

REPORT ON PROCEEDINGS BEFORE

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

CORRECTED

At Jubilee Room, Parliament House, Sydney on Tuesday, 23 February 2021

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 third hearing of the Select Committee on the impact of technological and other change on the future of work and workers in New South Wales. Before I commence I acknowledge the Gadigal people who are the traditional custodians of this land. I also pay respects to the Elders past, present and emerging of the Eora Nation and extend that respect to other Aboriginals present. Today we will begin by hearing evidence from two HungryPanda delivery riders. We will then hear from representatives of the Restaurant and Catering Industry Association, HungryPanda, the Australian Manufacturing Workers Union, the Public Service Association of New South Wales and Revenue NSW. Before we commence I would like to make some brief comments about the procedures for today.

Today's hearing is being broadcast live via the Parliament's website. A transcript of today's hearings will be placed on the Committee's website when it becomes available. In accordance with broadcasting guidelines, media representatives are reminded that they must take responsibility for what they publish about the Committee's proceedings. While parliamentary privilege applies to witnesses giving evidence today, it does not apply to what witnesses say outside of their evidence at the hearing. I therefore urge witnesses to be careful about comments you may make to the media or to others after you complete your evidence. Committee hearings are not intended to provide a forum for people to make adverse reflections about others under the protection of parliamentary privilege. In that regard, it is important that witnesses focus on the issues raised by the inquiry's terms of reference and avoid naming individuals unnecessarily.

All witnesses have a right to procedural fairness according to the procedural fairness resolution adopted by the House in 2018. If witnesses are unable to answer a question today and want more time to respond, they can take a question on notice. Written answers to questions on notice must be provided within 21 days of receipt. If witnesses wish to hand up documents, they should do so through the Committee staff. In terms of the audibility of the hearing today, I remind both Committee members and witnesses to speak into the microphone. For those with hearing difficulties who are present in the room today, please note that the room is fitted with induction loops compatible with hearing aid systems that have telecoil receivers. Finally, could everyone please turn their mobile phones to silent for the duration of the hearing.

HELEN YANG, Interpreter, sworn

FANG SUN, HungryPanda Deliver Rider, affirmed and examined through interpreter

JUN YANG, HungryPanda Delivery Rider, affirmed and examined through interpreter

The CHAIR: I now welcome our first witnesses.

Mr SUN: Hello, my name is Sun Fang. I am 38 years old this year and I come from China. I am a delivery rider for a HungryPanda.

Mr YANG: My name is Jun Yang. I am a delivery rider for HungryPanda. I am 51 years old this year.

The CHAIR: Could the interpreter also state your full name and position title and swear the oath for interpreters.

Ms YENG: My name is Helen Yeng. I am an interpreter between Mandarin and English language. I swear by Almighty God that I will well and truly interpret the evidence that will be given and do all other matters and things that are required of me in this case to the best of my ability.

The CHAIR: I invite the witnesses to make a short opening statement if they so wish.

Mr YANG: No.

Mr SUN: Good morning to you all, Mr Chair and members of Parliament. I wrote a letter to HungryPanda asking them to hold a kind of election to elect representatives for the issue of work safety. The continued reduction of wages by HungryPanda is not just a financial issue; it is also a work safety issue. Mr Xiaojun Chen lost his life for being a breadwinner for his wife and children. However, HungryPanda not only failed to address the safety issue but also reduced wages on several occasions within months. We can imagine that the number of injuries and deaths that happen to riders will not reduce but will instead increase. When somebody made a complaint about the unsatisfactory conditions of work and the reduction of wages, HungryPanda failed to take heed of those complaints. They also failed to recognise the value of our work. They instead spread the rumour of insecurity among the workers. I ask this Committee to find out what is happening and I will answer your questions faithfully.

The CHAIR: Thank you. Mr Yang, you were recently dismissed by HungryPanda.

Mr YANG: Yes.

The CHAIR: Was that after you complained about the cut to your income?

Mr YANG: Yes.

The CHAIR: Were you ever advised or given notice by HungryPanda that they intended to cut your pay?

Mr YANG: No. When we went on strike, they just sent me a message and then my number was blocked.

The Hon. WES FANG: Chair, just a procedural issue: I noticed that when the interpreter had an issue explaining a question to Mr Yang, Mr Sun then explained the question. For Hansard's purpose, it may be beneficial if the translator could explain how Mr Sun explained that question.

Mr DAVID SHOEBRIDGE: I do not think Hansard translates communication in Mandarin, only the translator's answer.

The CHAIR: On the matter: If Mr Sun wishes to speak on the record, he will address the microphone. If it is the case that Mr Sun and Mr Yang were passing on something that the interpreter could hear, that is not really relevant for the purposes of putting it on *Hansard*.

Mr DAVID SHOEBRIDGE: It does not show on *Hansard*.

The CHAIR: But I take your point. Should the circumstance arise again and I feel that it is necessary for Mr Sun to put it on the record, we will put it on the record. Mr Shoebridge?

Mr DAVID SHOEBRIDGE: Mr Sun and Mr Yang, first of all, thank you for coming today. I think it shows great bravery to come and tell you story.

Mr SUN: Thank you.

Mr YANG: Thank you.

Mr DAVID SHOEBRIDGE: Mr Yang, when did you start working for HungryPanda?

Mr YANG: So, I worked for them for over a year.

Mr DAVID SHOEBRIDGE: And before they terminated your employment with them, how many hours a week were you working?

Mr YANG: More than 70 hours.

Mr DAVID SHOEBRIDGE: How long was your normal working day? When did you start and when did you end?

Mr YANG: I would start at 10 o'clock in the morning and finish around 11 or 12 at night.

Mr DAVID SHOEBRIDGE: And when you first started, how much were you receiving for, like, a good day's pay—roughly how much?

Mr YANG: If it is many hours then I would get around \$150, on average, for about 12 hours.

Mr DAVID SHOEBRIDGE: But then they cut your wages at some point. What effect did that have?

Mr YANG: They cut the pay a number of times. The first time it dropped to seven from 7.5 and then they dropped further to \$6. Then finally they cut it down to \$4 or \$3.

Mr DAVID SHOEBRIDGE: Mr Sun, did you experience the same?

Mr SUN: No. My number was not blocked but I did suffer a pay cut.

Mr DAVID SHOEBRIDGE: So towards the end of your work there, Mr Yang, if you worked a 10, 11 or 12 hour day, how much were you receiving?

Mr YANG: You mean in a day?

Mr DAVID SHOEBRIDGE: Yes.

Mr YANG: \$150 to \$200.

Mr DAVID SHOEBRIDGE: And Mr Sun, would it be the same for you—a 12-hour day? How much would you earn?

Mr SUN: I did not work 12 hours a day. So, I only worked nine hours a day and I would get around \$260, on average.

Mr DAVID SHOEBRIDGE: And as the pay you got reduced for each job, did it mean you had to rush and try to complete more jobs?

Mr SUN: Yes.

Mr DAVID SHOEBRIDGE: What did that mean in terms of how you went about the city or how you went about delivering?

Mr SUN: Who would you like—

Mr DAVID SHOEBRIDGE: Mr Sun and then Mr Yang.

Mr SUN: So, because I was allowed to take two orders at a time, so I would have to deliver them as fast—as soon as possible, as fast as is possible, in order to get the next two orders. If I was allowed to have three orders things might be a bit better.

Mr DAVID SHOEBRIDGE: Mr Yang?

Mr YANG: As I had worked there longer, so I would be able to get five to eight orders every day.

The Hon. ADAM SEARLE: This question is addressed to each of the two witnesses, one after the other. When you commenced working with HungryPanda, did you have to provide your own work equipment, or did HungryPanda provide that for you?

Mr SUN: We all have to provide our own equipment. HungryPanda never provide us with any equipment but something I would like to add: But HungryPanda provided the box.

The Hon. ADAM SEARLE: Mr Yang?

Mr YANG: They did not provide me with any equipment. I bought the equipment myself. The HungryPanda only provide me a meal box and the uniform.

The Hon. ADAM SEARLE: And what did HungryPanda do to help you make your work safe, to make sure that you performed your work in a way that was safe to your health?

Mr SUN: They did not provide anything.

The Hon. ADAM SEARLE: Mr Yang?

Mr YANG: They did nothing in this regard.

The Hon. ADAM SEARLE: Okay. Now, both of the witnesses have given evidence about how they worked long hours. When you performed your work, was your pay stable and predictable from one week to the other? If you performed a certain amount of work did you always get the same amount of pay, or did it go up and down?

Mr SUN: No.

Mr YANG: On average, basically sometimes you get more, sometimes less.

The Hon. ADAM SEARLE: So there was no way to predict for the work you performed whether you would get the same pay?

Mr SUN: That is right.

The Hon. ADAM SEARLE: So, what impact did that have on your lifestyle, your ability to pay for rent and food and supporting yourself?

Mr SUN: At the moment, particularly after they started to cut the pay, it is very hard for us to carry on with that work. I do have to pay rent and food, and also I have to pay child maintenance. So things are very unfair for me.

The Hon. MARK BANASIAK: Can you outline, excluding the long hours, some of the other safety concerns that you have expressed to HungryPanda management?

Mr SUN: There is a lot of concerns.

The Hon. MARK BANASIAK: Did HungryPanda ever provide training around safety, particularly around road safety?

Mr YANG: No.

Mr SUN: No.

The Hon. GREG DONNELLY: I thank you both and we are very grateful that you have agreed to come and give some very important evidence to this inquiry.

Mr SUN: Thank you, sir.

The Hon. GREG DONNELLY: When you commenced with HungryPanda, were you told what payment you would receive per delivery?

Mr YANG: Initially, yes. I was told that the starting payment is \$7.50, but then they started to cut it—

The Hon. GREG DONNELLY: Excuse me, is that per delivery?

Mr YANG: Yes. Finally, it came down to \$3.

The Hon. GREG DONNELLY: Mr Sun, were you also told the payment you would receive per delivery when you started?

Mr SUN: They kept the payment for per delivery with a great deal of secrecy. In the end, we managed to find out information ourselves.

The Hon. GREG DONNELLY: With the delivery payment, was that a payment you got if you delivered for a certain period of time? In other words, did you have a time constraint on you to make the delivery? Or did you have no limit on what it took to make the delivery?

Mr SUN: There was a limit on the time, but there was no penalty if you went over that limit.

The Hon. GREG DONNELLY: Just one final question: What was the explanation—if there was one—for the cut in the per delivery rate? What did the company say was the reason for cutting the delivery rate?

Mr YANG: No explanation.

Mr SUN: No explanation at all.

Mr DAVID SHOEBRIDGE: Was it just because they could?

Mr SUN: Yes.

Mr YANG: Yes.

The Hon. WES FANG: I thank you for appearing today. I have three quick questions: How did you find HungryPanda was looking for employees? Did you sign a contract either as an employee or a subcontractor? Were you given any—

Mr DAVID SHOEBRIDGE: Through an interpreter—you had better break them up.

The Hon. MARK BANASIAK: You can do one at a time.

The Hon. WES FANG: Okay. Would you need some time with that?

The CHAIR: Just do the first question, and then we will do them one by one.

The Hon. WES FANG: How did you find that HungryPanda was looking for employees?

Mr SUN: In August 2019 HungryPanda first set up its company in Sydney. They were recruiting full-time delivery personnel, saying \$200 a day.

The Hon. WES FANG: When you were employed by HungryPanda, did you sign a contract either as an employee or a subcontractor?

Mr YANG: Yes.

Mr SUN: Initially, no, but in year 2020 a contract about partnership was signed.

The Hon. WES FANG: This is not my third question but if you have a copy of those contracts, could we please get them?

Mr SUN: Both of us have that contract.

Mr YANG: There was a contract before but it was taken back by HungryPanda, but then another one was signed in year 2020.

The Hon. WES FANG: My last question was: Were they provided any manuals around how to operate within HungryPanda's guidelines?

Mr SUN: No.

Mr YANG: No.

The Hon. COURTNEY HOUSSOS: I want to thank the witnesses for their time and for their testimony. I heard one of you say that you could have two or three orders and one could take five or six orders. Did that change over time? Did the company explain to you how you were able to take more orders?

Mr YANG: Initially you would not be given a lot of orders but as you get better and better in your work, they will start to give you more, particularly when they got busy when they had a lot of orders.

The CHAIR: Since you raised your concerns about your pay being halved per delivery with HungryPanda, have you had any substantial response from HungryPanda to your concerns?

Mr YANG: No.

Mr SUN: On the day we went on strike with HungryPanda, the company issued a notice to us; I regard that as a response.

Mr DAVID SHOEBRIDGE: What was that notice? What did they say?

Mr SUN: They said, "Okay, after the pay cut we will increase the pay and we want to reiterate that we are partners."

Mr DAVID SHOEBRIDGE: Since you left, have you spoken with any of the workers still at HungryPanda?

Mr YANG: Yes.

Mr SUN: I have not left HungryPanda because my number has not been blocked, and I have been in touch with other workers.

Mr DAVID SHOEBRIDGE: How do they feel about what happened to Mr Yang? Are they frightened of speaking up now?

Mr SUN: Over time, more and more people are concerned about what will happen; that is true.

Mr DAVID SHOEBRIDGE: Mr Yang?

Mr YANG: After Mr Lee's number and my number were blocked, other staff are concerned about their job.

The CHAIR: Thank you very much for your appearance today. We really appreciate the time that you have taken to give us your evidence.

Mr SUN: May I ask one question?

The CHAIR: Sure.

Mr SUN: Should I provide the Committee with the contract I just mentioned?

The CHAIR: Yes, please, that would be most useful.

Mr DAVID SHOEBRIDGE: And the secretariat will help you with that.

Mr SUN: Thank you, sir.

(The witnesses withdrew.)

WES LAMBERT, Chief Executive Officer, Restaurant and Catering Industry Association, sworn and examined
THOMAS GREEN, Head of Policy, Government and Public Affairs, Restaurant and Catering Industry Association, sworn and examined

The CHAIR: We welcome our next set of witnesses, representatives of the Restaurant and Catering Industry Association. Would either of you or both of you like to make an opening statement?

Mr LAMBERT: Absolutely. There is no doubt that there is a significant process of technology change currently underway in the restaurant and catering industry. While our industry has not been immune to previous waves of advancement, like the introduction of online booking platforms, tap-and-go payments and the rise of online review sites, none has had the same widespread effect on industry business models as the takeaway and delivery options. The online delivery industry has undergone a series of important reforms over the past 18 months that has drastically improved the offering available to restaurants, including flexible pricing, commission changes and flexible menu offerings. These key industry players have been working collaboratively alongside Restaurant and Catering Australia to genuinely improve how our members interact with the platforms.

The recent COVID pandemic has undoubtedly brought one of the most challenging years for business owners in the restaurant, cafe and catering industry in a century. However, many operators have seen the COVID-19 crisis as an opportunity to pivot their businesses to not only survive the effects on the hospitality industry during the pandemic but to create more resilient business models to thrive past 2021. In our 2020 benchmarking report, compiled to present a snapshot of the sector, we found an increasing resilience on digital technology across the entire sector, with the use of third-party delivery apps increasing during the pandemic with some estimates as high as 40 per cent.

Surprisingly, many businesses listed COVID lockdowns as the key reason for their signing up. To be clear, without the platforms, our industry would be in a lot worse shape than it is now. Countless businesses may have closed if it was not for the lifeline that only takeaway and delivery provided by the Government through the pandemic period. However, bad operators and continued imbalances continue to be a problem for the sector. While Restaurant and Catering in principle supports safety measures for riders, we understand that these costs cannot be borne by the restaurants or the platform operators, which both presently operate on thin margins, certainly not by the restaurants, who cannot take any more punches, but potentially by the customers, who are ultimately the beneficiaries of online takeaway and delivery and will be for many years to come.

The CHAIR: Mr Lambert, I appreciate the submission your organisation has put in. But one thing that I would not mind you taking us through is precisely the economic arrangements that tend to prevail between restaurants and the gig riding firms. How are restaurants choosing which platforms to operate on? What is their power within those platforms? How are they charged by those platforms? How do they in turn charge consumers?

Mr LAMBERT: From a customer point of view, which is the restaurants who are utilising the platforms, they have many options. There is self-delivery, which can be as low as 5 per cent, up to the largest delivery company, which can be 30 per cent, and many ranges in between, depending upon the services—

The CHAIR: When you say 5 per cent and 30 per cent, what are you referring to?

Mr LAMBERT: The commissions that the restaurants are charged for the services provided. Those services are across a range of percentages. Service is from around 5 up to around 30, depending upon what you get. It is up to businesses which they choose. Many choose multiple. Some choose a few. Nowadays, because consumers will often have multiple on their phones—I hazard a guess that everybody in this room has at least one delivery app on their phone, if not two or three—the restaurants also recognise that as a factor. There used to be footprint differences, but that is changing. The footprint of all of the delivery companies, small to large, is getting larger because consumers are demanding it. So more restaurants are taking on most of the delivery apps, both self and large.

The CHAIR: I note previously your organisation has pointed out the unilateral power of the platforms to decide pricing of both the commission rates as well as menu items. But there has been a change to that in the last year. Can you take us through what it was and what is it now?

Mr LAMBERT: When I started in the role, I pulled out the big stick because the delivery companies at that point were not as flexible as they have become. It is my understanding that back then, as recently as May 2019, there was less flexibility on the apps and businesses were unable to charge different menu prices in house versus on the apps and had to list their entire menus and there was not as much flexibility in the commission percentages, nor were there the choices of self-delivery, which is a relatively new phenomenon. Over the course

of the last 18 months, we have lobbied and worked closely with all stakeholders—the restaurants who had many complaints that needed to be addressed and the delivery platforms, small and large—in creating that flexibility that was needed pre-COVID but especially through COVID for businesses to be able to charge two-stream pricing, different pricing on apps versus dine-in, which then covered some or all of the cost of their commissions, and allowing them to put any menu that they wanted on the delivery apps and, in the case of the self-delivery apps, actually putting a delivery fee that would be paid by the customer for the delivery.

The CHAIR: Was it easy to bargain with the food delivery platforms?

Mr LAMBERT: Ultimately the relationships that we began to build with them that started from around November 2019 and then through the bushfires and into the pandemic—it was relatively straightforward. They were very collaborative in their dealings with us. According to ABS, whether it is accurate as of today, there are 48,699 restaurants, cafes, caterers and coffee shops in the country and over 25,000 in New South Wales. So it certainly is very important that those businesses feel that they can run their businesses profitably in the best way for them.

The CHAIR: Did our competition laws make it easier for you to bargain with these big platforms, or harder?

Mr GREEN: There was obviously a landmark case around unfair contract terms with one operator that was undertaken in 2019. I think that was quite clear around the way that these types of contracts can be written with the restaurants. I think that cleared up what we saw was the main hurdle in dealing with these platforms. But I think, as it has been for the last couple of years, the business approach from a lot of these platforms has shifted away from sheer market growth and a competition for market share into a more mature business model that allows them to be more flexible with the way that they deal with those restaurants. I think that is what you are seeing as a result.

The CHAIR: I appreciate your diplomacy, but in truth, the ACCC found their contract terms unfair and then more competition came into the market. That is correct.

Mr GREEN: In relation to that one operator, yes.

The CHAIR: Basically, the introduction of further competition in the industry is what gave you some leverage to be able to deliver a better outcome for your members. Is that correct?

Mr LAMBERT: I would say that it was a multitude of factors that all happened to happen at the same time, which were bushfires, COVID and us engaging directly with all of the delivery companies equally, allowing us to then be the voice of restaurants and the voice of reason and work to a solution.

The CHAIR: I am fairly positive though that the ACCC finding that the market leader's contract terms were unfair probably had some impact and probably gave you some leverage. Is that correct?

Mr GREEN: I would say that that would be a question for the delivery companies more than us. We are benefactors of the flexibility. So, however it came about, we are certainly grateful.

The CHAIR: I am sure they appreciate the diplomacy.

Mr DAVID SHOEBRIDGE: When you say "benefactors of the flexibility", what do you mean?

Mr LAMBERT: We represent restaurants, but we also then will help them to work with suppliers. When we are able to use our industry association status to help a business make more profit or be more profitable and save money with a supplier, we do so. Being able to work collaboratively between a large cohort of businesses and suppliers is what we mean when we say flexibility.

Mr DAVID SHOEBRIDGE: And your goal on behalf of your members is to reduce the amount of money that goes to the delivery companies.

Mr LAMBERT: Our goal as members is to ensure that they are more profitable. Ultimately, however that works, whether that is the ability for them to put higher-margin items on the menu or the ability for them to charge different prices, ultimately that is what is most important. It is not necessarily about specifically what each business pays in its own individual contractual relationships. We know that across a range of commissions, 30 down to 5, there are many choices for them. Ultimately they have to choose which option they choose.

Mr DAVID SHOEBRIDGE: But your members would obviously rather pay 5 than 30.

Mr LAMBERT: Ultimately, if that is the product that they choose, yes, they would, if they want to deliver themselves, yes.

