



Gig Economy

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Appen

- Over a million people in a “curated” crowd
- Crowd are pre-qualified for various types of task (eg. language skills)
- 130 countries
- Tens of thousands of payments every month across many of those countries
- Various know-how and “pre-processing” ML tools to assist in the tasks
- Recent acquisition of Figure Eight in the US brings greater array of tools and technology

Description of a Gig worker

- Barber
- Wig maker to order
- Buys and sells items on Ebay
- Engages in peer to peer lending through Prosper Marketplace and Lending Club

Description of a Gig worker

- The diaries of three men in 18th-century Britain that I have found give a fascinating insight into how middle class people – the supposed beneficiaries of today’s gig economy – made multiple employments work. Edmund Harrold, a resident of Manchester in the early 18th century was a **barber** by training and title. He rented a small shop, shaved customers’ heads, bought and sold hair, and **crafted wigs**. In the hours unfilled by this he worked as a book dealer, and eventually as an **auctioneer, selling various items** in alehouses within Manchester and in outlying towns. He **lent out money** when he had it, earning 10% interest on his holdings.

- <https://theconversation.com/the-gig-economy-is-nothing-new-it-was-standard-practice-in-the-18th-century-81057>

The gig economy (l'économie des petits boulots)

- <https://www.merriam-webster.com/dictionary/gig%20economy>
- A gig economy is a free market system in which temporary positions are common and organizations contract with independent workers for short-term engagements. The term "gig" is a slang word meaning "a job for a specified period of time" and is typically used in referring to musicians. Examples of gig employees in the workforce could include freelancers, independent contractors, project-based workers and temporary or part-time hires. <https://whatis.techtarget.com/definition/gig-economy>
- Australia's sharing economy was worth an estimated \$15.1 billion in February 2017 and about 10.8 million Australians, or 60 per cent of the workforce, were thought to have earned extra money from sharing economy services between July to December 2017. <https://www.abc.net.au/news/2019-01-23/ato-hunts-australians-hiding-income-via-uber-and-airbnb/10742528>
- Intuit predicted that by 2020, 40 percent of American workers would be independent contractors. http://http-download.intuit.com/http.intuit/CMO/intuit/futureofsmallbusiness/intuit_2020_report.pdf
- There seems to be a negative connotation with the term "gig economy".
- Is it just a timing thing? Is it truly a negative? If arguably negative now can it be later (re)structured to be a net positive? What reforms?


The gig economy – technology trends

- **Work ≠ Job ≠ Company** [Must do some research on Japan]
- Rethink talent models: It is currently not the only category of worker – there is a continuum of talent and businesses will draw from across that **continuum**
- It is not an isolated phenomenon – it has to be understood in context.
- Technology has changed the demands for workers and work with jobs being eliminated or changed with advances in systems.
- Compute power, cloud, localised manufacturing (eg 3D printing), automation, outsourcing, mobile, ML/AI and accessibility become pervasive globally
- And every talk has to mention blockchain of course [But to the extent it underpins cryptocurrency and micropayment systems it will be important to the gig economy].
- Data and data utilisation is a competitive advantage

Gig workers

- Task workers, temporary workers, temps, independent contractors, project workers, freelancers, crowd, on demand, platform workers, non-permanent, piece workers, home workers ...
- Are they all “vulnerable”? Is it always “abusive”?
- McKinsey Global Institute (October 2016) →
- **Free agents. Casual Earners. 70%**
- **Reluctants. Financially strapped. 30%**

	Primary income	Supplemental income
Preferred choice	“Free agents” 30% 49 million	“Casual earners” 40% 64 million
Out of necessity	“Reluctants” 14% 23 million	“Financially strapped” 16% 26 million