Mr DAVID SHOEBRIDGE: I do not know why we are having a semantic argument about this. If your members have a choice of paying 30 per cent of the meal cost to the delivery service or 5 per cent of the meal cost to the delivery service, they would rather pay 5 per cent. Am I missing something here?

Mr GREEN: I think it comes down to the product that is being offered. In the event of the 5 per cent platform, let us choose any number—Mr Yum, Hungry Hungry, Bopple, all fairly well known. Yes, there is a 5 per cent cost to the platform, but the delivery of that product is done by an employee of the restaurant, which is employed as a casual, full-time, part-time employee. So there are obviously flow-on employment costs, flow-on insurance costs to the business as a result of doing that. That is then offset by the upfront cost to the platform, being marketing, payment systems et cetera.

Mr DAVID SHOEBRIDGE: Have any of your members expressed concern about the working conditions of the people who actually deliver the food? Have they raised concerns about the safety issues and the welfare of those people?

Mr LAMBERT: Not widespread. Ultimately, a very busy restaurant does not necessarily see the transaction outside of their premise, meaning that the normal workings of delivery companies, self or large, are that a delivery rider or driver comes in and grabs an order with a number on it and has very little interaction with the restaurant. So, outside of their premise, they would have no say whatsoever. They are more worried about their own individual business.

Mr DAVID SHOEBRIDGE: From the industry organisation's perspective it is hear no evil, see no evil; whatever happens to the workers once they get the food in their hands is not your business.

Mr LAMBERT: Ultimately for every truck that brings supplies—alcohol or food—into a restaurant, the restaurant is more concerned about receiving those goods and taking that stock in and not necessarily the transport of those goods from one place to another. Ultimately the restaurants themselves have not expressed to Restaurant and Catering that they necessarily have any say in the riders' and the drivers' situation.

Mr DAVID SHOEBRIDGE: But you must have seen in the media, if not in other places, the number of those workers who are delivering your members' product who are being injured and who are being killed delivering your members' product. Are you saying that you do not have a stake in that or an interest in that, and that it is all an externality?

Mr LAMBERT: The question you asked is: Are restaurants asking or telling us that they are necessarily concerned about certain conditions of their riders and drivers? En masse there is not a conversation to Restaurant and Catering about riders and drivers. It is certainly a wider issue. Yes, I read the media, as do most businesses. But if you are asking me specifically if it is a line item in the council meetings that we have, or if it is a line item in the board meetings that we have, or if anyone is directly raising it with us—the restaurant owner—the answer is an unequivocal no.

The Hon. MARK PEARSON: Why do you not raise it?

Mr DAVID SHOEBRIDGE: Unbelievable.

The Hon. ADAM SEARLE: Exactly.

The Hon. WES FANG: Point of order—

The Hon. MARK PEARSON: I just asked a question.

The Hon. WES FANG: The point of order is that Mr Shoebridge has asked the same question at least two times, if not three. Now it appears that Mr Pearson is going to ask the same question.

The Hon. MARK PEARSON: No, I am not.

The Hon. WES FANG: I am speaking.

Mr DAVID SHOEBRIDGE: You do not have to run defence.

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

The Hon. WES FANG: The witness has provided an answer to the question on multiple occasions. I think that we need to understand the procedural fairness resolution and move on. For Mr Shoebridge to then be talking over Mr Pearson, providing commentary about how he believes an organisation should or should not be responding to an issue, is not appropriate for what we are doing today. I ask you to call them both to order.

The CHAIR: I am not going to call them to order. I will point out that members should allow witnesses to complete their answers and members should finish their questioning before that. Of course, there is a widespread practice in Legislative Council committees that if a member has a question that follows up on another member's question, which is within the same line, then some leniency is given. But we can all be polite in how we do that.

Mr DAVID SHOEBRIDGE: I indicate that Mr Pearson was asking a question over me. I like Mr Pearson's question and I appreciate that he asked it. I do not need Mr Fang's help. I would like Mr Pearson to ask it again.

The CHAIR: We are a respectful committee and we will continue to be a respectful committee. Mr Fang, I understand your point. We can all be polite. I think Mr Pearson was asking a follow-up question to Mr Shoebridge. I understand that Mr Shoebridge is fine with Mr Pearson asking a follow-up question.

The Hon. MARK PEARSON: My question is: Why does your umbrella organisation not see that it has a responsibility to bring that into the dialogue or conversation with your constituents?

Mr LAMBERT: First, I will start. This is why we are here; we are here to be part of the dialogue. I will pass it on to Mr Green.

Mr GREEN: To go back to a previous question that has been raised here around restaurant attitudes to this, we are certainly seeing restaurants becoming more and more aware of this style of work as it is increasing in its prevalence across the industry. Three or four years ago these platforms were not widespread across the industry. We are now seeing the majority either being on these platforms or, as a result of COVID, taking the form of takeaway and delivery in their business. Now, whether that is self-delivery, third-party delivery or takeaway, the changes in these businesses—yes, we are seeing businesses having to grapple with this for the first time. There are certainly businesses out there that choose to use self-delivery as a personal choice because they do not like the other options that are out there. We are seeing that the rise in self-delivery is the single largest growth sector of the delivery market in terms of percentages as a result of COVID. You can make of that what you will, but there is certainly a disparate set of views across the industry.

The Hon. MARK PEARSON: Would you not think that there is a line of responsibilities occurring here? A person comes to a restaurant and the restaurant is responsible for the cooking, preparation and serving for the person who is consuming. There is a line of responsibility, a line of communication, if you like, or a line of contract, in a sense. Is that responsibility not also taken right to the front door of the person in the fact that they are given the food? In your submission you raise that there is this serious concern between a contractor and a contract, and an employee. I am just trying to understand what you are saying in your submission as to how that should be resolved.

Mr LAMBERT: Do you want an answer to the first or the second question?

The Hon. MARK PEARSON: The first and then the second.

Mr LAMBERT: I will let Mr Green answer the second and I will go with the first. This is all new territory. Cabs can now be ordered through an app on your phone, which is also very new. Ultimately when you say, "Are restaurateurs asking us or telling us that they are concerned?" This is all new territory. They have never previously been concerned about the transport of goods and services to and from their business. They were more concerned about their own employees, their own customers and their own dine in situation. It has certainly been prevalent in the media that there have been incidences with riders and we are very well aware of that. Of course, business owners would certainly be well aware of that and concerned about the ultimate outcomes in that area.

The Hon. MARK PEARSON: Can I just ask you to clarify something? What do you mean by new?

Mr LAMBERT: New?

The Hon. MARK PEARSON: You said that this is all new but this has been going on for some time. It is hardly new. It has been years.

Mr LAMBERT: When you say "some time", it is relatively new. DoorDash has only been in the country for about 12 months and it is the fourth entrant to the market. Bopple and Mr Yum are also just one year; that is relatively new. For the industry it is all very new. Many businesses have been closed or have stayed closed for a good portion of COVID-19, so they have just come back on. In many States businesses remained closed until October, so for us that is relatively new. The issues are being discussed now because the gig economy is very new.

Mr GREEN: I think our position around the independent contract arrangement is twofold. One is that there is a question to be had around how delivery drivers are treated. That is not substantively a matter for us as

we do not engage these contractors as contractors of the restaurant. The second position was around any new arrangements, protections or structures that are brought into the market or the system. Our strong view is that these cannot be borne as extra costs on the restaurants.

The Hon. ADAM SEARLE: Just on that point, you say you do not engage them as contractors. I guess that is legally correct, but your members use these apps and your members are the beneficiary of customers coming to them through those apps. These delivery drivers or riders come to the premises of your members, collect your product and deliver that to the customers. However you want to dress it up legally, your members are using the services of these riders and benefiting from it. We are hearing evidence that they are getting paid as little as \$3 per delivery. I do not know how anybody manages to support themselves on that kind of income. This is just rank exploitation. Are you saying that you are going to lead a conversation with your members about this now, or are you waiting to see what happens?

Mr LAMBERT: I will take this one. First off, the question is about delivery from point A to point B. Couriers have even been delivering for parliamentarians across the Sydney CBD for 50 or 60 years.

The Hon. MARK PEARSON: So it is not new.

The CHAIR: Sorry, can we just allow the witness to talk?

Mr LAMBERT: The courier of things from one place to another does not create a contract between the person who wants to send something from one place to another. There is no contract. For example, a barrister who wants to send documents from here to there has never before gotten involved in the affairs of the courier company. As a barrister it would be a second thought, whatever happens with the courier company; you just want to be able to set it in the outbox and for it to go to some other barrister's office and get there.

So, to answer the question, again this is certainly something—we are here at this table because we want to be a part of the conversation to ensure that restaurateurs are not charged anymore than they are already paying for anything that is future legislated in terms of what restaurants are responsible for. Across the range of commissions that is what they have decided to pay and because restaurants' margins are quite thin, especially through COVID, IBISWorld and other sources tell us they are between 4 and 5 per cent.

The Hon. SHAYNE MALLARD: That much?

Mr LAMBERT: Yes, that much. For some larger groups—I used to own one—8 per cent is quite a great result. So it is very important that all legislation and all decisions ultimately are borne by the payer of the services, which, we believe, that over time has gotten the most benefit out of the situation.

The CHAIR: We will go Mr Searle to follow up and then we will go to Mr Mallard, Mr Fang, and Mr Banasiak.

The Hon. ADAM SEARLE: Just two things: I can understand the position of your members but your members and you as a peak organisation are in a good position to lead a conversation with these app providers or platform providers about greater social responsibility and not exploiting workers in the way that we have been hearing is taking place. Is that something that you as a peak organisation is not open to, now that you are hearing so much information about what is happening to these workers? Are you now prepared to lead a conversation not just with your members but with these other delivery providers?

Mr LAMBERT: We are absolutely here to be the voice of our members and as our members bring issues up and represent the things that they would like to change in their industry that we are the peak body of, absolutely we will speak on their behalf.

The Hon. ADAM SEARLE: Okay. I do not want to put words in your mouth but you have already said your members have not raised this with you.

The Hon. SHAYNE MALLARD: Not collectively.

The Hon. ADAM SEARLE: Well, at all.

Mr LAMBERT: I said collectively.

The Hon. ADAM SEARLE: Okay.

Mr DAVID SHOEBRIDGE: Well, you said it was never a line item in a meeting and it never turned up at any of your committee hearings. You were very explicit about it, Mr Lambert.

Mr LAMBERT: Correct.

The Hon. ADAM SEARLE: So you are saying your members are generally raising it with you and now you want to be a voice for your members. So what I am hearing is that you do not want to and you will not be raising these concerns about the exploitation of these workers with these apps and these platform providers. Is that what you are saying?

Mr LAMBERT: So, as you eloquently said, you do not want to put words in my mouth—

The Hon. ADAM SEARLE: So I am giving you the opportunity.

Mr LAMBERT: —so I would say, "Don't do so." As I said, as issues are raised to us by restaurateurs, we absolutely will bring those issues to their partners that we have relationships with and we will continue to do so.

The Hon. ADAM SEARLE: Well, Mr Lambert, with respect you are fencing because you said that you have come here to the table to be part of this conversation. I am raising with you and this Committee is raising with you frankly concerns about exploitation of workers. We are hearing that they are getting paid as little as \$3 for a delivery. Your members benefit from that work because your product is being delivered. Will you advocate with these menu providers and these delivery services better social responsibility and a crackdown on exploitation of workers?

The Hon. WES FANG: Point of order: It is the same point of order I raised last time, which is Mr Searle has just asked the exact same question as he asked the time before, reworded, trying to elicit a different response from the witness. The witness has answered the question. I am getting a sense and a tone of the way the questioning is occurring that people are not getting the answer they want so they are just rephrasing the question and I think we need to be responsive to the—

The CHAIR: Look, I have heard the point of order. I am conscious of the fact that I want to move to the Government so that the Government members can ask their questions. Mr Searle's questioning was well within the bounds of traditional custom of the Legislative Council. Mr Searle is entitled to press for an answer and the witness is entitled to repeat his answer, if he so wishes. If it becomes repetitive to the point where it is no longer probative, I will move it on. Mr Searle I think had finished, or had you not? Mr Lambert, you may respond.

Mr LAMBERT: I would say my answer would be the same. We will continue to represent our members as issues arise, and certainly this is the first time that I have ever heard—because I was not privy to your previous evidence to the Committee—about \$3 per delivery. Again, that is not part of our business model. Restaurateurs would not, do not, have any knowledge of the operations of delivery companies. They only know what they pay for the services that they provide.

The Hon. ADAM SEARLE: Sure.

Mr LAMBERT: So I appreciate that you have now informed me that some orders are \$3 and we will certainly continue to be collaborative on the issue.

The CHAIR: Very quickly, Mrs Houssos had a follow-up and then we will move, but I will need to follow up. Mrs Houssos?

The Hon. COURTNEY HOUSSOS: Thanks very much, Chair. I just wanted to ask you when you talked about advocating on behalf of the interests of your members and you also talked about how restaurant margins can be quite thin. Have you thought to engage with the companies about the fact that they do take up to 30 per cent at times of an actual order from a restaurant? That has been raised with me by small businesses that the amount is so significant that is being taken from them and it is clear from the evidence that we have received that that is what has happened to the delivery driver.

The CHAIR: Did you understand that? I think there was a bit of a technical problem.

Mr LAMBERT: I did. I am going to assume that the question is: Have we raised the issue of commissions? Absolutely. We certainly lobbied all of the delivery companies back as early as November 2019.

The CHAIR: When you say you lobbied, what do you mean by lobbied?

Mr LAMBERT: Discussions.

The CHAIR: Did you negotiate? Did you bargain?

Mr LAMBERT: It is more discussions, more collaborative discussions between—I use that word widely so it is pointing out to all parties the issues on the table and bringing the parties closer together to achieve an outcome. Certainly we are able to work alongside the largest delivery app dropping its peak commission rate

from 35 to 30 and also securing a discount for restaurant and catering members to even that rate and also working with the delivery apps to allow business to then again charge prices commensurate with paying a commission. Often times when a throughput cost is there, like credit card surcharges, for example, businesses then pass that cost onto the consumer, and in this case businesses have been able to pass the commission cost in part onto the consumer as the beneficiary of the instantaneous meal within an hour.

The CHAIR: Okay. I will move to Government questions. Mr Mallard?

The Hon. NATASHA MACLAREN-JONES: I have a follow-up question. The line of questioning has somewhat been on the responsibility of restaurants to make choices about the apps that they engage with. Do you think there is a responsibility on customers to be informed and make informed choices of the apps that they use?

Mr LAMBERT: I mean, that is a wide question. We do not represent consumers but I know that the anecdotal evidence I have three or four delivery apps on my phone and again I have spoken to from a consumer point of view also has multiple apps on their phone. It is really consumer-driven and then businesses choose which services they use based upon cost but also the services provided.

The CHAIR: Mr Mallard?

The Hon. SHAYNE MALLARD: Thank you, Chair. Can we lend Mr Mallard a microphone?

Mr DAVID SHOEBRIDGE: They are trying to silence you. Your own team is trying to silence you.

The Hon. SHAYNE MALLARD: Oh yes, David. Of course they are!

The Hon. WES FANG: He is not the person I would want to silence.

The Hon. SHAYNE MALLARD: Thank you. First of all I make a declaration that my partner and his hospitality businesses are a member of Restaurant and Catering—very active. I have no financial interest in that business so I just make that declaration. But you made the point before the margin is—I heard you say 8 per cent and I nearly fainted—but 3 to 4 only in a good year for restaurants. So these guys represent struggling businesses. They are not like the top end of town and a huge number are closing down as you come out of COVID and so forth. But you have put in your submission that the current laws and workplace protections are not fit for purpose for the twenty-first century.

Mr LAMBERT: Yes.

The Hon. SHAYNE MALLARD: I fully agree with that. I mean, from the aspect of a restaurant business. Would you like to outline why they are not fit? Would you agree with my contention, which I have made in this Committee before, that the gig economy, particularly so big in the restaurant area, is a response to the inflexible work conditions for restaurants and cafes?

Mr GREEN: Yep. So that question kind of comes in two parts: One is the gig economy side and one is the restaurants themselves. As a perfect example, prior to COVID there was no duty within the restaurant award being the industrial instrument that restaurant and cafe businesses pay under that involved any delivery duties at all. There was a duty under the fast food awards so you can get your big fast food operators. They were easily able to employ a delivery rider to do delivery work.

The Hon. SHAYNE MALLARD: Like Pizza Hut.

Mr GREEN: There was a vehicle allowance and a distance allowance—all that was accounted for within the award. That was not the case in the restaurant award nor in the hospitality award. So that has been a change only in the last six months when that has occurred and that is, as we have said, a result of restaurants pivoting to takeaway and delivery, wanting to use self-delivery—so not using a third party app deliverer but using the apps as a marketplace to access customers whilst employing their own staff. A lot of those businesses have then found that it is not as profitable or it is not as cheap as they think to do self-delivery based on the costs that are involved employing staff. We are now having—and it is an issue for this Committee to consider—issues with the new interaction with statutory insurance schemes at a State level with existing restaurant businesses.

The Hon. SHAYNE MALLARD: And the issue there would be downtime, right?

The CHAIR: Sorry, what do you mean by that?

The Hon. SHAYNE MALLARD: Like the drivers sitting around waiting for another order?

Mr LAMBERT: So, for example, take a restaurant that has no control over the number of orders per hour that it gets. Let us say you are in a lockdown, which in New South Wales was very recently—and in other States really recently—those restaurant employees who are waiting to deliver, who are employees of that business,

might only deliver two orders in an hour. That means that at a base level, for a casual employee in a day part, those orders are \$12.50 each to deliver. Let us not talk about late night, weekends or public holidays. On a public holiday Sunday, technically it could be as high as \$25.02 to deliver a \$15 pizza. That is something that we have noticed with the self-delivery apps and the rise of takeaway and delivery, especially when it has been the only legal option during lockdown. Many businesses were quite surprised to realise, "Hey, this is much more expensive for me than I thought." So it is certainly something that we are paying very close attention to on a Federal level.

The Hon. SHAYNE MALLARD: If we can go back to the initial question around the flexibility of the workplace—

Mr GREEN: And around the gig economy—

The Hon. SHAYNE MALLARD: —and how the gig economy emerged as a market response.

Mr GREEN: And I think it has been raised—it is around this on-demand option. It is just not feasible. We like to think of the standard takeaway pizza offering that has always had delivery, or the local Chinese or Thai restaurant that we affectionately remember from our youth that has always delivered, whereas a lot of these businesses are now dealing with products, items, delivery margins and radius all being done online through an application. It is wholly demand-driven as a result of the customer. We will have some members who will have a dozen orders come through in an hour but even if they had one or two staff that they employed in their business, they would not physically have the staff to deliver to them. Whereas these platforms have the ability to meet that demand, and that demand-driven system is where the gig economy has really flourished in our sector.

The Hon. SHAYNE MALLARD: You have nominated that the independent contracting arrangements should continue to exist on a certain basis, and you have listed five areas. Do you want to touch on those and explain why you feel that the independent contracting model is best for that?

Mr GREEN: When we seek to understand the impact of this change in business model that the gig economy has brought on our members, what we are primarily concerned with is: Is this a structure that disrupts the restaurant model to a point where it is no longer viable? I think there was certainly a conversation around whether or not that was the case about 18 months ago. I think a lot of businesses, whether previous to COVID or as a result of COVID, have managed to adjust and adapt their business model to take into account what people might think is high commission prices when in fact it is fairly standard costs.

The Hon. SHAYNE MALLARD: There was talk of dark kitchens and there were companies doing their own kitchens.

Mr GREEN: One of our least favourite things to talk about is dark kitchens, and how that is affecting—that being a business model that, in a delivery universe, thrives greater than the standard dine-in restaurant, which we are obviously not huge fans of for cultural reasons and the like.

The Hon. SHAYNE MALLARD: Absolutely.

The CHAIR: Can I push you on that? What are your concerns with dark kitchens?

Mr LAMBERT: Let me take this one to start. Ultimately, they have their place. There are some brands that have gone out of business and may rise up in chef collectives, where groups of chefs come together and decide to lease a collective space and then use all the delivery companies to sell their food and sell their brand without a front of house—without dine-in—specifically from a delivery point of view. But ultimately the dine-in culture of Australia is something that we value very strongly. Pre-COVID, 36 per cent of meals were eaten out of home, so the culture of dine-in is very important for us to keep. While there will be ghost, which is different from dark—ghost, for example, is when a restaurant let's say makes pizza and someone in that restaurant makes amazing hamburgers. So they create a brand that is listed on the delivery apps for hamburgers at the same address and they then take orders for hamburgers; that is ghost. Whereas dark—or other terms—would be a specific warehouse that is designed for multiple brands.

The CHAIR: Do you think your members are at a competitive disadvantage with platforms that provide dark kitchen services, given that those platforms have access to advanced data, can see the entire market demand and are able to respond far faster to changes in consumer sentiment?