FOUR SEGMENTS OF INDEPENDENT WORKERS

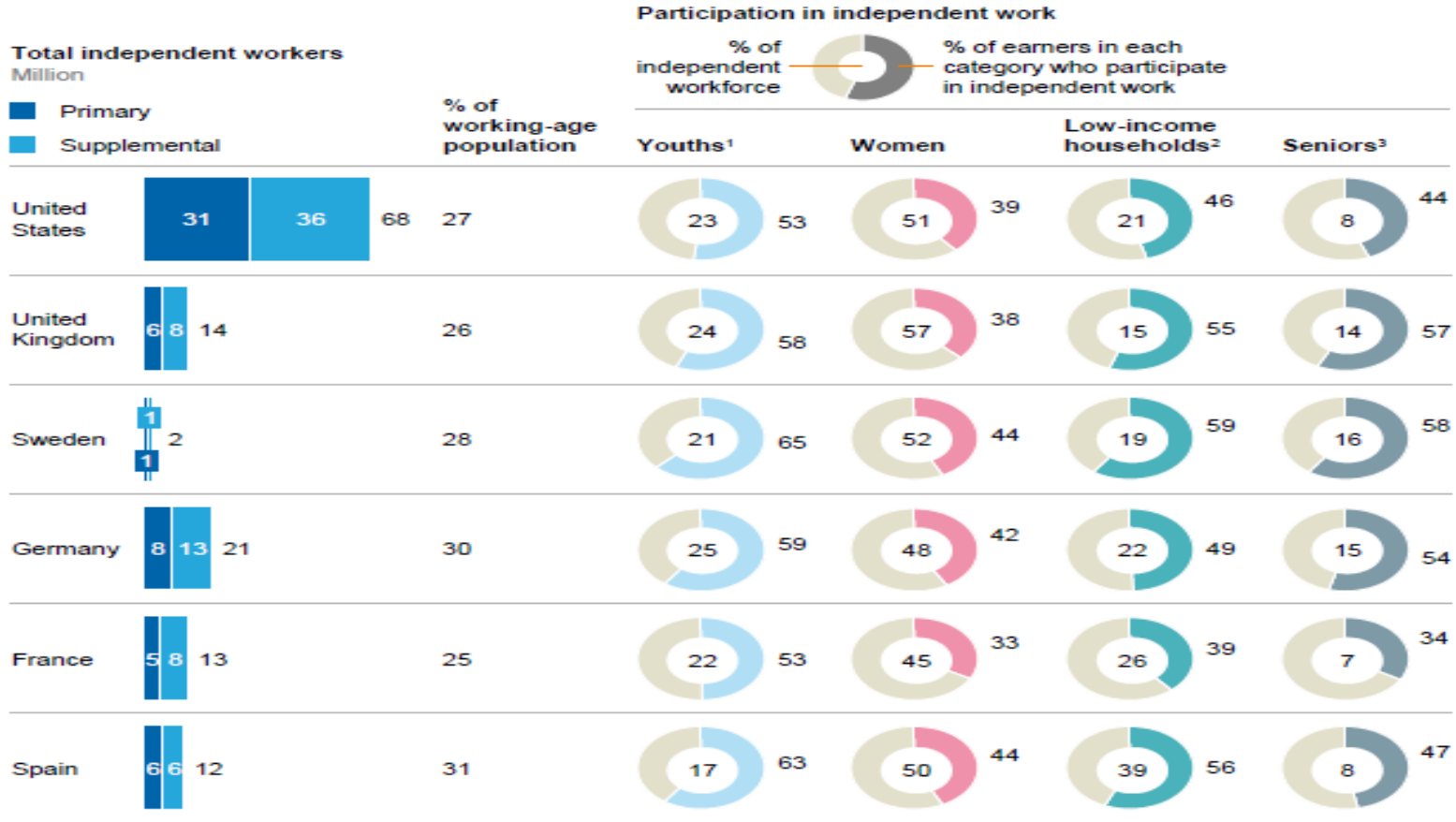
“Independent work is my ...”