Mr LAMBERT: We are not seeing a rise of the dark kitchens that people predicted. It is very expensive because of the distances required. It is not like warehouses are available in Sydney's CBD and delivery two or four kilometres away is very easy. Warehouse space is down near the airport, and there is no way you are going to make food and get it from the airport to where we are sitting in a reasonable amount of time. So we have not seen the rise in the dark kitchens that was predicted. Ultimately, the delivery apps do not make food; chefs make

food and brand creators make food. So they really control that space. If they do not want dark kitchens, if they do not want to collaborate together in large spaces, then it is not going to happen.

The Hon. SHAYNE MALLARD: We were just going through the five areas and I want you to highlight the ones where you think contractual arrangements should still be pursued.

Mr GREEN: I am just going to refresh my memory.

The Hon. SHAYNE MALLARD: You have talked about employment gaps in the workforce. We all get temps or agency staff in in all industries, not just in hospitality. That is "contractor".

Mr GREEN: Absolutely. And I think—

The Hon. SHAYNE MALLARD: Waiters for functions are contractors through an agency.

Mr GREEN: Yes. And I think, again, what you see is there is work to be done and there is demand to be met but existing employment structures do not adequately allow for that person to be employed. The example that I used was around a business might like to employ a delivery rider to work purely for that business to deliver food, but reasonably speaking there is not an opportunity to bring them in even on a casual basis because that demand is so instantaneous when using these platforms. It is impossible to predict when that labour might be need to be used. Whereas these gig economy independent contractors are so responsive in terms of their ability to immediately meet demand. That is where these changed employment arrangements are quite useful to restaurant businesses, because they would not be able to do it on their own; there is not a structure for them to meet that need without these platforms.

The Hon. WES FANG: Thank you very much for appearing today. I noted with some of the earlier questioning that there appeared to be an admonishment, shall we say, of representations that you may have made. Then immediately after that, another member asked about the percentages that restaurants are required to pay to some of the delivery services using applications, how high that was and whether you were making representations on that. Can I get a sense of how you think a conversation would go if you walked in to meet with a number of those delivery services and said, "We want to reduce the rates that our restaurants and members pay, but we want you to provide much higher services to the employees—or contractors—who deliver that food"? Is there a competing aspect to that? How does that weaken any negotiating position you may have to adopt with those delivery companies?

Mr LAMBERT: You have half answered your question. Ultimately, our primary role is to represent members to their suppliers to get better rates, which we have done by both lowering commissions through COVID and increasing flexibilities on the amount that restaurants can charge per item on the delivery apps, as well as allowing them to vary their menus. That is the interaction that we have had with the delivery companies on behalf of restaurateurs. Again, you are correct in saying that ultimately we do not tell the delivery companies how to run their businesses when it is outside of the purview of what the restaurateur pays for their goods and services.

The Hon. WES FANG: My follow-on question from that would be: How do you think the response would be if you went to meet with the delivery companies and said that you wanted to be provided the full list of employment schedules and conditions under which all their delivery personnel operate and that you would judge them on that? How do you think they would respond?

Mr LAMBERT: I cannot put words in their mouth but they would probably say that it was commercial-in-confidence or information that we as the businesses that use their services were not privy to.

The Hon. WES FANG: So, is it reasonable, do you think, that members of the Committee would hold you responsible for how your members' food is delivered?

Mr DAVID SHOEBRIDGE: Point of order: How long can the speculation go? You are asking the witness to have a reasonable opinion of the Committee. Mr Lambert, if you want to have a go, have a go. But I cannot see how it helps.

The CHAIR: I repeat the position that has been adopted previously: The member can ask a question; the witness can respond to it. If I decide that it is not of any further probative value, I will move the questioning on. Mr Lambert, would you like to respond?

Mr LAMBERT: Ultimately, I cannot speak for the delivery companies. We have had much success in being the bridge in relation to what restaurateurs needed through COVID to help them to improve their businesses in many cases, when takeaway and delivery were the only options. At present, no, I would not know their answer.

The Hon. MARK BANASIAK: In your previous answer you spoke about how you lobby or have collaborative discussions with all these labour hire companies or application companies such as Uber Eats, or what have you. Is there any platform that you have these collaborative discussions with that you can isolate and say that they are not as collaborative as you would like them to be or they are not necessarily the best actors in this area?

Mr LAMBERT: The answer is that we have not engaged with every delivery company in the country. There are many; there are many pop-ups and many that have come into the marketplace during COVID. We deal with and have had successful discussions with many. There are bad actors. Certainly, we read in the media that, much like anywhere else, bad actors are reportedly doing the wrong thing. We have always taken the position that we do not necessarily like bad actors. When the first underpayments began to hit the news, one of the large companies in our industry was in the news quite a bit a couple of years ago. Our position was to advocate for 100 per cent compliance with the rule of law and that it was very important that that was maintained. Certainly, if we disagreed with the law we would work with the Government to potentially change it. But we always advocate for compliance with the laws that are on the books at present and we cannot ever condone breaking those laws.

The Hon. MARK BANASIAK: I am going to press you a little bit further, though, because you did not really answer the question. The ones that you have had conversations with—and I understand that you have not had conversations with all of them—have you walked away from those conversations with any of them, and said, "They are not a good actor"?

Mr LAMBERT: No.

Mr DAVID SHOEBRIDGE: Mr Lambert, you said that it is next to impossible for your members to be outcompeted by a restaurant at Mascot. Is that right? Is it because it is too far to get the food from Mascot to the market?

Mr LAMBERT: No, I said that the delivery radius for a dark kitchen—if one existed in a warehouse at the airport—would be too far for the present rules that we understand to be for the delivery apps of one, two, three or four kilometres.

Mr DAVID SHOEBRIDGE: Yes, so that would not work. In your mind, a dark kitchen at Mascot would not be a competitive threat to your members because of the distance to where most people want to get the food? Or did I miss something?

Mr LAMBERT: Yes. Certainly, there was a worry some years ago that there would be a rise of dark kitchens and we have not seen that really.

Mr DAVID SHOEBRIDGE: So I cannot fathom how one of the reasons from an industry perspective you say that you want to have independent contractors is because having independent contractors will:

4. Allowing Australia to remain economically competitive both globally and internationally, rather than relying on outsourcing;

Surely if there is any industry that will not be smashed by outsourcing and global delivery it is your industry and food delivery?

Mr LAMBERT: When you say "smashed by"—

Mr DAVID SHOEBRIDGE: I mean impacted by, hurt by—you pick your noun. That is a nonsense reason from your industry to be supporting independent contractors, Mr Lambert.

Mr LAMBERT: According to the Australian Bureau of Statistics entries and exit report that came out a few days ago, there are actually—and it was a surprise to us—more businesses in accommodation food services in the end of fiscal 2020 than there were at the end of fiscal 2019. So, certainly, our industry is very resilient and the gig economy and delivery has only sought to help our industry to not only survive but also thrive. We expect that it will continue in the future. As Mr Green said before, the individual delivery cost of employees who are working inside restaurants can be quite prohibitive.

Mr DAVID SHOEBRIDGE: I cannot work out how that responded to my question, but I give in.

The Hon. MARK PEARSON: Would you consider it your responsibility to your constituents if you became aware that two or three delivery companies are dodgy—not paying their workers properly or not ensuring that they are safe—if that has come to your attention in whatever form, would you see it as your responsibility to inform restaurants or kitchens that those operators are questionable and may be breaking the law and that, in fact, consumers might boycott their restaurant if they use them?

Mr LAMBERT: Certainly, it is a good question. We would work with businesses to determine the best suppliers that they should use. If suppliers were found to have broken the law—not allegedly—and found to have been bad actors, then we would certainly not recommend that restaurants use those.

The Hon. MARK PEARSON: Would you actively or passively not recommend it?

Mr LAMBERT: How long is a piece of string?

The Hon. MARK PEARSON: No, it is a clear question. Do you pick up the phone and tell them or do you wait for them to ask?

Mr LAMBERT: Ultimately, it is a two-way conversation when businesses seek advice from us. We are very busy and so we do a lot of inbound and answer calls all day long. Certainly, if we were asked which were reputable and which were not, we would answer that question based on the facts.

The Hon. MARK PEARSON: The safety of human beings is important.

The CHAIR: I ask one final question, which you can take on notice if you so wish. In your submission you state:

R&CA notes that there is no definition of "employment" under the Fair Work Act 2009 (Cth) and classifying a worker as an "employee" or an "independent contractor" has largely been determined by way of a consideration ...

Can I ask formally whether you support a statutory definition of employment, like that recommended by Ms James and her report to the Victorian Government? If so, if you have any suggestion as to what that statutory definition should be and, if you are especially generous, if you could give us a version of the text or words that would be most appreciated, if that is possible.

Mr LAMBERT: Of course, Chair. We will take that on notice.

The CHAIR: Thank you, Mr Lambert and Mr Green, for being forthcoming and for the robust way in which you have engaged with our questioning. It is of most use to us. We appreciate your time and your evidence. You have 21 days to come back to us on notice with your response to that one question. The secretariat will liaise with you.

(The witnesses withdrew.)

TINA SUN, Human Resources Manager, HungryPanda, affirmed and examined

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

Ms SUN: My name is Tina Sun. I come from HungryPanda. Our company was originally established in the UK in 2016. We came to Australia in 2019 in Melbourne and we started our Sydney company in late 2019. The business model is very similar to Uber Eats or Deliveroo or any other delivery company. We work with merchants—the restaurants—and also the delivery riders or partners to complete orders ordered by any customer. The provision that we have here is that we respect the flexibility for the riders and what we are doing is actually a very niche market dedicated for Chinese and Mandarin speakers, so we only have the Mandarin version on our customer app. We are actually quite new in this market and we respect all the market rules and all the legislation here. We are doing our best to fit in this environment and we also work with all our drivers to make sure that the orders are up to high standard as required by our customers. Besides that, I want to give as much permission as I can today to assist you and the community on any further work on this topic.

The CHAIR: Ms Sun, can I get some more basic information about HungryPanda? How many riders or drivers or delivery workers do you retain at any one time?

Ms SUN: Do you mean how many currently?

The CHAIR: On a daily basis, how many delivery riders would be working for the HungryPanda platform?

Ms SUN: I do not have the exact number with me, but it would be around 100 to 150.

The CHAIR: Is that just in Sydney?

Ms SUN: In Sydney.

The CHAIR: Do you operate in other cities?

Ms SUN: In Melbourne as well and also in Queensland and South Australia.

The CHAIR: How many different people have worked through your platform since you commenced in 2019?

Ms SUN: Sorry, I do not have the number with me.

The CHAIR: Can you estimate?

Ms SUN: Can I take this question on notice? I can find out later.

The CHAIR: Ms Sun, you said that you are the HR manager. What is your corporate leadership like in Australia? Do you have an Australian CEO?

Ms SUN: No, I was appointed by the UK company to come to Australia to help set up the company in Sydney.

The CHAIR: Who do you report to?

Ms SUN: I report to the head office of the company.

The CHAIR: So are you the Australian leader of the organisation?

Ms SUN: No, I am not.

The CHAIR: Who is?

Ms SUN: We have a director in Australia.

The CHAIR: Are they based in Sydney?

Ms SUN: They are based in Melbourne.

The CHAIR: Is there a particular reason you made the decision to appear and they did not?

Ms SUN: Because I want to come here in person to show our respect. Due to the lockdown in Melbourne in the past two weeks, our director cannot come here so—but I have all the information that he wants to express. If you have any further information, we are very happy to provide it later.

The Hon. ADAM SEARLE: We received very disturbing evidence this morning from two of your former drivers or deliverers, who gave evidence that they were being paid \$7.50 a delivery and then their pay was cut to \$3 a delivery without any discussion with them or other workers. Can you tell us why HungryPanda decided to cut its workers pay by more than half?

Ms SUN: I am sorry, sir. I would like to correct that first. Mr Sun is still with us. He is still one of our good drivers working in the city area and we respect his feedback and his thought on that. Regarding Mr Yang, according to our statistics, his earning for the last week in January was around \$230 per day and per order it was around \$9. I am not sure what he mentioned about \$3 per order. We have evidence showing his invoices.

The Hon. ADAM SEARLE: Did you cut the pay of your delivery drivers?

Ms SUN: No. Can I give you some background here?

The Hon. ADAM SEARLE: Please.

Ms SUN: Firstly, Mr Yang was working in the Burwood area and the pay change happening in February was only for the Waterloo and Zetland area, so in that case Mr Yang was not affected by that adjustment. I think what he mentioned about his pay change has happened over a very long time since he joined and worked with us in 2019 to the very end of 2020. In that one year period we have changed some rates about payment, but it happened recently and the pay rate was actually depending on the distance of the orders.

The Hon. ADAM SEARLE: Did the pay rates go down?

Ms SUN: Regarding Mr Yang—

The Hon. ADAM SEARLE: No, forget Mr Yang. I mean, I am happy for you to address that issue, but generally have you reduced the rates of pay to your delivery drivers?

Ms SUN: We have changed the structure of payment.

The Hon. ADAM SEARLE: No, have you reduced the payments to your delivery drivers?

Ms SUN: On average per order cost, there is no reduction for per order.

The CHAIR: But your delivery fee was \$6 a delivery last year, was it not? That is your standard contract.

Ms SUN: Yes, that was for one kilometre as a starting price.

The CHAIR: Then that fee has reduced and effectively you have replaced it with some form of an incentive structure. Is that correct?

Ms SUN: Yes.

The CHAIR: But the base rate has dropped.

Ms SUN: We have divided Sydney into five different areas. I cannot say every area has dropped.

The CHAIR: When you decided to change it from a base structure to an incentive structure, which has caused many of your drivers to say that their pay has been reduced, did you negotiate? Did you provide any notice? Did you engage with your driver or rider pool before you decided to change that structure?

Ms SUN: Well, we respect our riders. They have a choice to work with us or work for any other platform. Before we changed that we talked to some of the riders who are working in that area but not every one of them.

The CHAIR: Basically your position was that if they did not like the new rates, they should leave the platform.

Ms SUN: Sorry, can you repeat the question?

The CHAIR: Is it basically your policy that if your food riders do not like the new rates they can leave your platform and drive for someone else?

Ms SUN: That is true, but we would consider that situation to make a decision before we make the pay change.

The Hon. ADAM SEARLE: You did not engage representatives of your drivers to negotiate these changes. You spoke to one or two of them and then just imposed these changes on the workforce?

Ms SUN: In 2020 we did not have a representative from workers but now we are working on worker groups—like Mr Sun said, he has some concern here—so the situation, I can say that we are working on that. Before this we talked to some workers—not everyone.

The Hon. ADAM SEARLE: But you can see that not negotiating with your workforce and then changing the way in which they are paid, leading some of them to have reductions in pay, is very concerning for people who have to pay rent and support themselves and their families? Do you understand that?

Ms SUN: Yes, I understand, but I have to emphasise that over 80 per cent of riders have multiple work. They are contractors to us because we respect the flexibility they demand here. I think everyone here knows how this model is working.

The Hon. ADAM SEARLE: We have heard from two of your deliverers this morning, and from other gig workers earlier in this inquiry, that this model leads to very unpredictable and uncertain levels of pay for workers and that makes it very hard for them to support themselves and their families. Why do you not move to a system that gives your workers more predictable pay outcomes? Would that not be fairer, so that they know if they work so many hours they are going to get so much pay?

Ms SUN: Sorry, sir, I think that I have made my point here that we respect the flexibility and we do believe that we are a quite niche market here. If we put more riders—employees—they can only deliver for us. In that case, they will earn less than what they currently have.

Mr DAVID SHOEBRIDGE: Thank you for coming today, Ms Sun. We appreciate you coming and giving evidence. Why was Mr Yang's access to your app turned off?

Ms SUN: Mr Yang has too many complaints from customers and merchants. We have evidence showing that our merchants said, "You can send anyone to us to deliver the food other than Mr Yang." After we received that feedback we talked with Mr Yang to solve this problem, to ask him to do another training for that, but he rejected it.

Mr DAVID SHOEBRIDGE: That coincided with Mr Yang raising concerns with you about pay rate and safety. You are saying that is just a coincidence, Ms Sun?

Ms SUN: We did not terminate with him due to any concern he raised up. Mr Yang was not in the area affected by this pay change. He was terminated only because we have complaints from a customer.

Mr DAVID SHOEBRIDGE: Ms Sun, can you see how bad it looks when you terminate his services at the same time that he is raising concerns about pay and raising concerns about safety? It looks like you have retaliated against him. Do you see that problem?

Ms SUN: I have to say that we did listen from our drivers, not only from Mr Yang. There are a lot of drivers raising their concerns and we are thinking about it, so that is why we re-changed the structure. But for Mr Yang's case, that was solely because of the complaints.

Mr DAVID SHOEBRIDGE: A number of your workers have said they are concerned about safety issues, that they have to rush from job to job to job and they feel unsafe. You know that those concerns have been raised?

Ms SUN: Sir, I have not heard a lot from that. But as for the hearing this morning, I heard all this.

Mr DAVID SHOEBRIDGE: One of your workers, Mr Chen, was killed working for you.

Ms SUN: Sorry, I have to correct here: Mr Chen had a very sad incident but it was not working for us.

Mr DAVID SHOEBRIDGE: I might just show you a couple of documents about the amount of workers compensation your company pays. Did you say that at any time you would expect between 100 and 150 riders to be working delivering for your company?

Ms SUN: Yes.

Mr DAVID SHOEBRIDGE: How long has that been the case?

Ms SUN: Since June 2020.

Mr DAVID SHOEBRIDGE: I might just show you some documents. These are documents that have been produced by icare, the workers compensation insurance company. They are HungryPanda's workers compensation documents. You will see they are numbered on the top right-hand corner.

The CHAIR: Do you have a copy?

Mr DAVID SHOEBRIDGE: I have two extra sets. Ms Sun, you will see in the top right-hand corner there are a series of numbers following "ICA". Do you see that in the top right-hand corner?

Ms SUN: Yes.

Mr DAVID SHOEBRIDGE: And the one on the front ends with the number 10? Do you see that? I will refer to those numbers at the end as we go from page to page. This first page is the icare form for HungryPanda showing the workers comp policy period from 31 December 2020 to 31 December of this year; that is the current policy. Do you see that?

Ms SUN: Yes.

Mr DAVID SHOEBRIDGE: If you turn to the next page you will see that the amount of workers compensation that HungryPanda paid was just \$3,070. Do you see that?

Ms SUN: Yes, that is true.

Mr DAVID SHOEBRIDGE: How on earth do you pay just \$3,070 when you have between 100 and 150 workers working for you in that dangerous activity of delivering food?

The Hon. WES FANG: Dangerous activity?

The Hon. ADAM SEARLE: People have been killed.

The Hon. WES FANG: I understand that, but I mean it is—

Mr DAVID SHOEBRIDGE: How do you pay just \$3,070 when you have between 100 and 150 workers riding for you?

Ms SUN: Sorry, sir, I have to make it clear that the riders are actually independent contractors. They are not identified as workers. That is our current situation there.

Mr DAVID SHOEBRIDGE: But Mr Chen has made a workers compensation claim against your company saying that he was covered by it. Are you saying you did not pay any workers compensation premiums to cover Mr Chen's claim?

Ms SUN: The first thing is Mr Chen was an independent contractor arrangement and he was responsible for his insurance when he joined. He was concerned of that. The second thing is icare did an investigation on Mr Chen's case and they declined that.

Mr DAVID SHOEBRIDGE: I take you to the document numbered 15 in the top right-hand corner. Do you see that? That is the workers compensation policy, again for HungryPanda, from 21 January 2020 to 31 December 2020; that is last year's policy. Do you see that?

Ms SUN: Yes.

Mr DAVID SHOEBRIDGE: If you go to the next page, page 16, you will see in that year you only paid \$2,894 in workers compensation premiums. Is that again because you did not pay any workers compensation premiums to cover the riders?

Ms SUN: No, we are not, because the riders are independent contractors to us and they are covered by other insurance policies.

Mr DAVID SHOEBRIDGE: Do you have another insurance policy that covers these riders?

Ms SUN: When we have our riders on-board we will require them to have an insurance policy for them first, but besides we want to make sure that all of the riders—even our independent contractors—we want to make sure they have minimum coverage. We are working with different providers to find a suitable policy here. I would like to point that in this market I find it really difficult either for us or for the riders to find a suitable policy.

Mr DAVID SHOEBRIDGE: I take you to another document in this bundle numbered 19 in the top right-hand corner. It is a declaration of wages that HungryPanda gave to icare for the period 1 July 2019 to 30 June 2020. Do you see that?

Ms SUN: Yes.

Mr DAVID SHOEBRIDGE: The wages are important because your workers compensation premiums are paid as a proportion of the wages. You know that, Ms Sun?

Ms SUN: Yes.

Mr DAVID SHOEBRIDGE: If you turn to page 22. In that form do you see that HungryPanda has described the business it does as labour hire? What do you mean by labour hire? That is your riders, is it not? That is what you are referring to.

Ms SUN: Sorry, the Sydney company here actually holds work employees, the staffs, who is doing the management and background jobs. This company actually hire labour for head office which means, or staff, is actually working for Sydney company. This labour hire solely referring to the employee hiring, not for the independent contractors.