	PRIMARY INCOME	SUPPLEMENTAL INCOME
PREFERRED CHOICE	FREE AGENTS Derive their primary income from independent work and actively choose this working style <i>Example: A self-employed plumber or a chiropractor in private practice</i>	CASUAL EARNERS Use independent work to supplement their income and do so by choice. Some have traditional primary jobs, while others are students, retirees, or caregivers. <i>Example: A hobby crafter who sells scarves or a professor who gives paid speeches</i>
NECESSARY CHOICE	RELUCTANTS Derive their primary income from independent work but would prefer traditional jobs <i>Example: A short-term temporary worker who would prefer a more permanent job</i>	FINANCIALLY STRAPPED Do independent work to supplement their income but would prefer not to have to do side jobs to make ends meet <i>Example: A janitor who doubles as a housepainter on the weekends</i>

Exhibit E2

Independent workers span all demographic groups

Responses from MGI Survey



1 Defined as under age 25.
 2 Defined as below \$25,000 or similar across countries.
 3 Defined as ages 65+.
 NOTE: Numbers may not sum due to rounding.

SOURCE: Eurostat; BLS; McKinsey Global Institute analysis

Gig workers

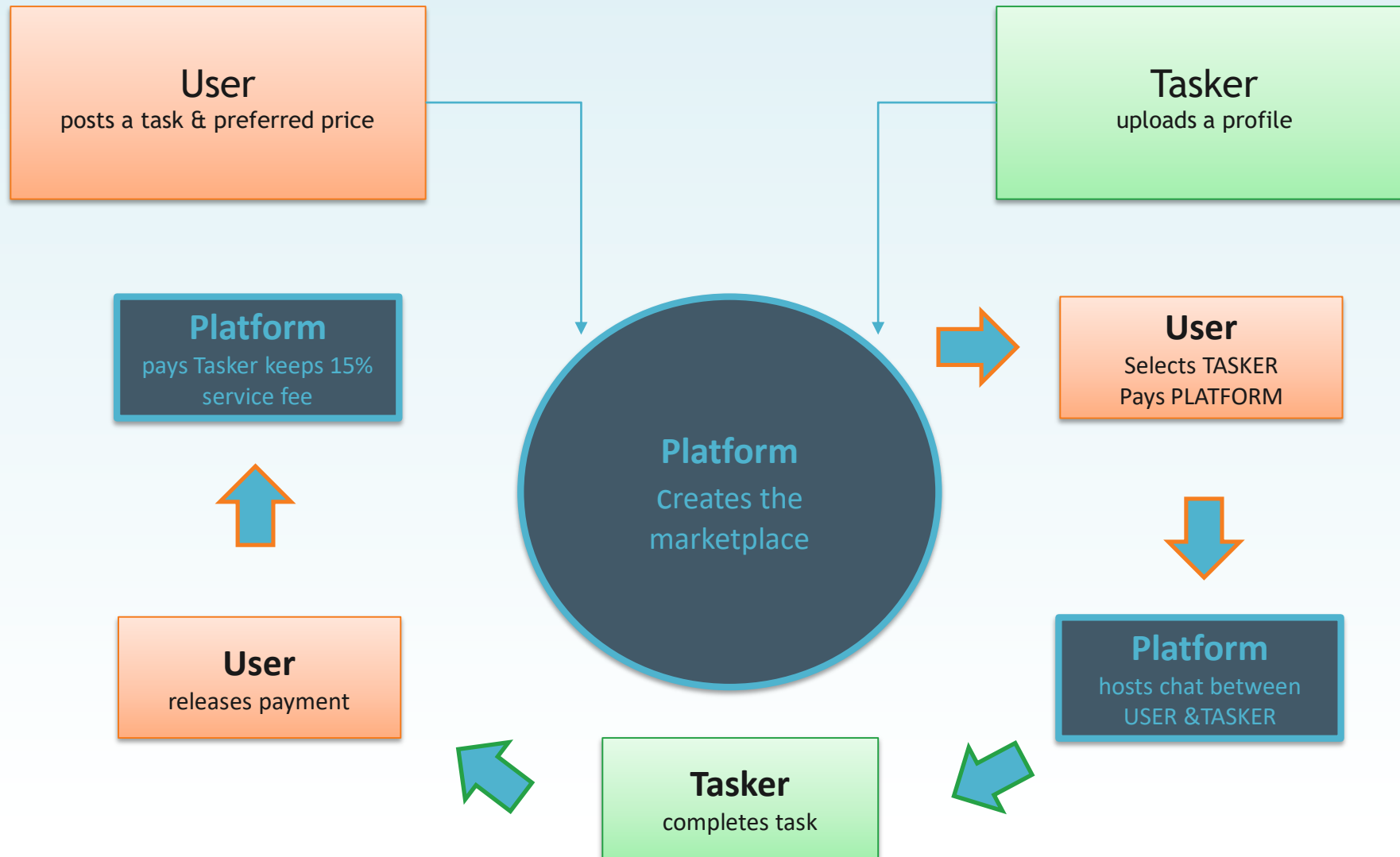
- Desire flexibility at both ends of the age demographic
- Flexibility in hours worked, in place of work
- Maybe full time. Just not for a single employer.
- Digital natives. Millennials and sooner have come to the market.
- Co-located v. Distributed: Often work from home.
- Likely not be in Australia.
- Are ready to work for the relevant task. [no training, development]
- Risk shifts to individual (running the(ir) business).