Mr DAVID SHOEBRIDGE: We may explore that in a second. I take you to two-thirds of the way down that page. Do you see it states, "Description of work performed" "labour hire services, 25 workers" and the wages bill of \$628,000 a year. Are you saying that that is the head office workers?

Ms SUN: Yes, right.

Mr DAVID SHOEBRIDGE: But you do not perform the industry of labour hire. The industry of labour hire is the people who send the workers into your head office. As I understand it, you perform some food delivery service. I do not understand how you have described your workforce as labour hire?

Ms SUN: Sorry, we describe our Sydney company as labour hire as all the income goes to our Melbourne company. Sorry, maybe I have been confused here. The Sydney company, the 25 employees you were referring to, is the one working for the Sydney office, not for the riders.

Mr DAVID SHOEBRIDGE: Are you saying there are 25 people in your Sydney office?

Ms SUN: Yes.

Mr DAVID SHOEBRIDGE: And you have got them all from labour hire?

Ms SUN: No, no. Sorry, the business for the Sydney company is that the company itself is for labour hire and this is serving for the Melbourne company but it does not mean that the employees in the Sydney company is doing labour hire.

Mr DAVID SHOEBRIDGE: The Sydney company provides labour hire to the Melbourne part of HungryPanda? Is that how it works?

Ms SUN: Yes, it is.

Mr DAVID SHOEBRIDGE: Ms Sun, you have at any point between 100 and 150 workers out on the streets of Sydney, delivering food at great risk to themselves and your company does not contribute a cent to cover their workers compensation entitlements. Do you see how unfair and unreasonable that is?

Ms SUN: Sorry, I have to emphasise here that all riders are independent contractors who at the very first beginning are aware of that because they work for different companies.

Mr DAVID SHOEBRIDGE: So it is just not your problem? They may be working, according to your time frame, according to your schedules for delivery. It may be very dangerous but it is just not your problem. They have to cover themselves if they get injured. Is that your position?

Ms SUN: Sorry, first of all we do not schedule the riders. They can log on and log off at any time they want. The second thing is we do know that we have obligation to make sure that they are safe on the road. Sorry, we cannot make sure, but we will try our best where reasonably practical.

Mr DAVID SHOEBRIDGE: My final question is: Do you really stand by that statement about trying to keep your workers safe in the light of the evidence this Committee received from two workers earlier today who said they have never seen anything from you about safety—no manual, no directive, nothing?

Ms SUN: On their onboarding we have provided some materials to them, including the rule handbook. I have evidence of that.

Mr DAVID SHOEBRIDGE: Can you provide that on notice?

Ms SUN: Sure.

The CHAIR: Ms Sun, you said that your riders work for multiple apps. Is that correct?

Ms SUN: That is correct.

The CHAIR: Is it not the case that your contract requires them to work for multiple apps? I have your contract here. It states, "The contractor warrants and agrees that during the term it will provide an offer on services

to the person's business or organisation other than HungryPanda." That is, you require them to be providing services at the same time.

Ms SUN: Sorry, Chair. We cannot require them to do anything, including working for others but we recommend them to do that. That is a requirement from ATO so that is why it is in the contract.

The CHAIR: For tax reasons. The other question is, just very quickly, you mentioned that you have an Australian director or the leader of the Australian operation is Melbourne based. What is the name of that person?

Ms SUN: It is Erick Du.

The CHAIR: Will you spell that?

Ms SUN: E-R-I-C-K and the surname or last name is D-U.

The Hon. WES FANG: Thank you, Ms Sun, and thank you for appearing today. When you hire your riders, do you make it explicitly clear that they are independent contractors as opposed to employees of your company?

Ms SUN: Yes, we do.

The Hon. WES FANG: The evidence the Committee heard this morning is that they are required to sign contracts with your organisation. Are those contracts explained to the riders before they sign about what requirements your organisation has and how, being an independent contractor, is separate and different to being an employee?

Ms SUN: Yes, I am sure they are aware of that. On their induction—we have an induction workshop for every new rider—we will explain that to them.

The Hon. WES FANG: Do you explain to them—

Ms SUN: The difference between independent contractor and employee?

The Hon. WES FANG: Yes.

Ms SUN: Yes, and their responsibilities and our responsibilities.

The Hon. WES FANG: Do you explain to them that being an independent contractor requires them to provide their own workers compensation insurance?

Ms SUN: Sorry, sir, I know that we require them to have their own insurance but I do not see any workers compensation insurance available for any delivery riders in New South Wales, sorry.

The CHAIR: Just to press you about that. How is it possible that you can expect a driver to get their own insurance when you know that there is no insurance in the marketplace for them?

Ms SUN: Sorry, there are different insurances that can be found in this market for the rider themselves.

The Hon. ADAM SEARLE: But you said there was no satisfactory insurance product.

Ms SUN: There is no workers comp but they can buy workers comp for doing a business themselves.

The CHAIR: But do you not understand that perhaps if they are getting paid what we were told this morning, \$3 per trip, they cannot afford to get an insurance policy? How will they be able to pay for an insurance policy if their level of pay is so low?

Ms SUN: Sorry, I can provide all the invoices for Mr Yang and I can show how much he earns.

The CHAIR: I am not asking you about Mr Yang. I am just asking you: Do you ever check whether or not a rider who is on your platform, who is working 12 hours a day, could actually reasonably afford a policy?

Ms SUN: Yes, we are sure that they can afford that.

The CHAIR: Of your 150 riders, how many of them have policies?

Ms SUN: We do require them to have one and we collect the certificate when they join us. But, in practice, we cannot make sure every policy is valid.

The Hon. WES FANG: With regard to the insurances that you require of your independent contractors, I presume that those who operate motor vehicle, a motorbike or the like, do you require copies of their CTP insurance of their registration? How much due diligence do you do on the people that are providing services to your platform?

Ms SUN: I am not sure whether I have all the information. I can talk in general, but I can give you some other documents about what we collect when the rider is—

The CHAIR: Can you take that on notice?

Ms SUN: Yes, sure—again.

The Hon. WES FANG: We have spoken about vehicle insurances but I guess we will move now to where I was leading with the workers compensation insurance. Do you have a requirement for your subcontractors to have an insurance policy in place to protect themselves should an event occur?

Ms SUN: Yes, we do.

The Hon. WES FANG: Knowing that there are difficulties in the market in finding that insurance, how do you go about ensuring that they do get insurance?

Ms SUN: Sorry, it is not difficult for a rider to find insurance for themselves. It is just there is no workers comp policy in place, but they can find some. A lot of different providers provide insurance policies for the delivery riders. I said it is difficult for us to find a group accident insurance.

The Hon. WES FANG: Seeing as there seems to be different silos of the organisation such as the Sydney silo and the Melbourne silo and the other silos in the other States, are you confident that all of those silos, particularly your part of the organisation here in Sydney, are compliant with Australian law? That is, the issues that Mr Shoebridge has raised and the issues around taxation which Mr Mookhey raised in the contracts.

Ms SUN: Yes, I am confident about that.

The Hon. WES FANG: Given that this Committee has raised issues today and you believe that you have been operating within the law, is it reasonable to project forward that if changes around this area are needed, it is going to require us to change laws in order to force operators such as yourself to adopt those changes?

Ms SUN: Sorry, sir, as I said, we are a very niche market. I cannot speak for any other platform, but in my point of view we welcome changes that if any litigation has changed, we will be compliant with that.

The Hon. MARK BANASIAK: In your previous answer to Mr Fang, you said that you do require that they have a level of insurance and that you do retain a record of a certificate of currency. Is that correct?

Ms SUN: We require them on the onboarding process and we do have records of who has provided the certificate, but I am not sure whether we have everyone's certificate in place.

The Hon. MARK BANASIAK: You also said you would find it difficult to actually keep track of whose policy is current. Given that every certificate of currency has an expiry date on it, would it not be just simple to pause that person's operation on your platform if their certificate of currency expired according to your records? Would that not be the most simplest way that you could ensure that every person on your platform has some level of insurance?

Ms SUN: By saying that we are not sure whether they have a valid policy in place, what we can check in practice is only the certificate. We can come back to them to ask for a new certificate if that has expired, but with one certificate we have experienced things that once the driver have a certificate and there is even not a valid insurance policy on him. That is why I mention that we cannot make sure that their insurance policy is valid.

The Hon. MARK BANASIAK: Why can't you insist that they upload their renewal every year?

Ms SUN: Yes, we can require them to do that.

The Hon. MARK BANASIAK: You can but you are not.

Ms SUN: Because we only entered this market within one year's time, so it does not happen for a second valid insurance policy collecting now, but we are improving our process on that.

The Hon. MARK BANASIAK: The company started in the UK in 2016. Is that correct?

Ms SUN: Yes, that is right.

The Hon. MARK BANASIAK: Just previously, you said that you are looking at worker groups now in Australia in response to concerns from drivers?

Ms SUN: Sorry, that was related to health and safety workers group?

The Hon. MARK BANASIAK: Yes.

Ms SUN: Yes, that is right.

The Hon. MARK BANASIAK: Did the issue of worker groups or health and safety ever come up in the UK since operations began in 2016?

Ms SUN: Sorry, I do not have that information for the UK.

The Hon. MARK BANASIAK: Would you be able to take that on notice and come back to us about whether similar issues were raised around worker groups in the UK from 2016 onwards?

Ms SUN: Sure, I can do that.

Mr DAVID SHOEBRIDGE: We have had the Restaurant and Catering Industry Association come and say that the industry has very tight margins and that it had a very tough year last year. Are you aware that the restaurants you work with had a tough financial year last year?

Ms SUN: I have to say last year was quite difficult for everyone. Yes, they have.

Mr DAVID SHOEBRIDGE: HungryPanda had record growth and profits reported in London and New York. Is that correct?

Ms SUN: I do not think we have profit public in London and New York.

Mr DAVID SHOEBRIDGE: That is what was reported at the time HungryPanda sought an additional \$70 million from the capital markets. You went out last year and got an extra \$70 million from the capital markets saying that your business was profitable in London and New York. Is that correct?

Ms SUN: That is for 2019, sorry.

Mr DAVID SHOEBRIDGE: Can I ask you about last year? Because you got the \$70 million at the end of last year saying your business was profitable globally. What was the situation for HungryPanda in Australia? Was it profitable?

Ms SUN: We are relatively new in this market and I can say that we are not profitable. We charge lower commissions than Deliveroo and UberEats because this is a niche market and we are new here. If we want to be here and survive here we cannot be that expensive.

Mr DAVID SHOEBRIDGE: I suppose I am troubled by putting two pieces of information together. On the one hand, HungryPanda acquired \$70 million from the capital markets last year, and on the other hand, it does not pay for basic insurance cover for any of their riders and you contribute only \$3,000 to the workers comp scheme. It seems as though you are getting a free ride from the system. What do you say to that?

Ms SUN: Sorry, I would not agree with that. First of all for the fundraising, that is a business level strategic decision but within the Australian market we are following all of the rules that is required by law. We are not only paying very large money to our riders as the same to the restaurant. If we are paying large to our riders, we will not have any riders.

Mr DAVID SHOEBRIDGE: If your riders get badly injured and they cannot work, you just stop giving them work and it is a matter for them how they get by; it is not your problem. Is that what you say?

Ms SUN: No, I am not saying that. We are doing our best to prevent injury of the riders.

Mr DAVID SHOEBRIDGE: But you do not cover them if they get injured. If they get injured, they cannot work for you, you do not have any insurance coverage for them, you do not pay them anything, and you just wash your hands of them.

Ms SUN: Yes, because these riders are working for different platforms at the same time.

The CHAIR: Ms Sun, I am just going to follow that up. Do riders who are injured whilst delivering for HungryPanda report that to you?

Ms SUN: Sorry, I do not have that record with me.

The CHAIR: Do you inquire into whether or not your riders are injured when they are at work?

Ms SUN: Yes.

The CHAIR: How many riders have you determined yourself have been injured while delivering for HungryPanda in the last year?

Ms SUN: I do not have the statistics with me.

The CHAIR: Can you take that on notice?

Ms SUN: Yes, I can take it on notice.

The CHAIR: Thank you. I want to ask you now about the very sad passing of Mr Chen. We had the opportunity to hear from his widow last year and we also had the opportunity to hear from the regulator in response. Can you firstly update us on the investigation HungryPanda did into the sad passing of Mr Chen, and what you found?

Ms SUN: On our side, after that very sad accident we worked closely with SafeWork and we have done a series of investigations on what we can do to improve the safety system. So far, what we have done now is we have changed a bit on the system to make sure that the riders do not need to take any calls. We identified that calling on the road is a very high-risk activity. We are also doing a series of different actions to improve the safety of our riders on the road.

The CHAIR: Do you admit that there was any fault on the part of HungryPanda in the death of Mr Chen?

Ms SUN: According to our investigation, there is no evidence showing that there was a breach of our obligations on the safety part.

The CHAIR: Okay. When did you first learn about the passing of Mr Chen?

Ms SUN: The very first time, when the accident happened.

The CHAIR: So, contemporaneous or close to when the accident happened?

Ms SUN: Yes.

The CHAIR: But HungryPanda did not report this to SafeWork NSW at all. Do you agree?

Ms SUN: We did report later because—when the accident happened, I went to the hospital. I have to say, we were not quite familiar with the process, but we did pay very high attention to that accident.

The CHAIR: Okay. When you said that you reported it later—how late after the accident? How many days after the accident did you report it to SafeWork NSW?

Ms SUN: Sorry, I cannot remember, but you can always find it on the record from SafeWork.

The CHAIR: Okay. If you would not mind taking it on notice, just so we can compare your records with their records, that would be helpful.

Ms SUN: Sure, definitely.

The CHAIR: Thank you. SafeWork NSW told us that the first time they learned of the incident was when the union reported it to them a week afterwards, when the union first became aware of it. Did you by any chance see SafeWork NSW say that or were you aware of that prior to your appearance?

Ms SUN: Sorry, I do not think the union reported to SafeWork one week after the accident.

The CHAIR: SafeWork was very clear that the first they heard of the accident was from the union and that the first report they had of the death of Mr Chen came from the union. That accords with what the union has told us, as well. So, it is not really in dispute that the first time SafeWork NSW learned about it was from the union. Do you dispute that?

Ms SUN: Sorry, sir. I can find out the exact number when I make the call to SafeWork and come back to you. We can find out what was the time difference. Sorry, I do not have the exact information now.

The CHAIR: Okay. Ms Sun, you said you were not familiar with the process. Were you aware that you had a legal obligation to report the death of Mr Chen to SafeWork NSW as soon as you learned about it?

Ms SUN: Yes, I do now, but—

The CHAIR: Did you know at the time?

Ms SUN: No.

The CHAIR: Did anyone at HungryPanda know at the time?

Ms SUN: For the health and safety work notification process, we were not familiar with that. But after that, we have worked closely with SafeWork and we have improved the procedure and are quite familiar with this process now.

The CHAIR: But do you accept that it was a significant lapse on HungryPanda's behalf not to be aware of your legal obligations in this respect?

Ms SUN: We do respect our obligations. But for the reporting process only, we were not quite familiar with that.

The CHAIR: Okay. Since then, we have had Mr Chen's widow tell us that her family is facing destitution because Mr Chen was their sole breadwinner. She was making the point that she was in dialogue with HungryPanda to see whether or not she could resolve a settlement with HungryPanda. Can you update us on where you are up to with Mr Chen's widow?

Ms SUN: After that accident, we did a lot of support to this family. We were very sad about the accident. We helped them to apply for the visa and pay for all the expenses, including their return flights during the lockdown period, and also the funeral cost. Also all the accommodation and also the cost when they returned to China for the cost that—Mrs Chen and his family members. After that, I think Mrs Chen already got compensation from the compulsory third party [CTP] insurance from the bus driver. It is around \$20,000. Of course, we are not claiming that back. We see that as compensation.

The CHAIR: Are you refusing to provide any additional compensation other than the benefit that is available on CTP?

Ms SUN: We are not saying that we are refusing to provide anything, but it is still under discussion with his lawyer.

The CHAIR: Right. But, as of now, you are still in—is it litigation or conversations with the lawyer of Mr Chen's family?

Ms SUN: It is just conversations.

The CHAIR: Right. When do you anticipate that these conversations will resolve and HungryPanda will make a decision as to whether it is going to offer any further compensation?

Ms SUN: Sorry, I cannot say that now because it will depend on how the conversations goes on. I do not think I have all the information to let you know how the decision will be.

The CHAIR: My final question on this line is: Do you not understand the reasonable fear Mr Chen's widow has of permanent destitution because she is missing out on any form of compensation basically because HungryPanda did not have a policy?

Ms SUN: Sorry, Chair. I think this question is from a different aspect. The first thing is that we do not think we have breached any of our obligations and we have done what we can to support this family. We are very sorry to hear that this family is suffering. We know that and we will support in the future, in the way that we can. But I have to say that there is no evidence that we have breached this obligation.

The Hon. MARK BANASIAK: Just quickly, in response to Mr Mookhey's questions you said you were unfamiliar with your obligations in terms of reporting to SafeWork NSW. As a company that operates in six countries you obviously have the business know-how to expand the company into six countries, but you are coming here with testimony to say that you have expanded into this country without the business know-how to actually check up on what your obligations are in operating in all of these countries. Is your testimony that you have entered this market and have not done your due diligence in familiarising yourself with your legal obligations in this market?

Ms SUN: Sorry, sir. In the Australian market, we have to say that we were quite a new company here and—

The Hon. MARK BANASIAK: I accept that you are a new company—

The Hon. WES FANG: Point of order: I accept the robust questioning—it is fair—but I think we need to give the witness an opportunity to finish her answer. She was considering and pausing. I think we need to be procedurally fair.

The CHAIR: I uphold the point of order. I am sure the Deputy Chair will provide the witness with reasonable time to respond. I am aware of the fact that we have limited time. Mr Banasiak, did you want to repeat the question?

The Hon. MARK BANASIAK: Accepting that you are a new company, you have entered this market and you have entered several other markets. My question is: Why have you not done your due diligence when entering a new market in making sure that you know and adhere to all your legal obligations?

Ms SUN: In the Australian market, when we enter that we have legal advice. We have a legal adviser in place, but I have to say that we were relatively new in this market. We were not familiar with every rule here, but we do respect our obligation here. After talking with SafeWork we do understand how we can go from here. I have confidence that we can do it better.

The Hon. MARK BANASIAK: Who provided that legal advice to you when you entered this market? Was it someone in your own company or was it an external provider?

Ms SUN: That was an external adviser.

The Hon. MARK BANASIAK: On notice, could you provide the name of that external provider who provided that advice?

Ms SUN: Sure.

The CHAIR: I will go to Ms Maclaren-Jones, then Ms Houssos and Mr Donnelly.

The Hon. NATASHA MACLAREN-JONES: I am interested in how you recruit or find riders.

Ms SUN: We have different ways to publicise our information asking the driver to sign up with us. The first thing, we will put some information on the delivery bag so that if someone wanted to deliver with us they will email us. The second thing is we have a website, so the riders can leave their information on that, and we will arrange for them to get onboarded.

The Hon. NATASHA MACLAREN-JONES: When you say "onboarding", is that training? Could you outline what that means?

Ms SUN: The main purpose for the onboarding process is to make sure that this rider will be familiar with all the application usage and the basic rules on the road, and to make sure that they have the—can require the licence. So if they have the licence, we believe they have passed the standard required by New South Wales.

The Hon. NATASHA MACLAREN-JONES: Do you provide any safety training to your drivers, specifically about personal safety, collecting supplies and riding on the road?

Ms SUN: Of course we put the safety of our riders as the first priority. In doing that, we supply different safety equipment, like the high-reflection jacket and also a high-reflection delivery bag to make sure that they are seen on the road when it is dark or when there is any rainy weather. The second one will be we will give them materials, including the road user handbook and other safety-related materials. I have taken it on notice, and I will provide to the Committee later.

The Hon. NATASHA MACLAREN-JONES: My other question is in relation to the contract that you enter into with your riders. Is there a standard contract that you use for all riders?

Ms SUN: Yes, it is.

The Hon. NATASHA MACLAREN-JONES: Could we have a copy of one of those?

Ms SUN: Sure.

The CHAIR: I will go to Mr Donnelly and then to Ms Houssos.

The Hon. GREG DONNELLY: Thank you, Ms Sun. When HungryPanda entered the Sydney market were you employed with the business at that time? Were you one of the employees to start with the company when the market was entered into in Sydney?

Ms SUN: No, sorry, I joined the Sydney company last year during 2020.

The Hon. GREG DONNELLY: Do you know anything about what was behind the setting of the delivery rate for drivers in the first place when the Sydney market opened up—how that figure was calculated or worked out? Do you have any information about how that rate was struck for the delivery riders?

Ms SUN: Sorry, can you explain that question a bit? Is it regarding—

The Hon. GREG DONNELLY: Yes, so the delivery drivers receive a payment per delivery.

Ms SUN: Yes, right.

The Hon. GREG DONNELLY: I am wondering whether you know the reasons behind how that rate was calculated, where the figure came from.

Ms SUN: Sorry, I cannot answer this question now.

The Hon. GREG DONNELLY: Okay. In earlier evidence you spoke about adjustments that had been made to delivery drivers' rates. And I understand by "adjustment" you mean it has been reduced from an original figure. Is that correct? So the adjustments have been downwards from the original figure. Is that the position?

Ms SUN: Sorry, the price is actually depending on the distance. We have raised a bit on the short-distance order, like for the order within one kilometre and two kilometres, but for long-distance order we have reduced it a bit.

The Hon. GREG DONNELLY: Could you say that last part again?

Ms SUN: We have raised the rate for short distance, but we have reduced a bit for the long-distance ones.

Mr DAVID SHOEBRIDGE: Is that beyond two kilometres? Is that the range, Ms Sun?

Ms SUN: Yes, beyond two kilometres. But over 80 per cent of the orders are within two kilometres.

The Hon. GREG DONNELLY: In working out how to make the adjustment and what the adjustment is, who does that? Who does the work to recalculate the rate that the drivers receive? Who works out that figure?

Ms SUN: When doing that adjustment, there are different parts. The first thing, we will consider the number of orders that we have currently due to the sequencing and different times. We will also consider how many orders our rider can take per trip; like Mr Yang and Mr Sun, they can take three or five orders per trip. Also we will consider how much they will earn per day, like for seven to eight hours, because they just drop in and drop off; they did not stay online for six or eight hours long. So it depends how many orders they deliver per day. So by considering all these components we will make a conclusion on what adjustment we can make and also talk to our riders—some of our riders, not everyone—to see whether they agree with that.

The Hon. GREG DONNELLY: My final question is if a rider or delivery rider says they do not agree with the adjustments, what do you say to them?

Ms SUN: It will depend. So if a rider is concerned about losing a lot of money due to this adjustment—for example, if a rider is affected heavily by this adjustment—we will consider to give actual promotion on that to make sure that he is earning a similar level. I am not sure whether it is clear. But it is not most of the case because we also have our own seasoning so in the busy time we can make sure that if the pay per order has dropped, we can make more orders to our riders—they can take more orders each trip to maximise their time and earning—but for the time that we are not that busy we may reduce the orders that the rider can cap per trip but we might increase the price. So that is how it works in general.

The CHAIR: We will go to the final questions from Ms Houssos.

The Hon. COURTNEY HOUSSOS: Can I start by asking what has changed in the way that you operate since the death of Mr Chen?

Ms SUN: Sorry, can you repeat that question? It was not clear.

The Hon. COURTNEY HOUSSOS: What has changed in the way that you operate since the death of Mr Chen?

Ms SUN: We have launched a series of different changes, including a system that is allowing the riders to use the app only, rather than taking out phones on the road. We are also improving the system of calculation and the algorithm behind that to make sure our riders can travel less when delivering the order. After that we are working closely with SafeWork on a series of different safety implements. That will be done by next month. Sorry, I hope that will answer your question.

The Hon. COURTNEY HOUSSOS: I would appreciate if you could take it on notice and provide us with a copy of that document to the Committee. You spoke earlier about some information that is provided to drivers when they are employed with you. Do you provide that information in English or in Mandarin?

Ms SUN: Some of the materials are in English but in our induction we will explain it to them in Mandarin. Some of the material is in Mandarin already.

The Hon. COURTNEY HOUSSOS: Is any of the [inaudible]?

Mr DAVID SHOEBRIDGE: Ms Houssos, that was garbled.

The Hon. GREG DONNELLY: Repeat that.

The Hon. COURTNEY HOUSSOS: Apologies. Was any of the road safety information in Mandarin?

Ms SUN: Sorry, do you mean is any of the information that is given to the riders in Mandarin?

The CHAIR: The question is: Is any of the road safety information that HungryPanda provides in Mandarin?

The Hon. COURTNEY HOUSSOS: That is right.

Ms SUN: Yes, that was in Mandarin.

The Hon. COURTNEY HOUSSOS: Sorry, I have one last question. What is the process before you kick a rider off the platform?

Ms SUN: We have our own review process. It all depends on different situations. If it is a very serious situation—for example, if a rider hits a customer—we will terminate directly. That is written in our contract. For general, not very serious situations, we will have a review process by talking with them. They have around two or three opportunities to have a review with us. If they pass the review, they can come back. If they keep providing very bad service to our customers, we may consider terminating our relationship with them.

The CHAIR: Ms Sun, thank you very much for your time. We appreciate your time and the frank way in which you have engaged with the Committee.

Mr DAVID SHOEBRIDGE: Ms Sun, thank you.

The CHAIR: You have taken quite a few questions on notice. You will have 21 days to answer. The secretariat will be in touch with you further to provide you with those questions and to obtain your answers. Again, thank you for taking the time to appear today.

(The witness withdrew.)

(Short adjournment)

SHAY DEGUARA, Manager of Industrial Support, Public Service Association of New South Wales, affirmed and examined

CLAIRE PULLEN, Project Officer, Public Service Association of New South Wales, affirmed and examined

ABHA DEVASIA, National Research Coordinator, Australian Manufacturing Workers' Union, affirmed and examined

CHLOE SMITH, Executive Support and Projects Officer, Australian Manufacturing Workers' Union, affirmed and examined

The CHAIR: Welcome back to the second session of today's hearing into the impact of technology and other change on the future of work and workers in New South Wales. We have in front of us various representatives from manufacturing unions and from the Public Service Association of New South Wales. Would either of your groups like to start by making a short opening statement?

Ms SMITH: I thank the Committee for the opportunity to appear here today. The Australian Manufacturing Workers' Union [AMWU] represents over 16,000 workers across New South Wales and the ACT in all areas of manufacturing: metals and engineering; food and confectionary; printing and packaging; vehicle service and repair; and technical, laboratory and administrative work and trades. For more than a century our union has been at the forefront of responding to changes in the workplace and to the nature of work. Many of these are changes that our union fought for and which we take for granted today, including weekends, the eight-hour working day as well as improvements to safety standards and conditions like leave and superannuation. Our union is not inherently opposed to technological and other changes in the workplace. Manufacturing continues to be one of the most intensely innovative industries in the country, and our members are aware of both the benefits and pitfalls of technological change.

We recognise that some changes can make work safer, improve productivity, expand employment and provide opportunities for skills development, which in turn can lead to improved wages and conditions for workers. These improvements do not come about by accident or through the generosity of private capital; it is only through the collective efforts of trade unions, which ensure that workers are included in the decision-making process around changes in their workplace, that workers' safety is paramount and that the profits generated through improvements to productivity are shared with workers. More recently some of the pitfalls of changes to work have been thrown into sharp relief. The rise of insecure work, while rampant in service industries for many years, has also impacted industries like manufacturing, which once boasted some of the most secure and well-paid jobs in the country.

Of particular concern to our union has been the evolution of labour hire. Once intended simply to provide workers to fill short-term gaps in the workforce during peaks of activity, labour hire has now evolved into a profitable business model of systemic worker exploitation. Workers on labour hire contracts experience a myriad of disadvantages, including rampant underpayments and wage theft, lack of access to proper training or safety gear, no access to sick or annual leave, little to no protection from unfair dismissals and the psychological impacts of stress and uncertainty around shifts. The issues facing gig workers and entrenched long-term casuals in the industries that our members are from are the same problems in a different guise. These companies have made it clear that they are either incapable of or unwilling to self-regulate, and our legislative framework has not kept pace with changes to the status of work.

Any worker, whether they are full time, part time, casual, labour hire or in the gig economy, should have access to rights and protections at work. It should not be incumbent upon taxpayers to pick up the slack where companies fall short of their obligations. Moreover, we urgently need compliance measures in place to regulate the labour hire business model and to ensure that companies and their operators are held personally liable and subject to significant penalties if they are found to be in breach. Our submission also addresses the need for an industry plan for automation and regional jobs. We particularly want to emphasise the critical role that governments can and should play here, particularly through procurement projects. We also highlight the importance of investing in skills and training to ensure that workers are prepared for the jobs of the future; first and foremost by fully funding TAFE and ensuring that curriculums, teacher training and resourcing are at the level that is needed to produce workers who are prepared for the jobs of the future in an industry that is increasingly reliant on multidisciplinary skills and critical thinking capacities.

AMWU members will respond to changes in their workplaces just as they have done for over a century. Our message to governments and employers is to recognise that workers are your best asset. As such they must

have a voice in decision-making processes, be supported and respected through industry transition and share in the benefits that new changes can bring. Thank you.

The CHAIR: Thank you. The Chair has got better looking.

The Hon. MARK BANASIAK: Misleading the House.

The CHAIR: I withdraw that.

The Hon. MARK PEARSON: Not much difference, really.

The Hon. GREG DONNELLY: Put it to a vote.

Mr DAVID SHOEBRIDGE: Two peas in a pod.

The CHAIR: Would the Public Service Association like to make an opening statement?

The Hon. WES FANG: Dissent from the ruling.

Ms PULLEN: The Chair and Deputy Chair are both looking very fetching today.

The Hon. MARK BANASIAK: Well played!

Ms PULLEN: Thank you for the opportunity to appear here today. The Public Service Association of New South Wales and the Community and Public Sector Union of New South Wales represent over 39,000 workers in New South Wales. More than 60 per cent of our members are women and almost half, over 45 per cent, live in regional New South Wales. The majority of our members are Crown employees employed by the New South Wales Government but a significant minority are in the Federal industrial relations system, like our TAFE members, our members in universities and our members in Disability Services and Forestry. We represent a wide range of workers from prison officers to forestry firefighters, school assistants to community youth justice staff. We represent the health staff who kept us safe and informed during the global pandemic and the workers who answer calls from citizens needing help and advice every day.

Our members are spread across almost 5,000 workplaces all over the State and have different experiences with technology, workplace surveillance and flexibility, including access to parental leave. As a member-driven union we work with our members to improve our members' working lives. As part of this, last year after our submissions closed for this inquiry we undertook the *What Women Want* report, which is the largest survey of working women in New South Wales that we are aware of. In it, members shared their experiences of work and spoke about what they want at work, much of which can be facilitated by the better use of technology. Our members told us that flexibility at work is key and their number one issue.

Workers identified that technology already exists to facilitate this, particularly for parents and those with other care responsibilities, like elder care. However, they also told us the ways in which technology and surveillance are used, where the toilet breaks in their own homes are timed and monitored and union activity is monitored in real time. The New South Wales Government is the largest employer in the country. It has an opportunity to be an employer of choice, using technology to provide safe and secure jobs that become the engine of our economy, driving investment and community flourishing, particularly in regional New South Wales, for women and for people with disability—noting that the New South Wales Government is behind in most of its own targets on these issues.

The New South Wales Government is also a regulator that should look to provide standards for our community, not just at work but to citizens as owners of our own data. We made a number of recommendations in our submission. Broadly they fell into three categories: That Government should strive to be an employer of choice and set benchmarks against which private industry measures itself, particularly in using technology to facilitate the employment of regional workers of women and of people with disability. Conversely, it should not use technology to monitor its workers without due cause and only to ensure the delivery of services. We also said the Government, as regulator, should ensure that workers have dignity and fair conditions of work and are not subject to undue surveillance of the workplace, and to make sure that our laws can cope with technological change. We said that Government should safeguard the rights of citizens to their own data and establish a framework for citizens' rights as far as their own data goes, including the data generated for the New South Wales Government by our members.

The opportunities afforded to citizens and Government by better technology are exciting and New South Wales has an opportunity to be an Australian and world leader in this field. We hope we are able to assist this inquiry today and how we might do that.

The CHAIR: Thank you, Ms Pullen, and thank you Ms Smith. Is it possible, if you have been reading from opening statements, you could table them? That would be great and I think Committee staff might assist in obtaining copies for members, if that is possible as well. Thank you very much. In the spirit of declarations, I should just declare that I have a family member who previously worked for the Australian Manufacturing Workers' Union [AMWU] and, I guess, to be fair I am sure there is an ambition to someday work for the Public Service Association [PSA]. Either way—

Mr DAVID SHOEBRIDGE: I will declare I am a member of the PSA.

The CHAIR: Great. Does anyone else have any relevant declarations to make?

The Hon. ADAM SEARLE: I was formerly a member of the PSA.

The CHAIR: Great. I am sure they will have a membership form for you to re-sign. Can I just kick off with questions to you, Ms Smith, or Ms Devasia. Is that how you pronounce it?

Ms DEVASIA: That is right.

The CHAIR: For the past 300 years the manufacturing industry has been going through various processes of automation. That is correct?

Ms SMITH: Yes.

The CHAIR: Can I presume that it has accelerated in the last 10?

Ms SMITH: I cannot give you the exact details of specific technology. What I will say is in Australia I do not think we are at the cutting edge when it comes to what the future of manufacturing looks like. As we outlined in our submission, there has not been a plan for automation in this country. There has not been a plan for industry transition or the rollout of Industry 4.0, which we mentioned in our submission as well. I think—and I am happy to table this for the Committee if it would help—a survey that we conducted of our delegates back in 2018 found that most frequently the technology that is being introduced into their workplace is actually surveillance and monitoring technology, first and foremost.

Mr DAVID SHOEBRIDGE: Chair, just a quick question. I have not seen a submission from the AMWU. Do you mean your opening?

Ms DEVASIA: There was actually a submission that we filed.

Ms SMITH: Yes.

The CHAIR: We are checking the status of your submission in that respect but I was about to say I also was not aware that we had one, but thank you. When you talk about the automation process and the introduction of these technologies for the basis of workplace surveillance, is that because employees or others are monitoring the productivity of a worker?

Ms DEVASIA: It is a little bit of both, I would say. So, its predominant use that we are seeing among our membership—

The Hon. MARK PEARSON: Can you move the microphone? I am sorry, but it is a very direct microphone.

Ms DEVASIA: The experience of our membership that we are seeing in relation to surveillance seems to be that it is about managing not just productivity but also disciplinary issues. Most of our members, in discussions that we have had and in the context of industrial disputes or in the context of, say, enterprise bargaining which look to implement sound and well-consulted surveillance policies, will speak to the fact that surveillance can also be used as a health and safety mechanism, and that is something that members are quite open to. But what we are seeing is kind of a functional creep of that type of surveillance that moves into being used for disciplinary issues, managing time, hurrying people along from a basic perspective and moving right along to using it to dismiss members.

So in terms of surveillance, yes, that is what we are saying. There is also the issue around surveillance cameras also being used by members or by companies that is utilised by members in the same workplace while they are used in terms of managing performance but also to look at how machinery might work or to problem-solve. So it is not as if it is a blanket disapproval of surveillance. There is an understanding that it can be used for various guises, but what we are saying is that increasingly that power imbalance is tipping towards a use against workers for disciplinary purposes, yes.

The CHAIR: Okay. The Committee will be holding some separate hearings on surveillance but of course feel free to talk about it and Committee members should feel free to question witnesses about it. But before I hand questioning over, I just want to ask two questions about the industrial relations around automation: Can you give us some insight as to workers who are being displaced by automation whether or not they have an entitlement to re-education, retraining, reskilling or reallocation to another form of work and whether that is working well? What type of framework do you think we need to ensure that automation is delivering both for the business and equally for the worker?

Ms SMITH: Look, again referring to this survey of our members from 2018 that I am happy to table, by and large our members do not feel that they are benefiting so far or being involved in the decision-making process around the introduction of new technologies. They also do not feel—30 per cent of members are never engaged in consultation about technological changes to work; only 10 per cent said they are regularly; few delegates see that technology is benefiting them in the workplace; and members do not necessarily see a correlation between new technology being introduced and improvements to their wages and conditions.

Few delegates identified that they are given access to skills retraining and development so by and large, as I said in answer to the previous question, I would say that there has not been a coordinated approach either from industry or Government. It is something that we have been advocating for for a few years—that we do need an industry plan. Workers do need formal avenues for consultation and involvement in decision-making, and workers' safety needs to be paramount. We also have as a general principle that we do not believe the workers should be subject to control by artificial intelligence or robotics in the workplace. But, look, by and large, as I said we are not sure of what the future of that looks like in Australia as yet. It is basically down to individual companies and individual employers in terms of what innovations they introduce in the workplace.

The CHAIR: Thank you. I will invite the PSA to respond to that line of questioning and then I will hand over questioning to Mr Shoebridge.

Ms PULLEN: In the New South Wales public service my view would be that we have not progressed as far as, say, the Federal public service in terms of automated decision-making. I imagine everyone would be aware of Robodebt—

Mr DAVID SHOEBRIDGE: That went well.

Ms PULLEN: —which is an automated decision-making that was a prospective invoicing algorithm that generated debts based on the data held.

It is not something that New South Wales Government is exploring in any great degree that I am aware of. But that would be the main concern: that algorithmic decision-making is not yet sufficiently advanced to deal with the complexities that arise. I actually worked at the Federal public service union throughout Robodebt, and what that question came down to was something as simple as a Centrelink worker would look at two pay slips—one that said "ABC Child Care Proprietary Ltd" and the other one that said "ABC Child Services New South Wales Proprietary Ltd"—and be able to say, "Well, that is both ABC Child Care. That is the same employer. We will count your income in that way," but the algorithm is not sufficiently advanced to pick that up. That is where the speculative invoices were generated that meant people were then sent debt notices, which led to the quite awful consequences for some people. It is not yet at this stage something that is far advanced in the New South Wales public service, but it is not hard to see where it will go.

To give you an example that is pertinent to the New South Wales public service: Service NSW use a CRM, a customer relation management platform, called Salesforce, which advertises itself, I think, as the number one sales platform—"convert your customer data into sales." That is the approach that is currently being taken to citizens of New South Wales when they call wanting help with theirrego or call wanting to know what the New South Wales domestic violence line is. Their data is being input into a system that is designed to turn them into data points for future sales.

Mr DAVID SHOEBRIDGE: I have found your submission, and I think it was because the acronym had not been unpacked into "Australian Manufacturing Workers' Union". Is it still the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union [AFMEPKIU], by the way?

Ms DEVASIA: No. That has not been the case for quite a while.

Mr DAVID SHOEBRIDGE: Lovely. That would have hurt. Both of your submissions raise the need to invest in TAFE. Do you have any response to the announcement we saw this week about almost 700 TAFE jobs being lost and what we need to do to actually rebuild the TAFE sector? Maybe the PSA first and then the metalworkers?

Mr DEGUARA: Our sister union, the Community and Public Sector Union, NSW [CPSU NSW], covers them industrially. We were a bit shocked about that because we thought that the Government was considering boosting that, and that was the news out of the pandemic as well. It is a big concern. We need to have TAFE there as a transformative approach so that heavy trades can become advanced heavy trades and deal with technologies that are available, and also the same with other skills as well, to provide the infrastructure and human capital on robotics and all sorts of other technologies that are available. Where they are cutting the jobs in this round of cuts is actually the people who support the online and other sorts of delivery services as well. We had the ICT cuts last year and these are the student support cuts, as well as the infrastructure. These are the people who can support the transformation.

Mr DAVID SHOEBRIDGE: The AMWU?

Ms SMITH: I think it is safe to say that we think what has happened with TAFE over the past decades with successive funding cuts, closure of campuses and closure of courses is a tragedy. Hopefully, the recent COVID experience, which seems to have reinvigorated people's understanding of the importance of manufacturing in our economy—both domestically and globally—will lead to people understanding how critical TAFE is in order to make sure that we are a world leader in manufacturing, and that it does play that critical role in anchoring our economy. TAFE is absolutely critical to having a successful, innovative, globally competitive manufacturing sector. TAFE is best placed as the public provider of vocational education. The vast majority of vocational education and training [VET] students are at our TAFEs, but we need to make sure that they are properly resourced and that our teachers are receiving regular training to make sure that they can keep up with manufacturing because it is so innovation intensive. We need to make sure that we are targeting specific skills shortages, targeting courses to cater to those skills and also providing incentives for students to enrol in those courses.

At the moment there are not a lot of incentives for students to enrol in vocational education in this country. It would be remiss of us not to mention the rise of the for-profit private training colleges that have taken over the VET sector in recent years. There is little regulatory oversight. They seem to leave a lot of students in debt with not much to show for it in the way of practical qualifications, and I think that has really damaged the standing of our VET sector in this country. So there needs to be regulation around those, and we need to fully fund TAFE in order to make sure that it is producing workers for the future of manufacturing.

Mr DAVID SHOEBRIDGE: Does the AMWU and/or the PSA have a position on whether or not any public vocational training funds should go to the for-profit providers? Or should it go 100 per cent to TAFE?

Ms SMITH: Our view is that it should go 100 per cent to TAFE, and that there also needs to be caps on things like the advertising and marketing revenue for those institutions.

Ms DEVASIA: Our position is also that there are those identifiable skills that would arise out of a skills audit, which would then become for free or completely open within the TAFE sector itself. I would also point out that, in addition to that, it is not just unions who are calling for a skills audit or who have identified those particular skills that are lacking in, for example, AI or advanced manufacturing. I think it was the AI group that appeared before the Committee that would have also—I do not know if they touched on it, but I know that their submissions in the past have also spoken to this very dire lack of substantive skills within Australia that do not need to be imported nor can be taught as well as they can be within Australia.