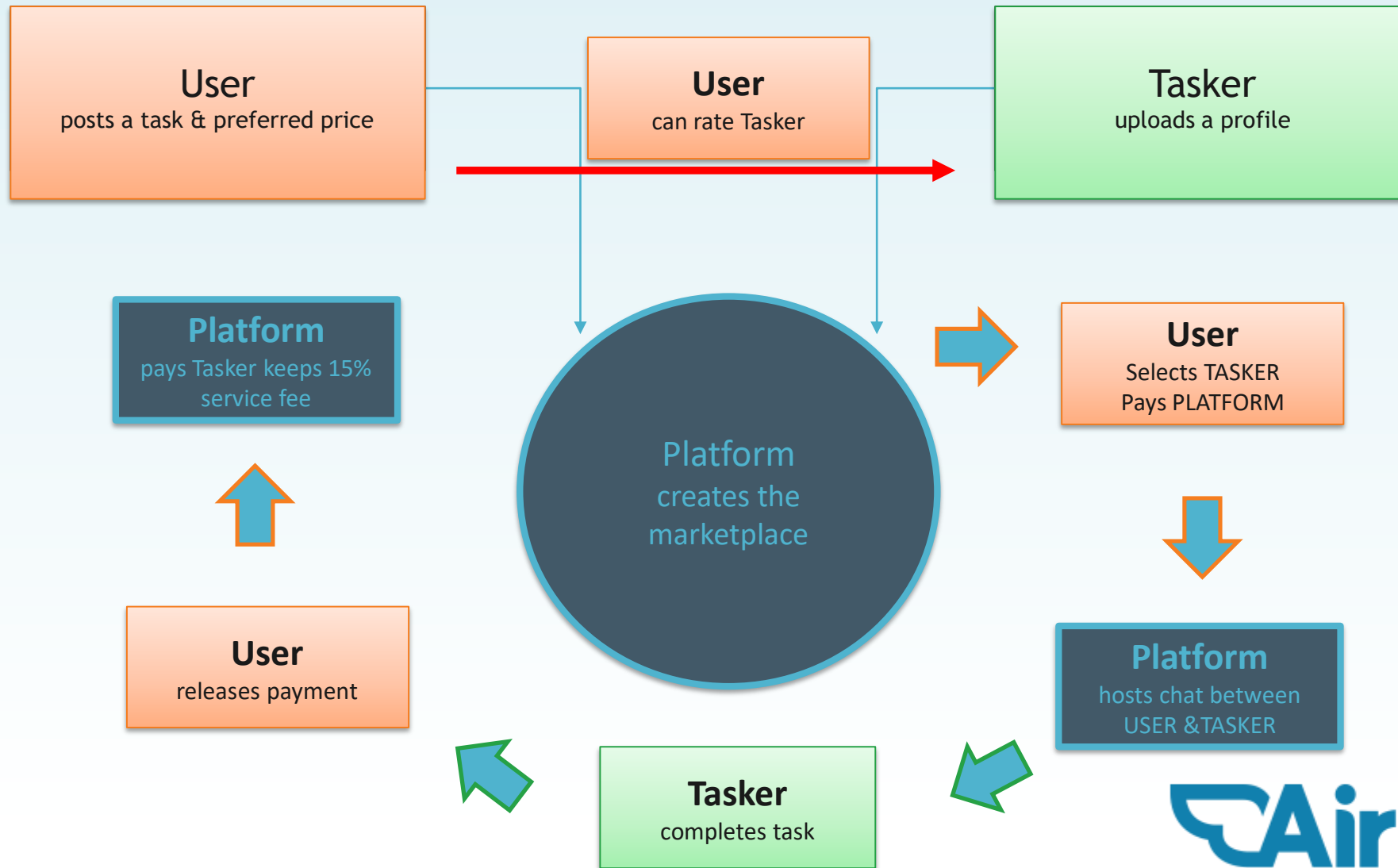


So who are the gig workers in Australia ?

Gig workers in Australia

- *independent workers who move from one job, or 'gig', to the next utilising digital technology, created and provided by an intermediary business, to connect with purchasers of their services (Stanford 2017)*
- *they are not employees, but unlike other self-employed people they do not have the freedom to negotiate their compensation or terms of service (Harris and Krueger, 2016).*
- measuring the incidence of independent workers is far from straightforward ... (but we can) distinguish between self-employed people who employ other workers (employers) and those in businesses without any employees (the solo self-employed).





What is happening in the market?

- There is no evidence of the rise over time in the use of independent workers
- The growth of the gig economy involves the substitution of one type of worker for another, or is largely confined to second jobs

Figure 6.1: Proportion of employed persons who are self-employed



Who are they?

- 64% male
- Working an average of 34.7 hours / week
- \$66K p.a. (mean)
- 77% major urban areas
- Job satisfaction is higher than employees
- 19.4% in construction
- 5.3% in transport postal warehousing
- 8.2% other services

ON-DEMAND EVERYTHING

House calls



Transportation



Marijuana



Food / Grocery Delivery



Laundry



Home Services



Travel & Lounging



Shipping



Parking



Health & Beauty



Gig “employers” and platforms

- B2G, C2G, G2G
- Who uses (relies on) (needs) gig workers?
- Platform companies like Uber, Lyft, Taskrabbit, Freelancer ... but it is becoming increasingly pervasive and driving into traditional businesses more and more
- Will all companies simply become platform companies?
- Robert Bosch GmbH created an entire separate subsidiary to manage its 1700 person on-demand network
- Workday acquired Rallyteam (a gig work platform)
- ADP acquired WorkMarket (a gig work platform) and Global Cash (a payment solution for gig workers)
- SAP acquired FieldGlass
- Fuel50, Legion etc etc

Gig employers

- Reduced need for office space – distributed (“spatial unfixing”)
- Scalable workforce (variable cost model)
- Reduced costs of workforce
- Reduced costs of entry generally
- Multiple employers for workers – possibly competitors
- Unaligned with broader strategy
- Cultural disconnects
- Hearthfire

Gig employers - Support

- Creating new value chains
- Platforms (Freelance Management Systems)
 - RallyTeam, WorkMarket, Onforce, Lystable
- Background checking/vetting
 - Checkr, onfido, Sterling, Goodhire, Accurate
- Expense Management
 - Intuit, Stride, SherpaShare, hurdlr, Everlance
- Benefits
 - Perkspot, zego, Bunker
- Payroll
 - Stripe, Gobank, dailypay, earnin, PayActiv, instant, Push


Understanding to Action

- Pesole, A., Urzì Brancati, M.C, Fernández-Macías, E., Biagi, F., González Vázquez, I., Platform Workers in Europe, EUR 29275 EN, Publications Office of the European Union
- EU Parliament: The Social Protection of Workers in the Platform Economy. [http://www.europarl.europa.eu/RegData/etudes/STUD/2017/614184/IPOL_STU\(2017\)614184_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2017/614184/IPOL_STU(2017)614184_EN.pdf)
- EU introduces new minimum rights for 'gig economy' workers like Uber drivers and Deliveroo riders. <https://www.independent.co.uk/news/world/europe/eu-workers-rights-gig-economy-uber-deliveroo-training-a8874561.html>
 - Description of their duties
 - Starting date and pay information
 - Indication of what a standard working day is, or reference hours
 - Right to compensation for late cancelling of work
 - Only one probationary period, lasting a maximum of six months
 - Allow employees to have other jobs, banning "exclusivity clauses"