Ms PULLEN: We would agree that TAFE should be fully funded, certainly preferentially to the private providers. There is no real alternative, particularly in regional areas. There are arguments to be made perhaps around competition in metropolitan areas, but in regional areas there may only be one TAFE and it should be fully funded.

Mr DAVID SHOEBRIDGE: I just had one final question on this round, which is how critical is TAFE to the regional New South Wales jobs plan proposed by the AMWU?

Ms SMITH: Yes, it is absolutely critical. With these regions, we are already talking about places that are experiencing high levels of unemployment, particularly youth unemployment, and high levels of economic disadvantages by other measures as well. So it is absolutely critical as part of a holistic plan for regions. It is not just about investing in new industries and putting money into those businesses and employers in those regions through government procurement, it also has to be about making sure that local workers and the local workforce are equipped with the skills to be employed in those jobs too.

Ms DEVASIA: For example, there is a potential site down in Port Kembla and Moss Vale—one for electric buses manufacturing and the other for potentially electrical vehicles. The experiences of our organisers on the site and young people in the region are that, for example, they are sending people from the ACT to

Wollongong to be trained up because there has been a dearth of TAFE places or a shutdown of TAFE in those areas. So we have got now this commuting for study in addition to the fact that in those regional areas, there is just no availability of skills training.

The Hon. WES FANG: Keeping with the theme of vocational training and TAFE: In the testimony that was just given about attracting people to vocational training and the difficulties that you are having, it led me to think that potentially this constant negativity around TAFE is part of the reason you may be struggling to attract people. Do you think that perhaps the unions and other education organisations have a role in talking up what skills and training can be received from vocational providers so that we actually get people excited to move into those roles into the future?

Ms PULLEN: I am happy to take that one. I think there is two parts to it, and I say the first as a broad social observation. The reputation of vocational education as opposed to university education has not been a good one historically. Certainly, my parents would have been horrified if I had wanted to go to TAFE. It is a normal thing, unfortunately, for a lot of families to rate university education over vocational education, which is now at the point where, from my understanding of our national skill set, we have too many people who have been to uni and not enough people who have been to vocational education.

That is the first part. We as a movement cannot take responsibility for that broader social trend. On the second issue about how much responsibility unions should take for pointing out when governments cut funds to TAFE and that might damage the reputation of TAFE, we are keepers of our unions' reputations and our members' best interest. The Government that funds TAFE might want to look to maintaining the reputation of TAFE in the community and how that might work best in attracting people to want to go there.

The CHAIR: I invite the AMWU to respond to that as well.

Ms SMITH: I will just say that we echo a lot of what Ms Pullen has said. Our union is very proud of the fact that almost all of our elected officials—certainly in our State branch and in most of the branches across the country—are TAFE educated and TAFE graduates, so we absolutely value and highly respect the role of TAFE in our society and in our economy. That is why it is so important that when we see it being underfunded and resources torn out of it—if you love something you want it to be the best that it can be. That is certainly our union's approach to TAFE: We think that it is too important not to take seriously. As Ms Pullen said, it is not our responsibility to go out and be a mouthpiece for TAFE; we are a mouthpiece for our members' interests.

The Hon. WES FANG: I accept that and I thank you for that initial response. However, Ms Pullen, when you were giving your testimony around TAFE you talked about the importance of rural and regional communities. I am regionally based in Wagga Wagga so I have had the opportunity to tour a lot of those TAFE areas, for example, where we have a Connected Learning Centre being constructed in Hay at the moment. That is a huge investment by TAFE into Hay, where they may not have had many of the training services and packages that were available before. By putting this Connected Learning Centre in they can bring modules out and train people in this small, rural community, which is 700 kilometres west of Sydney, for the industries that are required within the town. It is adaptable by using technology. Again, I come back to the point that, with all the innovation that is happening and being rolled out—forget politics—there are some very innovative and—

The Hon. MARK PEARSON: Point of order: I am wondering when there might be a question from the Hon. Wes Fang.

The Hon. MARK BANASIAK: We are all wondering.

The Hon. MARK PEARSON: I ask that he gets to it.

The Hon. WES FANG: That is the pot calling the kettle black.

The CHAIR: I think the Hon. Wes Fang is coming to his question and he will come to it.

The Hon. WES FANG: Do I need to restate my question?

The Hon. MARK BANASIAK: Please do not.

The Hon. MARK PEARSON: What is it?

The Hon. WES FANG: Is there, perhaps, a role for the unions to acknowledge that those innovative training systems are in place and that TAFE can provide those skills to regional communities where they need to have those skills provided?

Mr DEGUARA: I have been to all the TAFEs in the Riverina. Some time ago in the early 2000s I was the organiser and they have TAFEs in Hay, Leeton, Finley and all the major centres. What has happened, partly

with Smart and Skilled and other programs, is that what was offered became offered for all colleges. But when you do the physical trades it is very hard to do the delivery. They have got around that to a degree by having a bus or a module that comes on the back of a truck—and that is a good way of delivering it—but a lot of those towns actually had most of those heavy trades set up to some degree or within close distance. So one of the problems that has come out of the current model, which was done through some University of Wollongong research—they had all their problems with the bushfires down the South Coast and in the Snowy, for example, and there is 10 years' worth of work but not enough skilled people to deliver it.

Some of the apprenticeships that are going on down in that region, they have to do their day job and then get in the car and go three and a half hours or something from the South Coast to get to an afternoon class to do their apprenticeship, which was formerly available on the South Coast. So we have kind of gone too far in the balance in the technology because some things you just cannot learn via a screen—like Ms Houssos over there. We kind of need to have a bit of practical, in-person assessment as well, and stewardship for the teacher to help in the same frame. That is where TAFE has the advantage. TAFE does 80 per cent to 85 per cent of apprenticeships every year in New South Wales because they have the physical infrastructure on their campuses. The private providers generally do not have that unless they are a big multinational mining or construction company that has the facilities to bring it in-house.

The Hon. WES FANG: Can you see, though, that what I am seeing is effectively what I am trying to highlight: I have posed a question and it is automatically pivoted to negatives again, as opposed to—

The CHAIR: I am going to hold it up there.

Mr DAVID SHOEBRIDGE: It is not a fireside chat.

The CHAIR: Mr Fang, you are entitled to press for answer, for a response, which I think you have done twice. If it is actually a question of evidence that you would like to elicit from witnesses, please do so.

The Hon. WES FANG: I will rephrase to say: The constant negativity around TAFE will certainly be affecting how people view it. Do you not see that that is a potential issue that is happening with vocational training?

Mr DAVID SHOEBRIDGE: It is not the budget cuts, the staff cuts or the campus closures; it is commentary on it.

The Hon. WES FANG: Welcome back, David.

The Hon. NATASHA MACLAREN-JONES: Point of order: We have allowed Mr Shoebridge on many occasions to spend five to 10 minutes asking questions. The Hon. Wes Fang has an opportunity to ask questions without interjections.

The CHAIR: I uphold the point of order. I encourage all members to refrain from interjecting on others because we have some expert witnesses whom I would like to hear from. I would also like other members to be given an opportunity to ask questions. Perhaps, Mr Fang, if you can come to your question, the witness can answer it and then we can move on.

Ms PULLEN: If I have understood where the honourable member was heading with this, I will say that wherever there are extra funds allocated, or things are not cut and where there are good things, particularly in regional areas, we will make sure that we are there telling people how amazing the new budget, new staffing and new facilities for TAFE are.

The CHAIR: Thank you. Did the AMWU want to add anything to that line of questioning?

Ms SMITH: I will just say that I know the focus was particularly on regional areas, but just as a piece of anecdotal evidence, late last year I spent the day with three of our apprentices who were all studying at campuses based in Sydney—one was just down the road at Ultimo TAFE. We met with the New South Wales skills Minister to lobby him about TAFE. Hearing from those apprentices, the one at Ultimo said that he estimates the machines and equipment they are using in their practical, hands-on classes at Ultimo TAFE to be about sixty years old and certainly not at the cutting edge. So it is not just an issue for regional TAFE campuses; it is an issue across the board. We can only speak about what we know about manufacturing courses but, as I said earlier, we are going to be honest and representative of what our members' concerns are. If we feel that our members or potential members in manufacturing industries are not getting access to the best training and resources they could be, we will call it out because there is no excuse for that in a country like Australia.

The CHAIR: Can I just follow that up? In the absence of access to skills training, do you agree that a worker cannot then access the benefits of automation?

Ms SMITH: Do you mean if they do not have access to skills training and opportunities for developing new skills?

The CHAIR: Yes.

Ms SMITH: Absolutely.

The CHAIR: And, as a consequence of their inability to get retrained, they at risk of being excluded from the labour market. Do you agree with that?

Ms SMITH: Absolutely.

The Hon. COURTNEY HOUSSOS: I thank all the witnesses we are hearing from today. I am particularly interested, as Committee members would know, in the New South Wales Government's adoption of the "all roles flex" policy. So I am very interested to hear a bit more about your *What Women Want* survey and the results of that. First of all, can you outline your experience of working within the New South Wales public service—is it positive or negative—and what are the things stopping it being adopted?

Ms PULLEN: We found out a range of things during the *What Women Want* report that we did not expect to find out. We were lucky enough that the survey opened just pre-COVID until the end of June, so we got data from just over 5,000 women working in New South Wales from both before and after the pandemic. One of the things that came through really strongly for us was that a lot of women told us that they had sought flexible work of some kind—either job share, being able to work some of their time at home or out of the office, or to work part-time or flexible hours—that was denied consistently before COVID. Then as soon as they had to work at home it was fine. Our members identified strongly that the resistance did not actually come from any technological lack of capacity but a managerial or executive lack of capacity or will to do it. For the most part the members who spoke to us during the survey have had their flexible work requests accepted. Over 80 per cent of the women in the report had their requests accepted. Most men who have sought flexible work have been denied. That came through in the report. There is a really strong gender flavour to who needs flexible work and what it is for.

The flip side of that is then you see the gender pay gap and the lack of promotion of women through higher ranks of the public service because they are paying that price. They get the flexibility when they ask for it, but they are not considered to be on a career track because of it. One of the other things that came through strongly in the report, which we did not anticipate, was the experience of women with disability. Their responses were very similar in that, when they requested reasonable adjustments, which might include working at home, they were told that they needed to get medical reports or needed to certify that they were medically fit to continue their jobs when all they asked was, "Can a work a day a week at home?" Then as soon as COVID hit they were working five days a week at home. So the experience of women in the New South Wales public service around flexible work is varied.

Some of our members will never be able to have some flexible work—prison officers cannot ever work at home. That is the reality of the work they do. But for the majority of our members there is some capacity to do it and the technology exists for the most part and that is their number one priority that they identify to us. That is the number one thing they want. Again, the Federal public service are a little bit further ahead of New South Wales on this. One of the things that has been adopted across the Federal public service—again, depending on the agency—is an assumption that 40 per cent of the time worked can be worked at home without question. Two days out of five is accepted and no conversation needs to take place. Then anything on top of that is by negotiation around job need. That is something that our members are really acutely aware of and should have access to already. The technology exists to facilitate it, but they are having a very varied experience of it in the workplace, particularly men.

The Hon. COURTNEY HOUSSOS: That is really interesting. I did directly ask the Department of Premier and Cabinet about paid parental leave. They told us that it is standard to have 14 weeks paid for women and only one week for "other parent". Is that consistent across the public service and how does that match up with best practice across the rest of the workforce?

Ms PULLEN: That is correct in terms of the detailing of the entitlement. In our view it is discriminatory in that only a woman can access paid parental leave to be the primary carer for a child, which may not suit everyone's circumstances. In terms of best practice, when those conditions were brought in, they were best practice but that predates—

Mr DEGUARA: Some decades.

Ms PULLEN: Yes, I was in primary school when these came in. Mr Deguara can probably speak in more detail to the provisions that we have in our private sector membership, which are much better in my view.

Mr DEGUARA: In universities, for example, which were public sector—they still are public sector but are under separate management structure. They have arrangements which can be up to a year's worth of paid parental leave and allow both parents to share their responsibility. A lot of women actually say that they get held back because they cannot share the responsibility. A lot of men say that as well. Because what happens is they have to take the time out, whereas the male partner will often not be required to do so. We have some of those arrangements in universities, for example, which are a year's worth and extra years either part-time or full-time off as well. Another aspect which we do not have in the State public sector—we did have an improvement on access to parental leave for long-term fostering, but it is only unpaid parental leave. In all aspects except the legal framework, long-term fostering is the same as adoption, but you do not get access to the same levels of paid parental leave.

The Hon. GREG DONNELLY: Can I take the representatives from the PSA to page 18 of their submission? On page 18 you say:

Given it is Australia's largest employer, NSW Government has a unique leadership role

...

To future proof its response, NSW Government should be guided by a set of principles:

Can I specifically take you to principles Nos 8, 9 and 10? No. 8 says government "should not monetise citizen data for commercial use". No. 9 says it should not monetise data with respect to workers and, finally, number 10 says it "should not on-sell citizen or worker data to anyone". Could you elucidate those and give us some further comment about any concerns that you may have observed or—even if it is not grounded fully in evidence but have been suggestions of certain things. Could you take us through what you are trying to get at in those three particular points?

Ms PULLEN: I am happy to. For those on the Committee that do not know, I will disclose my background in the dirty game of marketing, so I can speak to this from that perspective. As I said, Service NSW uses Salesforce, which is a very well known customer relationship management [CRM], which has the sole purpose of taking data and turning it into something that lets you sell something to someone. Whenever you ring Service NSW, with the exception I think of parts of Roads, which have not yet been fully integrated, your details are going into that system. I want to be clear that this is not happening yet, but it is something that could conceivably happen.

Mr DAVID SHOEBRIDGE: Did you want a boat licence with that?

Ms PULLEN: Not just that. So someone like me who knows a bit about marketing—you need to get the best value for money out of your marketing spend. If you are talking about advertising on Facebook, for example, you can geo target someone who lives in a certain suburb or who likes a certain football team or who is in a certain age bracket. It is a very common feature of most platforms around marketing. On a hot day there are calls to Service NSW from tenants who want to find out what their landlords' obligations are around air-conditioning and cooling their rental property.

If I were someone like Harvey Norman or Kogan who sold portable air conditioners and I had an evil marketing genius working with me, I would say, "Why don't you buy from Service NSW the top three suburbs that called—the drop down menus of landlord and tenant. Then target those suburbs with targeted ads for portable air conditioners." That is hugely commercially valuable information being generated by our members about citizens of New South Wales when they are just calling to find out if their landlord has to put in air-conditioning when it is over 45 degrees. I want to be very clear that this is not happening, but the systems are in place to enable it. Our members generate this kind of data already about the citizens of New South Wales.

Mr DAVID SHOEBRIDGE: We heard in a separate inquiry that that database is in fact very insecure. It is not a fit-for-purpose database to hold the amount of data that Service NSW has. Is any of that your concern?

Ms PULLEN: Yes. I will try not to go on too much about this but, given the scale of the New South Wales Government, there is a real argument to be made that you actually custom-build your database rather than try to make an off-the-shelf solution work. It is full of application programming interfaces [APIs]. It is insecure. There is a range of things that go wrong with off-the-shelf solutions when you are working at scale and that is what the New South Wales Government is—just a volume of calls.

Service NSW is set up as a business to business. Whenever a call comes in it gets allotted to a department or area and then Treasury is billed or Roads and Maritime is billed as a business-to-business model. I think there

is a really obvious argument to be made that, working at that scale, New South Wales Government should just build its own system that is secure and is hosted on servers that are in New South Wales. I think after the last week seeing what Facebook has done to our news feeds there is not a great argument to be made that you should allow overseas-based companies to host our data, for example, given how common Amazon is as a server. This is a very longwinded answer to your question, I am afraid, but I think there is a potential—and the systems are already in place—for our members to generate saleable data about citizens, and we should probably not do that.

The CHAIR: I am just conscious of time. I will go to Mr Searle for questions.

The Hon. ADAM SEARLE: Just picking up on the AMWU's evidence about workplace surveillance having mission creep and how other aspects of work are now being surveilled and maybe being made use of, those new areas where workplace surveillance is now creeping into are not currently captured in a regulatory sense by the New South Wales Workplace Surveillance Act 2005 or any Federal law, are they?

Ms DEVASIA: No, they are not at the moment.

The Hon. ADAM SEARLE: That lack of regulation means the employers can use that information in any way they like and workers, whether in the public or private sector, are just disadvantaged. Is that correct?

Ms DEVASIA: That is correct. We did not speak to this specifically in our submissions but that is our position. It is also about the fact that there is no ability under the current regime for employees to hold employers to account. They have to essentially wait for criminal prosecution to be commenced by either the Privacy Commissioner or whoever the regulatory body is. We would be agitating for employees to be able to bring civil proceedings against employers that misuse that data.

The Hon. ADAM SEARLE: There is also no facility for workers to share in any financial benefits that employers gain from that data, is there?

Ms DEVASIA: That is correct. There is not any.

The Hon. ADAM SEARLE: For the PSA, I note at page 9 of your submission you talk about the labour expenses cap and the efficiency dividend, and the impact that is having on the public sector in terms of keeping the number of employees down. But, in a sense, it creates a perverse incentive for agencies to engage labour hire and contract staff. What impact is this having across the public sector?

Mr DEGUARA: We have just seen contingency—the reports that are released every year have not been going down; they just continue to go up and stay high. I think in the submission it also talks about the particular problem with information and communication technology [ICT] or computer people. That is one of the biggest expenses. It seems to be that we spend a lot of money employing people to do this work at quite a high rate when we could actually have them in-house and have control over them through a normal employment contract and public service responsibilities, which we do not seem to have when they are often employed by the company associated with the company that is providing the actual service or software as well.

The Hon. ADAM SEARLE: Outside of ICT, it seems to have led to a loss of expertise in a whole range of areas in the public sector where, in a sense, the Government or the people of New South Wales become hostage to private providers. Has that been your experience?

Ms PULLEN: Yes. There are two parts to the answer on this. I think the first one is, again, the Federal Government is showing where things could go and it is not necessarily in a good direction. I am not sure if members recall, but last year or the year before we almost did not have a census because that was outsourced to, I think, Hewlett-Packard servers and Hewlett-Packard ICT, which was hacked quite easily in a very basic direct denial of service attack and just went down. That was an outsourced overseas server that then took down a critical function of government when it could have been done in-house. That is a feature of the labour expense cap, both federally and at a State level, because the money going to contractors is uncapped so that is where it is spent.

The second part, I think, is about skills and training. This comes up a couple of times in the *What Women What* report. Members told us that whenever they asked for training they were told, "I'd love to, but we just don't have the budget for it." I say this with great respect, but when you look at the ageing profile of the public service workforce we know that older people who are not trained are more vulnerable to phishing attacks, scams and these kinds of things that are a vulnerability and therefore a risk for ICT systems. Some of our members talk about going years without being trained in how to use email, upgrades, new software and new systems. That is then a vulnerability for the data that is held on the members' systems themselves.

The Hon. ADAM SEARLE: My last question is around flexible work and what you were saying were the differential experiences. At budget estimates in previous years—I think even before COVID and the

lockdown—Mr Reardon, the Secretary of the Department of Premier and Cabinet, has said there is a default setting in the public sector of all positions, leaving aside ones that require specific locations, should be able to be worked flexibly, not just from home but from other locations, and the default is, "If not, why not?" Is that not actually the lived experience on the ground?

Ms PULLEN: It varies greatly. In a lot of places it depends on the good graces of having a manager who is prepared to agree, in the first instance, and who is not antagonistic to the question and to it being escalated if it goes anywhere. Mr Deguara spends a bit more time with our member service centre than I do and might have something to add.

Mr DEGUARA: The other aspect of it is it is also about office accommodation. When they actually put in new office accommodation guidelines in Property NSW they filled it up so that you would have 70 per cent of your actual workforce in the workplaces. It is a cost-saving exercise.

The Hon. ADAM SEARLE: That means you have got to have about one-third of your workers offsite.

Mr DEGUARA: You have to have flexibility. But the problem was that it is only able to be accessed often from the higher levels, where there was no trust issue. You would have people denying others flex leave who were often the ones who were enjoying it themselves. It is a problem in that respect, and it seems to be a hierarchy issue as well. But COVID has actually given us the example that it can be done and we are hoping for a better approach.

The Hon. ADAM SEARLE: By "flex leave" you mean flexible working?

Mr DEGUARA: Yes.

The Hon. ADAM SEARLE: Thank you.

The CHAIR: We have got three minutes. I take the liberty of pointing five questions at that AMWU, if that is possible, on some matters that it has raised as well. The AMWU predominantly bargains in the Federal system, is that correct?

Ms DEVASIA: We do both.

The CHAIR: Yes, but predominantly in the Federal system.

Ms DEVASIA: In the Federal scheme, yes.

The CHAIR: You made the point earlier that the ability of a worker to control or have access to or bargain over the use of technology, workplace surveillance policies and others is a matter that has been raised with you in your survey, is that correct? And that it is a desire of your members to have a greater input and say into how the technology change, automation, and surveillance policies are applied in the workplace?