TRANSPARENT AND PREDICTABLE WORKING CONDITIONS IN THE EU

NEW AND BETTER MINIMUM STANDARDS FOR ALL WORKERS

 Information on work's essential aspects to be provided **within a week**

 Right to receive **compensation** in case of late cancellation of the agreed work assignment by the employer (for workers with variable work schedules)

 Probationary period limited to **six months**

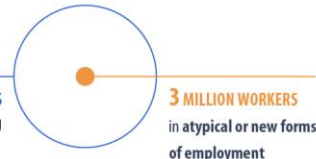
 Right to **cost-free mandatory training**

 Right to work for other employers, with a **ban on exclusivity clauses**

WHO IS COVERED BY THE NEW RULES?



200 MILLION WORKERS
in the EU



WHAT ARE WORKERS IN ATYPICAL FORMS OF EMPLOYMENT?



WORKERS ON ZERO-HOUR CONTRACTS
(people working in fast food chains and logistical centres or as shelf stockers in supermarkets)



DOMESTIC OR VOUCHER-BASED WORKERS (performing such activities as cleaning, gardening, child-minding or assisting older people)



PLATFORM WORKERS
(on-demand drivers or couriers)

Source: European Commission



Issues in the Australian labour market

1. Defining the gig relationship – is it a binary choice?

Kaseris v Rasier Pacific VOF [2017] FWC 6610, 21 Dec 2017

- Uber v independent contractor or an employee ?
- *(Uber) submits that ... based on a proper consideration of the contractual relationship including the lack of the wages-work bargain together with the provisions in the Services Agreement, it can in no way be concluded that an employment relationship between the Applicant and the Respondent existed. I consider that this is manifestly correct.*

- *Pallage v Rasier Pacific* [2018] FWC 2579, 11 May 2018
 - Uber v partner or an employee ?
- *Klooger v Foodora* [2018] FWC 6836, 16 Nov 2018
 - independent contractor or an employee ?
 - Consequences of the decision
- *Inquiry into the Victorian On-Demand Workforce*
 - Legal work status
 - Application of WHS and other workplace laws
 - Extend of sham contracting
 - enforcement

'Third way' regulation in Australia

- Specialist vehicles – e.g. concrete agitator or quarried materials trucks (NSW)
 - Couriers & taxis, Bread Carters, Milk Vendors & other vehicle owner drivers (NSW)
 - Vehicle Owner Drivers & forestry contractors (Vic)
 - Outworkers in clothing, textile & footwear
 - Daily hire workers in construction
 - Piece rates / tally rates – e.g. meat industry
-
- NSW: the regulation of “contracts of carriage” expressly does not include meal delivery by courier. Consider implications for



Understanding to Action

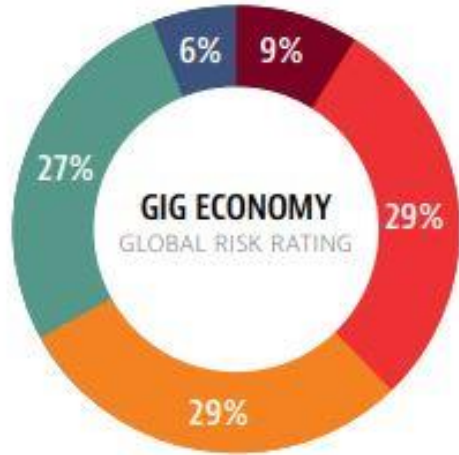
- Victorian Inquiry into the On Demand Workforce (Natalie James)
- Numerous submissions have been received (individuals through to major companies)

Misclassification

- DOL - Contractors <https://www.wired.com/story/feds-rule-companys-gig-workers-contractors/>
https://www.dol.gov/whd/opinion/FLSA/2019/2019_04_29_06_FLSA.pdf
- NLRB Memorandum – Contractors <http://src.bna.com/lbt>
- Note split in Federal Circuit and differing tests
- Dynamex Case (CA)
 - Is the worker free from company control?
 - Is the worker performing a key business function?
 - Does the work have his or her own independent business?
- What about the role of arbitration agreements and class waivers in gig contracts? [Except PAGA]
- FLSA/Wage and Hour
- Unemployment insurance cases

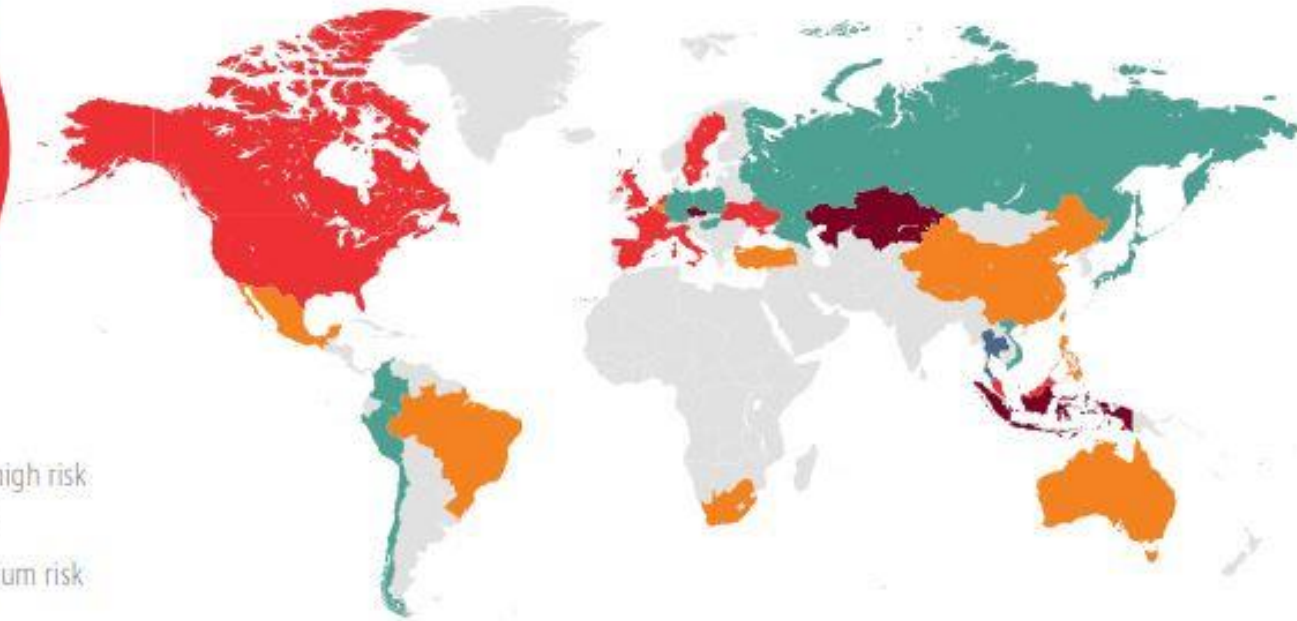
Modern Workforce Risk Heat Map

This heat map illustrates generally where businesses are facing risk in relation to the modern workforce and, in particular, where misclassification claims are an issue.



- RISK LEVEL 5 High risk
- RISK LEVEL 4 Medium to high risk
- RISK LEVEL 3 Medium risk
- RISK LEVEL 2 Low to medium risk
- RISK LEVEL 1 Low risk

DATA FROM 34 COUNTRIES



Baker & McKenzie: <https://www.lexology.com/library/detail.aspx?g=dbaacd7d-fb53-4fc7-8598-d6a0d1082cc8>

Modern Slavery, CSR, and ESG

- Corporate Social Responsibility
- Environment, Social and Governance
- Modern Slavery Legislation in UK, NSW, Australia, California ...
- Take steps to understand your supply chain and then mitigate risks of modern slavery in your supply chain
- Whistle-blower legislation
- Minimum conditions (ILO)