Ms SMITH: Yes, that is correct.

The CHAIR: Have you ever sought legal advice as to whether that is an allowable matter under the Fair Work Act 2009 to bargain over?

Ms DEVASIA: No, we have not actually sought legal advice, although we do have an ongoing dispute at the moment about the use of the surveillance in a particular site, and also whether that would then flow on to whether it is allowable within that EA.

The CHAIR: But it has surfaced as an issue as to whether or not it is allowable for you to even make requests in this respect in the Federal system, is that correct?

Ms DEVASIA: I would have to take that on notice to completely flesh that out because I only know the basic details of that particular dispute. But yes, it is becoming a live issue.

The CHAIR: Insofar as one of the recommendations that the Committee might need to make in respect to how to resolve these concerns, do you think we should be recommending a broadening of the definition as to what is an allowable matter to allow workers to bargain over how automation applies to their jobs?

Ms DEVASIA: I think that would probably be a preferred outcome for the AMWU because it then broadens the scope of how we can control that at the site, yes.

The CHAIR: In terms of levers that are available to the State Government, do you agree that the Government in New South Wales is a major purchaser of goods and services, including manufactured goods?

Ms SMITH: Yes. Both State and Commonwealth governments are major purchasers. I do not have any particular data on the State Government but I know, for example, from some of the preparation for this hearing that estimates of total annual procurement purchases by the Commonwealth Government at least fall between \$100 billion to \$200 billion per year, which is up to 10 per cent of national GDP. Much of that is on manufactured goods.

The CHAIR: You would agree with me, for example, that the New South Wales Government is the only buyer of public ferries and public buses in New South Wales?

Ms SMITH: Yes.

The CHAIR: Do you think, therefore, that it is open to the Government to use its procurement standards as a way in which to provide people with the rights to determine the pace, rollout and productivity gains and benefits of automation?

Ms SMITH: Absolutely. I think the Government, as I said in our opening statement, does have a role to play here and through procurement they can be a best practice employer in that regard.

The CHAIR: Given that the Government allocates according to best value for taxpayers, which everyone supports, but that often does create incentives for businesses to further automate and to faster automate, do you agree that this is something that the New South Wales Government should require tenderers to disclose in tendering processes the extent to which they will be automating their operations to meet New South Wales Government requirements?

Ms SMITH: I think that would certainly be of interest to know, yes.

The CHAIR: My final question on this line is to both unions. Do you think insofar as we retain a New South Wales State industrial relations system, that we should be providing explicitly for the rights of workers to bargain to capture more of the productivity gains of automation so they can flow onto higher wages and make that an explicit part of the New South Wales industrial relations system?

The Hon. WES FANG: Classic answer, no. I am trying to elicit a considered response, sorry.

The CHAIR: Was that your last question?

The Hon. MARK BANASIAK: No different to your question.

Ms PULLEN: Do not tempt me.

The Hon. MARK BANASIAK: Just a different response.

Ms PULLEN: Yes. Having mostly practised in the New South Wales system, I have a fond place in my heart for it. But there is scope for it to act more broadly than it does and more broadly than the Federal system given, as you say, the constraints that we currently have with allowable matters. It is also a good place to go and talk about things in the workplace that are not strictly related to the employment relationship as currently constructed.

The CHAIR: Do you agree with that?

Ms DEVASIA: Yes, we would.

The CHAIR: I appreciate your time and expertise that you have offered to share with this Committee this morning. I note that both unions have made extensive submissions on workplace surveillance matters, for which we are having discrete hearings later on. So it is possible, although I am not certain, that you might be invited back to provide further advice and insight on that as well after the Committee deliberates in respect to who it will be calling. I think you took some questions on notice. The secretariat will be in touch to provide the questions you have taken on notice. You have 21 days to return an answer. Thank you very much for your time today.

(The witnesses withdrew.)

(Luncheon adjournment)

SCOTT JOHNSTON, Chief Commissioner of State Revenue, Revenue NSW, sworn and examined

CULLEN SMYTHE, Commissioner of State Revenue, Revenue NSW, sworn and examined

The CHAIR: Would either of you like to make an opening statement?

Mr JOHNSTON: Yes, I will thank you. Thank you to the Committee for the invitation both to make a submission to the inquiry and attend this hearing to give evidence. By way of opening statement I would like to make a few observations or key points drawing on the submission that we provided. Firstly, Revenue NSW has responsibility for administering the State's taxation laws. We administer those laws as written fairly and impartially. While we assist the Government in reviewing these laws and developing any changes, we are ultimately not responsible for tax policy. Tax policies are led by the Treasurer and his department and, as you would appreciate, are shaped by various considerations—economic, social and environmental—that are beyond our remit to comment on. Therefore, to the extent that the Committee is investigating possible legislative changes to address issues raised during the inquiry, we are constrained in what we can say.

Secondly, I would like to say something about the Payroll Tax Act 2007 as it relates to what might be described as the gig economy. In essence, the Act reflects a policy setting under which wages or payments paid by an employer to workers would generally be taxable if the workers are common law employees or the workers, through independent contractors, are not common law employees and nonetheless are in an employment-like relationship with the employer. In relation to independent contractors, the Act seeks to give effect to the policy by making wages paid to such workers liable to payroll tax unless one or more exemptions apply. These exemptions generally relate to the circumstances which suggest a non-employment-like relationship such as where the contractor's services for the employer are of a limited or transient nature, or incidental to the activities of the business.

The contractor provisions were introduced into the payroll tax legislation in 1986 precisely to address the increasing use of contractors by employers as a means of avoiding or minimising payroll tax liabilities even though those contractors were working under arrangements that were similar to those of ordinary employees. The kinds of employment models used by businesses in the gig economy can bring various provisions, including the contractor provisions into play. However, it is important to recognise that this is not unique to the gig economy. The gig economy is a manifestation of a trend that has been underway for a few decades with which workers have been increasingly engaged in non-traditional forms of employment.

Under the Payroll Tax Act the issue of whether or not payments made by a particular employer—in the gig sector or in another sector—are liable to payroll tax may require consideration of a range of factual circumstances that go to the overall character of the worker-employer relationship. Thus, based on these circumstances, is the relationship one of employer or employee? If it is then, subject to the total wages exceeding the payroll tax threshold, the business will be liable to pay payroll tax. The fact that a business enters into contracts with his or her workforce, and refers to the workers as contractors, will in no way be determinative of the issue. It is the substance and totality of the relationship that matters.

If it is not a relationship of employer or employee, it is more properly characterised as one of principal and contractor. If so, employers will still be liable to pay payroll tax unless one or more of the exemptions apply. That, in a nutshell, is how the payroll tax provisions can operate in certain employer-worker situations such as those that might arise in the gig economy. This process may involve some complexity for both the taxpayer and Revenue NSW. Through revenue rulings and other materials we have provided a significant amount of guidance to assist taxpayers navigating this, the contractor provisions, and generally complying with their payroll tax obligations.

Thirdly, having outlined the applicable legislative framework, I would like to say something briefly about our approach in applying the framework and all the legislation we administer. So our approach is to encourage and assist clients to comply with the law by providing information, education and tools to help them understand their obligations and grants to which they are entitled. Our approach is to detect and deter noncompliance by concentrating on areas of high risk and provide a level playing field and minimise business disruption. In respect of compliance, our risk approach is designed to focus on activities of highest potential for noncompliance. We use data analytics and risk assessment processes to identify taxpayers who may be noncompliant, and specialist analytic software to review taxpayer data that we have obtained from a number of sources.

As we point out in our submission, finally, New South Wales operates within a harmonised payroll tax regime. That was one of a number of initiatives sponsored by the Council of Australian Governments to reduce red tape and drive productivity. Under this harmonised regime, participating jurisdictions have enacted template

legislative provisions and adopted consistent rulings which support the interpretation of the legislation. One of the benefits of harmonisation is that it minimises complexities for business that operate across borders because they are generally subjected to the same levels. As the terms of reference raise the issue of possible reform of taxation legislation we think it is important to bring the issue of payroll tax harmonisation to the attention of the Committee. Were any legislative amendments to address issues arising out of this inquiry will be pursued? Other participant jurisdictions would need to be consulted and their agreement obtained if harmonisation were to be maintained. That concludes my opening statement.

The CHAIR: I invite you to table that opening statement if possible and we can get copies for members. I want to go through some preliminaries to establish a basic fact line about how payroll tax works and, equally, the application by Revenue NSW of those laws. Some of these will be repeats of some of the questions I have asked Revenue NSW in other forms of parliamentary hearings but it is important to put it on the record for this hearing, if that is possible.

Mr JOHNSTON: Sure, no problem.

The CHAIR: I want to be very clear. Payroll tax as it currently applies is in two respects: the eligibility to pay payroll tax, and then if someone is found liable to payroll tax there is the quantum of the liability. Is that correct?

Mr JOHNSTON: Correct.

The CHAIR: Revenue NSW will first determine whether a taxpayer or a person needs to become a taxpayer for payroll tax and you apply the control test really to determine that question. Is that correct?

Mr SMYTHE: There are a number of tests—sorry I am not trying to—

The CHAIR: Of course, this is payroll tax 101 and that is why we are here.

Mr SMYTHE: There are a number of common law tests that are taken into consideration. Control is one of the principal tests that is looked at.

The CHAIR: If Revenue NSW determines that a person is liable then you will perform the assessment as to how much wages attract it once you take account of the threshold. Is that correct?

Mr SMYTHE: Yes.

The CHAIR: I want to focus on the first question, which is liability, not quantum, if that makes sense. Revenue NSW has previously told Parliament that you have undertaken some investigation into companies that have been likened to the gig economy, or participating in the gig economy. Is that correct?

Mr JOHNSTON: That is right.

The CHAIR: I think last time we had the opportunity to question you on this you said that there were three investigations that you had undertaken. Is it correct that you said it was three at the time?

Mr SMYTHE: I cannot recall. I have no reason to doubt.

The CHAIR: Have you undertaken any further investigations since we last spoke about this, Mr Smythe?

Mr JOHNSTON: I will answer that. We continue to investigate businesses where we feel noncompliance might be occurring and that is an ongoing function across all sectors of the economy. We do not actively look at the gig economy as an industry in itself. Our function depends more on the relationship between employer and the people undertaking the work.

The CHAIR: You make those investigation decisions using a risk-based framework. Is that correct?

Mr JOHNSTON: Yes.

The CHAIR: As I understand it from Revenue NSW's procedures, you categorise people into categories of risk or industries into categories of risk. Is that correct?

Mr SMYTHE: Generally that is correct. There is a number of things that are taken into account that were mentioned, but, yes, we look at the likelihood of noncompliance across industries.

The CHAIR: Where do some of these companies fall within your risk-based assessment in terms of their liability under the payroll tax? Are they considered high risk, low risk or no risk? Where are you rating them?

Mr SMYTHE: It is quite difficult for us to answer that. The reason behind that is that the analysis and the operational decision-making is made in a particular part of our organisation and that is not something that I spend my days looking at and nor does Mr Johnston.

The CHAIR: But you do maintain a risk-based framework to decide what to investigate. Is that correct?

Mr SMYTHE: That is correct.

The CHAIR: Can you shed light on whether or not that risk-based framework has caused you to launch investigations into some of the companies that, for example, have appeared before this inquiry?

Mr JOHNSTON: We cannot speak to individual cases. What I would say about our risk-based approach is that it continues to evolve with new information that is provided. If information comes to hand that industry sectors or particular businesses are worthy of exploring, and that is using our analytics platform plus other sources of information, we will then address that—we will actively investigate. Knowing where we are seeing patterns across the sector to look, further heightens the risk of investigation of some businesses in these types of sectors.

To a point, evolving newer industries certainly give us great attention to see how they are behaving and how they are responding to us, but it is very difficult for us to say that we have a particular focus of investigation around compliance on the gig economy businesses. We try to treat them all the same and fairly and impartially but we continue to learn from the evidence that we gain from investigation after investigation to hone our techniques and our approach and our success.

The CHAIR: But how would you know whether or not a platform is active in the marketplace?

Mr JOHNSTON: To the previous point, for us, we look at a business and their relationship to their employees. When you talk of a platform, could you define what you mean by that?

The CHAIR: For example, let me present to you a specific case study which might be able to help. Of course I understand that you maintain that you are not in a position to talk about individual matters, but let's just use this case study for illustrative purposes.

Mr JOHNSTON: Sure.

The CHAIR: For example, we heard this morning from HungryPanda. How would you know that HungryPanda is active and engaging labour in some capacity in Sydney?

Mr SMYTHE: So there is a number of factors that go into that. One of them, for example, is the media. We become aware of participants because of the media, because of general knowledge and general information but also from the datasets that we are able to go through to have a look. For example, say there was a business that did not have a very high profile in one particular period but we received information on, say, the earnings of that business in our datasets. If they were increasing quite quickly, that may well be one of the factors that we would look at to see if this is a business that is likely to move towards the payroll tax threshold that would then tip them over into being liable to deal with us or liable for payroll tax.

The CHAIR: I understand that from media reports and other forms of data, that is one way. But under New South Wales law a person is required to self-register under payroll tax. Is that correct?

Mr SMYTHE: That is correct.

The CHAIR: Is it fair to say that you predominantly rely on employers to self-register?

Mr SMYTHE: Predominantly; that is right.

The CHAIR: Should an employer not self-register, you use these alternative methods to find out that they are active in the marketplace. Is that how I interpret your evidence?

Mr SMYTHE: That is correct.

The CHAIR: What other methods do use? I presume you exchange information with the ATO or you exchange information with other State revenue agencies.

Mr SMYTHE: That is correct. The example I gave about seeing earnings, profits and market participation, they come from a large number of datasets—the ATO is one of them—and we perform analytics on that to try and work out not only the size of the operations but also the risk of noncompliance. Going back to the statement of Mr Johnston—the opening statement—where we see businesses that look like they are moving towards the payroll tax threshold, it is quite common for us to provide information. It can be quite difficult, especially with businesses that are smaller but are starting to see some success. Before they hit our radar, part of

our analytics is to try and notify them and let them know that this is something they may well need to deal with in future.

The CHAIR: Without identifying any particular taxpayer, in the past 12 months have you proactively approached any of these platforms or anything that remotely resembles a gig economy to notify them that they might have a liability under payroll tax?

Mr SMYTHE: That is a question I will need to take on notice. Because I am not personally aware of it, I am not able to answer the question.

The CHAIR: Sure. Before we close that line of questioning, would it be of assistance to Revenue NSW if there was a requirement for a platform of this type to proactively notify you that they are active in the marketplace, regardless of whether or not they meet the threshold?

Mr JOHNSTON: It would be helpful to be aware of any activity that is coming, particularly with the notion of the fast moving pace of these platforms. I think that would very much support what we are doing, but notwithstanding—

The CHAIR: It would be more efficient for you.

Mr JOHNSTON: It would be helpful, but I do have some confidence in our own ability to identify activity in the market. But if we could do it quicker and without creating undue bureaucracy for others to identify information that is not of any use or any value, I think there is some merit in that thought.

The CHAIR: Would you agree that it is not excessively onerous to simply have to put a notification into Revenue NSW?

Mr SMYTHE: No, I think it is how that is designed is probably the thought that would be needed for it to add value.

The CHAIR: Okay, fair enough.

The Hon. ADAM SEARLE: I think you were talking about the contract of provisions. How exactly are they engaged? What assessments do you make in terms of whether something is a legitimate contracting arrangement or perhaps what some of us might call sham contracting? That is, where the workers have no control over their work, they are at the beck and call of another party, maybe a platform provider, and there is that legal dispute about whether they are employers or whether they are truly independent. How do you make assessments of those things? Or do you wait for it to get sorted out some other way?

Mr JOHNSTON: No, not at all. If an organisation or a business comes to our attention, we start an investigation. It is complex and I will read through some of the factors that are considered which might be of use to the Committee. If a worker contracts with an employer using a company, the worker may be an employee of the company, rather than the employer, which breaks this employer-employee relationship.

The factors that have been considered by the courts in determining whether a worker is an employee include: control and direction; the contract and practical relationship, which is the terms of a contract as evidence of the nature of the relationship; contracts to receive a given result and whether the contract is focused on providing a particular result, other than the provision of labour; independent business, which is the extent to which the worker is conducting his or her own business, as distinct from participating in the business of the employer; the power to delegate; risk, which is the extent to which the worker bears commercial risk and responsibility for any poor workmanship; and provision of tools and equipment.

Numerous court decisions have held that you have to think of this in totality. This is where sometimes our investigations are quite complicated and involved. But we do not wait for it to play out in other ways, although other information where changes might occur or decisions might be made—we consider what the implications are on that relationship and how we best assess it. We are actively engaged and take very seriously our compliance function to collect the liability that is due.

The CHAIR: Basically, your view is that you follow common law principles to make that assessment. Is that correct?

Mr JOHNSTON: Yes.

The CHAIR: And that is because there is no statutory definition of what an employer is under payroll tax. Is that correct?

Mr JOHNSTON: Correct.

The CHAIR: Insofar as the current payroll tax provides contractor provisions, they are for the purpose that you outlined in your opening statement, Mr Johnston—and Mr Smythe repeated—which is to determine whether a principal and contractor relationship is akin to an employment relationship and entered into for the purpose of evasion. Can you take us through how you decide whether or not someone is entering into a contractual relationship for the purpose of evasion?

Mr SMYTHE: I think the focus here is rather less on the purpose—so, the evasion element—and really on the contract arrangement. Just because someone is caught under the contractor provisions by no means by itself suggests that someone has attempted to evade or avoid their payroll tax liability. There may well be a number of reasons that someone enters into a particular type of contract arrangement that have nothing to do with payroll tax. It could be copying a business model that has been appropriate overseas, where a business may have started. It may be for other commercial, tax or legal reasons. There can be a number. Rather than get involved in having to consider what the purpose was, we can just deal with the facts.

The first question that we have to ask when we are looking at these contracts is: Is this one that is relevant for the contractor provisions? To determine that we go through the items that the Chief Commissioner just outlined. In reaching that conclusion there are a number of steps that can be undertaken, and this is one of the reasons that payroll tax audits can be quite involved. If there is a written agreement it will involve review of the written agreement, but the agreement by itself is, in certain circumstances, insufficient. It may not touch on particular matters of control. It may be silent as to whether or not the services may be delegated. There can be a number of things. So, other steps may be taken that may involve interviews with workers or something similar. It may involve reviewing legal advice, both that provided by the taxpayer and also separate legal advice that we may seek in relation to particular arrangements.

The CHAIR: But the point is that payroll tax currently provides a scenario in which a principal can be charged payroll tax for their contractors. Is that correct?

Mr SMYTHE: That is correct.

The CHAIR: Is that if you find them not to be genuine contractors, or that even if they are still genuine contractors, it is possible to attract a liability?

Mr SMYTHE: We like to think that we do not bring genuine contractors into the net, but I just need to be a little bit careful about "genuine contractors". Again, I do not want to suggest that every business or every arrangement that is caught under the contracting provisions is not a bona fide arrangement set up for—

The CHAIR: Yes. You do not need to be judgemental about whether or not—I will not use the term "genuine" in that sense, to relieve you of that obligation. Can you describe the scenarios in which a principal can have contractual relationships and still attract payroll tax liability?

Mr SMYTHE: Yes. So a person under this contract may call themselves an independent contractor, for example. However, they may be subject to the direction of what work, how much work and what particular times they must provide a service. If, say, I was the principal and the Chief Commissioner was the subcontractor, I may require that he personally perform particular services that he cannot delegate to an associate. There are also a number of statutory exemptions in the legislation that try to provide some breadth for businesses or operations that would be generally accepted as independent contractors to not inadvertently fall under these provisions. For example, a number of employees—helping them to perform the work and perform at certain time periods. If they offer the same service out in the market then, in most cases, that operator would not fall under the contractor provisions for payroll tax purposes.

The CHAIR: Sure. The grouping provisions under payroll tax are also relevant, are they not?

Mr SMYTHE: They can be. The grouping provisions aim to ensure that, where a number of entities or operations are basically affecting a similar business or where there is control over a number, they are grouped together for the purposes of determining the payroll tax threshold.

The CHAIR: Again, to get this out of the abstract and into the specific, we learned this morning from HungryPanda that they retain 150 riders in Sydney through a company that is called HungryPanda Sydney Pty Limited and they maintain a separate corporate structure to maintain their other workforces in other cities as well. It is not precisely clear where their head office—which part of the corporate group that they would fall into. That has appeared to us to look like an arrangement that may be intended to separate out workforces, to keep them below the threshold. I do not know whether you saw their evidence but can you explain how the grouping provisions would apply in that scenario?

Mr SMYTHE: Without specific group structures and legal arrangements and whatnot, I could not explain how—

The CHAIR: Specifically, yes, but in general?

Mr SMYTHE: —it would specifically apply.

The CHAIR: How would you go about investigating whether or not those grouping provisions should apply?