- ILO Declaration on Fundamental Principles and Rights at Work, 1998, commonly known as the ILO Declaration, is a non-judicial, “soft law” instrument that is comprised of a number of ‘core’ ILO Conventions which seek to ensure that basic human and labour rights are universally recognised and protected (whether or not a state has ratified the relevant convention). The four core principles are derived from the underlying conventions and the obligations they impose regarding:
 - the elimination of forced or compulsory labour;
 - the abolition of child labour;
 - freedom from discrimination in employment and occupation; and
 - freedom of association and the right to collective bargaining

- Gig workers are typically not “joiners”
- Union membership is declining generally
- However, direct access to media channels is growing
- Gig workers have indicated a willingness to take grievances to the virtual streets
- Freelancers Union has created a portable benefits delivery system, linking benefits to individuals rather than to employers, so independent workers can maintain benefits as they move from job to job and project to project.
- Grab and Gojek drivers in Indonesia collective action.
<https://theconversation.com/can-grab-and-gojek-drivers-in-indonesia-build-a-solid-union-95032>

Tax and Superannuation

- Important that gig workers are notified of and pay income tax
- Issue with sites that take **C2G/G2G** position
- In US, no 1099s issued making it hard to track and pay appropriate taxes (and possibly even to avoid paying those taxes)
 - 36 percent didn't understand what kind of business-income and expense records related to their gigs they needed to keep for tax purposes.
 - 43 percent didn't know how much they would owe the IRS for this income and were not setting aside money to pay those taxes
 - 47 percent didn't realize that they could be taking deductions or credits related to their gig work to lower their tax liability
 - **61 percent didn't get IRS reporting forms from the company through which they booked gigs**
- “Gig economy platforms Uber, Airbnb and Airtasker say they are consulting with the Federal Government about how they can adhere to a new reporting regime being considered as part of a crackdown on people dodging their taxes by under-declaring income.” <https://www.abc.net.au/news/2019-01-23/ato-hunts-australians-hiding-income-via-uber-and-airbnb/10742528>
- Payroll tax (estimated loss to CA state revenue of US\$7B)
- GST (GST turnover greater than \$75K (other than for what the ATO calls “ride-sourcing”))
- Independent contractor so superannuation/401(k)/SS payments may be reduced resulting underfunded retirement and dependence on government support <https://theconversation.com/how-gig-economy-workers-will-be-left-short-of-super-85814>

Safety, Benefits and Insurance

- Workplace
- Safety
- Unemployment insurance
- Disability insurance
- Portability of benefits
- Although it may increase the cost it will also attract more skilled workers to the gig model
- Black Car Fund in New York (takes a clip to support various programs)

Issues in the Australian labour market

2. Managing Risks in the Gig Worker Model

- Modern Slavery – first reports due 31 December 2020
- Supply Chain & Accessorial Liability
 - Existing franchisor & holding company liability rules
 - Existing accessorial liability rules
- *Fair Work Ombudsman v First Group of Companies (Dereg)* [2018] FCCA 1228 (ISS Case)

- Work Health & Safety
- Sham Contracting
- Superannuation
- Workers Compensation
- Tax: payroll, PAYG
- Class Action claims
 - Adero re Appco and others (direct marketing)
 - Shine Lawyers v Tandemn (telecommunications)

Pre-industrial revolution

<https://www.wired.co.uk/article/gig-economy-bank-of-england-worker-rights>

“Prior to the Industrial Revolution, and indeed for some years after it, most workers were self-employed or worked in small businesses,” Haldane said in a speech given at Bradford’s National Science and Media Museum this week. “There were no unions. Hours were flexible, depending on what work was needed to collect the crops, milk the cows or put bread on the table. Work was artisanal, task-based, divisible.”

Questions? In case you don't have any.

- Is the gig up?
- What's in a gig worker contract?
- Who owns the IP? IP warranties? Indemnities?
- Was the outcome in Foodora good?
- We cant stop it so how do we make it work?
- Are we being too patriarchal?
- Do gig workers get the same protections under discrimination law?
- Harassment/bullying?
- What happens if they're offshore?
- Will law firms and the big 4 just become platform companies too?