Mr SMYTHE: The grouping provisions contain a number of different mechanisms that allow for the connection of different businesses or different operations. One of the factors that may be relevant in determining whether the grouping provisions apply to a particular corporate structure is a question of control. Is there a single entity that controls two or more businesses, whether that is direct or indirect? By indirect I mean "through a chain of entities". There are common director provisions; so, where you have a number of businesses that have the same person or two persons acting in a director capacity, that is something that will be looked at.

There is also, though, a question of whether or not the businesses conducted by the entities we are looking at grouping have sufficient evidence that they are in fact quite separate, with very little to associate them. For example, it is quite common across the big end of town in this country and many others for a single person to act on the board of directors for a number of different listed companies. It would be very difficult, given the significant independence of operations of many of these companies, to attempt to group them. Under the legislation, I do not think it would be appropriate.

The CHAIR: When you say you do not think it would be appropriate, what do you mean by that?

Mr SMYTHE: That goes to the question of whether or not they are, in fact, truly independent operations. An example might be a company that, although listed in Australia, has mining operations in Africa, separately to a property trust that owns, say, office buildings in Adelaide or New South Wales.

The CHAIR: Sure, but I guess that is not necessarily the focus of this inquiry. The focus of our inquiry is the scenario in which these new structures are emerging and the extent to which they are being captured by existing law or whether they should be, which, to be fair, is a legitimate question to ask as well.

Mr SMYTHE: Yes.

The CHAIR: In the scenario that I put to you, which is what we have learnt this morning—I mean HungryPanda has one head office. It controls their national operations. That is the first thing in terms of their corporate structure. The second thing we learnt is that insofar as it evidences all their control tests that you just specified, it seems to pass all of them for the purposes of attracting a payroll tax liability. So you might not be able to answer this, but I will ask you: Have you investigated HungryPanda, by any chance?

Mr JOHNSTON: We cannot answer that question due to the privacy of the information and the efforts that we undertake, but the important question to this is: How do we stay current around different businesses that are growing and changing? We continue to investigate and see businesses that are not providing or paying, or paying sufficient, payroll tax to us. We investigate whether they are appropriately classifying themselves and take that further. So I think while we will not be confirming or otherwise who we are investigating here, and that was in my opening statement—we are not able to—we take it very seriously about these changing types of businesses and investigate them appropriately.

The CHAIR: Yes, sure. I am not going to repeat the many arguments that we have had—or I have had—with Revenue NSW about statutory secrecy provisions as they apply in Parliament. Notwithstanding the fact that I do not agree with you that you are not in a position to answer, I will not press for an answer, so we can avoid the fight. But can you explain to us what levels of cooperation and collaboration are in place with other State revenue offices when it comes to gig economy style platforms.

The Hon. WES FANG: Can we have that on half speed?

The CHAIR: I will repeat that more slowly, Mr Fang. I will get rid of the preamble—

The Hon. WES FANG: It is fine.

The Hon. ADAM SEARLE: No need on our account.

The CHAIR: I will not dispute the statutory secrecy provisions in this particular forum. Can you explain what forms of collaboration are in place between Revenue NSW and other State revenue-based agencies for the purpose of assessing payroll tax as it applies to gig platforms?

Mr SMYTHE: We cooperate and exchange information quite regularly with all other State revenue offices. Particularly, we have an exception from the secrecy provisions within the Taxation Administration Act 1996 that allows us to do that. There are regular meetings of a committee of various revenue offices to discuss different types of compliance activity, particular industries. It is quite interesting that, depending on the State, it is not hard to look at the map and recognise that the types of businesses that are predominant in one State are not necessarily as large a part of the economy in another. So there is often a greater exposure in particular industries around the country, which means that those other States often gain a higher level of proficiency, and so there is also an exchange of learnings of conducting audits and getting an understanding of different legal positions that may be taken in respect of different industries around the country.

The CHAIR: But you agree with me that New South Wales is the biggest economy in the federation?

Mr SMYTHE: I believe—

Mr JOHNSTON: Yes, in many ways I would agree with that.

The CHAIR: Yes. If you disagree, I am sure the Government might take umbrage with that.

Mr JOHNSTON: Yes.

The CHAIR: But you agree, therefore, that the biggest market for these types of platforms is New South Wales?

Mr JOHNSTON: I do not have the comparison to other States to make that argument, but I think there is a logic that you are presenting that would say that we are the biggest economy so there is a stronger proliferation of gig economy businesses.

The CHAIR: It is us and Victoria, is it not, that predominantly accounts for the majority of activity?

Mr JOHNSTON: Yes, that is right, and who we work very closely with.

The CHAIR: I appreciate the diplomacy of the answer, but to cut to the chase, we have learnt in other hearings that often there is a relationship between Revenue NSW and the Victorian agency. Has there been collaboration with the Victorian agency in this respect? You do not have to tell me what it is and what you have found. I just want to know what is the status of your relationship with the Victorian revenue agency, given that some of these platforms are headquartered here and some of them are headquartered there, and therefore it is either going to be your responsibility or theirs to check whether or not they are liable to pay. As I understand it, we have an arrangement with them that we share intelligence, and if they suspect that people are headquartering in Melbourne to avoid liability in New South Wales, they tell you.

Mr JOHNSTON: Yes, Mr Mookhey, we actively share information continuously with Victoria and other States where appropriate, and that is a very useful source of information for us to drive our activity going forward.

The CHAIR: But what has it yielded? In layman's terms I understand that you have described your policies and procedures, but to address the concern that has been presented to us in submissions and to the public, what can you say to the taxpayers of New South Wales that would give them comfort that Revenue NSW is investigating these companies and ensuring that anyone who owes tax pays it?

Mr JOHNSTON: I think we are being quite clear about our strong commitment around education, compliance activity and utilising different data sources to understand the liability of different businesses, whether they have or have not disclosed. To the point around confidence and investment and effort, this is a very strong one that we make within Revenue NSW, so I would hope that we are providing good confidence that we are investigating where appropriate. As we have said, the challenge for us, which you may not agree with, is that it is difficult for us to talk in the absolute about examples of cases where we are investigating, but we are actively pursuing efforts where we see a problem or a potential issue.

The CHAIR: I appreciate that, Mr Johnston. I accept that you take your responsibilities under the tax law seriously, as does all of Revenue NSW, which you should be complemented for as well, particularly the statutory secrecy provisions outside of parliamentary settings. But it is on the public record that you did investigate Foodora, you did issue them with a liability, and they did leave without paying it. At the time we learnt about the Foodora investigation we also discovered that two other investigations were underway. We learnt that two years ago. I am not asking you to identify the taxpayer, but I am asking you to identify two things: Are those investigations complete and, if so, what were the outcomes?

Mr JOHNSTON: I will have to take that on notice and come back to the Committee.

The CHAIR: Are you not in a position to answer that now? Is that the reason you are taking it on notice?

Mr JOHNSTON: I think it is important to give the correct answer in terms of what is complete and to consider how we do that in the best way, just to give the Committee the right answer for this, as opposed to—we do not actively describe a business as "gig economy". We look at the types of relationships businesses have with the people undertaking their activities, so there is a complexity to this which makes it really challenging for us. I do not want to give misleading information.

The CHAIR: No, I am not suggesting you are, Mr Johnston. I appreciate that. Part of our terms of reference is to determine whether or not the laws are fit for purpose, because you rightly point out that these laws were written in 1986. Is that what you said?

Mr JOHNSTON: That is correct.

The CHAIR: And they have not been modernised substantially since 1986 to the best of your knowledge? Would you agree with that?

Mr JOHNSTON: That is correct, yes.

The CHAIR: So it is nearly 30 years. In fact, I think it might be 25 years since the contractor provisions were really looked at in New South Wales.

The Hon. WES FANG: That is so Labor—25 is the nearest.

The CHAIR: Yes, sure. So that is part of the reason why we are making these inquiries. Would it be of assistance to the New South Wales taxpayers for us to create a statutory definition of what an employer is, rather than you having to rely on the common law?

Mr SMYTHE: That is really a policy question.

The CHAIR: Have you provided any advice to the Government in this respect? You do not have to identify what the advice is, but is this a question that Revenue NSW has examined—whether or not there should be any reform to these provisions?

Mr SMYTHE: I have no personal knowledge of such a recommendation. That does not mean that one may or may not have been given before I joined Revenue NSW.

The CHAIR: But to the best of your knowledge you have not given one in recent times, Mr Smythe?

Mr SMYTHE: No.

The CHAIR: But is it open to you to provide policy advice to the Government? Is it within your power?

Mr JOHNSTON: Yes. We provide advice and feedback around a whole range of issues. That is true. On this specific issue we have not in recent times given a direction or a view on what we think it should be.

The CHAIR: You are Australia's leading authority on the New South Wales payroll tax system. Can you tell us why that has not caused you to want to give this advice or to prompt any inquiries? You have the ability to independently initiate this advice to the Government and you do so in respect of other loopholes or gaps in tax law. Why has this one not attracted any particular activity on behalf of Revenue NSW?

Mr JOHNSTON: In actively giving a policy view on what changes should be made, that is a complex question that goes well beyond the terms of reference of this inquiry. In the past two years since we last provided information, which was before my time within Revenue NSW, there has been great change in a whole range of areas where we have provided support and discretion to businesses. Through 2020 the area of focus has been elsewhere. We have a strong relationship with Treasury. We provide information about progress, success, challenges and otherwise. Through the compliance efforts we continue to improve our practice. Whilst noting the age of the legislation, we continue to collect significant revenue for the State and we do it in a really strong and effective manner. To provide greater change, we would advise care and caution because there were reasons why those contracts and provisions were provided as they were: To protect genuine independent contractors. It is complex. Notwithstanding that, would we give advice in the future? I would not discount that, but I do not think we have as yet.

The CHAIR: Would it be of assistance if there were discrete provisions in the Payroll Tax Act that covered those grey areas where people are entering and exiting contract relationships and employment relationships much faster than was envisaged by the original legislation?

Mr SMYTHE: Statutory definitions across all areas of revenue and I would say across all areas of legislation are to some extent a double-edged sword. When they are introduced they are generally fit for purpose, but as you pointed out, given the speed with which a number of industries are changing—both the proportion of the economy they represent and also the particular way that they operate—legislated definitions can lose relevance reasonably quickly. This is one of the benefits—I promise I will get off my soapbox—of the common law system; it allows principles to be outlined in legislation and then built upon by the courts. While that may not always be appropriate when we move into new areas of legislation, with something such as payroll tax, which has been around for a good 70 years, it does provide some level of versatility, and that has served us well. The question of whether or not that has merely served us well or well enough is one of the policy questions that is probably more appropriately dealt with by Treasury.

The CHAIR: Mr Smythe, I appreciate you pointing out the risks of statutory-based approaches. To be very clear, we are open-minded on that for the reasons that you have just nominated. Some people who have come before the inquiry have argued strongly in favour of statutory definitions, and others have not, hence it is appropriate to ask you what you think under this purpose. Unless other Committee members are desperate for the call, I will move to your relationship with the ATO and where you are up to with that. One thing that we learned with Foodora is that your investigation took place in concert with the ATO. The ATO also issued a liability, which Foodora failed to pay, and then it left the country as well.

I think everyone can agree that is not ideal behaviour. Can you explain to us exactly what your relationship is with the ATO, how you are exchanging information with it and whether or not this has attracted any special scrutiny as well? To be fully clear about context, we have had a bunch of people, including participants in the gig economy as well as the platforms, who made the point that they would prefer some form of a harmonised approach and a one-stop shop, for want of a better term, when it comes to their tax liability. Can you give us any insight into how you are engaging with the ATO both in terms of investigations and also the ease of doing business?

The Hon. WES FANG: You thought my questions were long.

Mr SMYTHE: It is a difficult question to answer more because it moves down into the mechanics of the interactions between the States, which is something that I do not deal with on a daily basis. What I can say is that we do receive data from the ATO; that is provided to us. We have a number of datasets that we match and feed into the analytics process when we are determining particular areas where we might investigate. When it comes to a particular taxpayer, we may well obtain specific information in relation to them. One of the difficulties of course is that ATO tax information may not be broken up on a State basis in all cases, which can create some difficulties. It is generally not the end point, but it is something that provides additional data that is factored into our other information-collecting activities. Is that helpful?

The CHAIR: Yes, that is very helpful.

Mr JOHNSTON: Further, to speak to the relationship, there is a regular quarterly meeting between commissioners across jurisdictions and the ATO where the broad content is about sharing, not individual cases, but future directions of how we are working, how we work together and trying to get alignment where possible. It is also about utilising each other's expertise and knowledge in different ways. I think that is a really valuable and productive function that we have nationally. It does speak to the complexity that businesses would have across different interactions with different jurisdictions, and also with the Commonwealth tax office. There is a strong and very open relationship. We are driving different strategies and different efforts in different places but there is a very open, sharing and supportive relationship, I would say.

The CHAIR: Finally, I want to talk to you about the processes that you outlined in your submission, about the harmonisation processes that were endorsed by the Council of Australian Governments back in 2008. You suggest that any recommendation we make should be mindful of those requirements. What requirements should we be mindful of?

Mr JOHNSTON: In its essence, if we diverted down a path that was not followed by the rest of the country, that essence of harmonisation would be diminished. That is more of a question of whether that is of great value or not, but there has been a strong effort to try to provide businesses who operate across borders as similar and simple process and as consistent a process as possible. That was the point to that argument; it is not to say that nothing can be done, but of course being mindful that there is active discussion across other jurisdictions about intent. That would be worthwhile considering if there is change.

The CHAIR: But no aspect of that agreement would change the ability of New South Wales to change its own laws.

Mr JOHNSTON: No. The submission and the opening statement was, for the use of the Committee, pointing to being mindful of any divergences having an impact on other business interaction and lack of harmonisation.

The CHAIR: Fair enough, but we have signed up to the requirement to consult with other States prior to making any changes, have we not?

Mr JOHNSTON: There is continual discussion about development of payroll tax. I think it would be considering the length and strength of the relationship—that would be sensible from a practitioner's perspective—to engage in a conversation across the country about the intent and appetite of others if there was foreshadowed change. Again that is not to say that nothing can be done, but it is actually about positioning and trying to make it effective, because if it is different in New South Wales than everywhere else then there may potentially be challenges that businesses will face in responding to that.

The Hon. WES FANG: Or benefits.

Mr JOHNSTON: Yes.

The CHAIR: Yes. Did you want to ask, Wes?

The Hon. MARK BANASIAK: I think Wes was just nodding.

The CHAIR: Just finally, did you, by any chance, examine the on-demand task force report that was provided to the Victorian Government?

Mr JOHNSTON: I could not speak to that, no, sorry.

The CHAIR: This is the *Report of the Inquiry into the Victorian On-Demand Workforce* that was handed to the Victorian Government last year. Fair enough, if you have not since it is not a report in our jurisdiction.

Mr JOHNSTON: Yes.

The CHAIR: The Australian Institute says:

... that by ... [avoiding] payroll tax, on-demand businesses effectively receive a subsidy to the value of 4.85 per cent on their wages.

Are you aware of any similar analysis being undertaken in New South Wales?

Mr JOHNSTON: Could you just—

The CHAIR: I will slow it down and repeat it to you.

Mr JOHNSTON: Yes, please.

The CHAIR: The report states:

The Australia Institute however submitted that by adopting business models that avoid payroll tax, on-demand businesses effectively receive a subsidy to the value of 4.85 per cent on their wages.

Are you aware of any research on that question in New South Wales?

Mr JOHNSTON: We have done—I will start off we have not done research to make an assessment to that. Mr Smythe, would you like to comment?

Mr SMYTHE: No, I am not aware of any research.

The CHAIR: Okay. Fair enough. To be fair, probably the submitters to that inquiry are submitting to this inquiry. I just thought we should see if there is any other research which would contradict it as well.

Mr SMYTHE: Well, 4.85 per cent is the current payroll tax rate.

The CHAIR: Yes. I imagine that is the reason why they said that that amounts to a 4.85 per cent subsidy, but we can take that up with them if you do not have any research to suggest otherwise. That would be useful. That is the end of my questioning. Do any other members have questions?

The Hon. MARK PEARSON: Thank you very much. I am just asking you to elucidate something for me. In your submission you talk about contractors, independent contractors are workers who are "conducting their own business". It is becoming clearer and clearer how murky and unclear it is and how much exploitation can occur because of that murkiness and lack of clarification. Do you not think if we had a statutory declaration of an employer, employee, labour hire, contract worker, contractor conducting one's own business [audio malfunction] there would be a clearer definition? I ask because you point to this problem in your own submission—this blur. I understand your point about common law and allowing it to be applied, but do you not think we have come to a

point where this needs to be clearer because no doubt legal actions will begin to be taken and it will help both sides of the inquiry during those legal questions? What is your answer to that?

Mr JOHNSTON: I will start and ask Mr Smythe to continue. I think the substance of our submission is that this is a very complex area but we also feel—from experience we know that any change or modification or addition will have consequential effort elsewhere. So, there was an original policy intent with the contractor provisions that were to maintain the independent contractor, essentially. So, while clarity may be useful for us in administering the law, we would have to make sure. The advice would be that you would want to do it in a way that would not have a perverse outcome to its original intent where there are independent contractors who function in a certain way, which is—

The Hon. MARK PEARSON: But my point would be that it would be clearer and easier to navigate.

Mr JOHNSTON: Potentially, but it would require more detail and more discussion. I think this is a point of not disagreeing but nor agreeing.

The Hon. MARK PEARSON: No, I understand.

Mr JOHNSTON: Just saying content of thought around how that is designed is really important from a payroll tax perspective and noting that this broader, this inquiry, into other areas. But that would be our view.

Mr SMYTHE: I do not think I have anything to add to the chief commissioner's comments.

The Hon. MARK PEARSON: Thank you.

The CHAIR: I misled when I said those were my final questions. I have discovered two more. I will take you to some of the other points that were made in the Victorian inquiry just to see whether there is a response you can give us or not—up to you.

Mr JOHNSTON: Okay.

The CHAIR: The report says that the State Revenue Office:

...told the Inquiry that it would be useful to have a determination about the status of a worker when considering the application of the [Payroll Tax] PT Act to a business.

So you think it would be helpful to Revenue NSW if there was a determination or a ruling of any form that would give you clarity as to how to apply the common law principles in the New South Wales scene?

Mr SMYTHE: I am not aware that we have received any feedback on that issue. We are able to—the legislative regime that we have—and this factors into the chief commissioner's comments on the information we provide out to the market—of course we start with the legislation and the commentary of the courts on that through case law. There are a number of rulings that are harmonised rulings that have been adopted across all jurisdictions. In New South Wales we also provide something called commissioner's practice notes, which are more informative and try to provide some practical examples of how Revenue NSW views the provisions and would apply them in particular cases. If we were to receive a comment that something like that was needed, we would look into, as a first step, providing a practice note or further guidance to anyone who had any queries.

The CHAIR: But the chief commissioner has the power to make a ruling, do you not?

Mr SMYTHE: Yes.

The CHAIR: And you do too, as the commissioner of revenue?

Mr SMYTHE: Not a ruling.

The CHAIR: But the chief commissioner does?

Mr JOHNSTON: Yes.

The CHAIR: Hence so far you have found no reason to make a ruling at this point in time.

Mr SMYTHE: That is correct.

The CHAIR: And, to be fair, you pretty well are new to the job, so I understand that. Can I ask what I think will be my final question—let's see? Equally one point that the Victorian revenue office makes about a difference in law is that they say their Act extends their obligation:

... around payroll tax by providing that businesses are 'taken to be employers' when they engage independent contractors under 'relevant contracts', which are defined to include certain arrangements for the supply of services.

All contracts for service are considered relevant contracts unless an exemption applies. Effectively this means that, unless an independent contractor fits within an exception, they are treated the same as an employee for the purpose of payroll tax.

That is different to how we do it, is it not?

Mr SMYTHE: It is similar.

The CHAIR: But there are differences.

Mr SMYTHE: It is largely similar. Actually, I believe those, without having the two Acts before me, the description you just gave outlines the way that we would look at it as well.

The CHAIR: Okay.

Mr SMYTHE: Hence—sorry.

The CHAIR: You can conclude.

Mr SMYTHE: Hence the legislative exemptions, so providing services to the general public and whatnot.

The CHAIR: On notice, is it possible that you can provide us with a bit of a comparison between how the Victorian obligations work versus ours and whether they are harmonised? I ask because you do make a good point about the need for harmony, particularly between those two States. It would be helpful if we just get some insight as to the similarities and differences, if there are any.

Mr JOHNSTON: Yes. We can take that on notice.

The CHAIR: Excellent. Is there anybody else who would like to ask our tax officials any further questions?

The Hon. WES FANG: I cannot speak as fast as you.

The CHAIR: I promise I will pay. I think I have one fine outstanding. I promise I will pay it. I got it last week.

Mr SMYTHE: Thank you.

The CHAIR: It will come in by its due date. I appreciate your time very much and we thank you very much for sharing your expertise. Thank you also for the quality of your submission. It was pertinent and to the point.

(The witnesses withdrew.)

The Committee adjourned at 14:42.