

National policy approach to workers' compensation and the gig economy

OCTOBER 2025

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1. Preamble

- 1.1 Ensuring gig workers engaged on digital labour platforms are adequately protected in the event of a work-related injury or illness is a complex policy issue being considered by most Australian jurisdictions. Following the tragic deaths of gig workers engaged on digital labour platforms¹ and the various federal and state inquiries considering approaches to this policy issue, Safe Work Australia Members agreed on 8 June 2023 to develop a national policy approach to address workers' compensation and the gig economy.
- 1.2 The decision to review workers' compensation arrangements also reflects the recognition in the industrial relations context that certain gig workers engaged on digital labour platforms require minimum standards and protections. The *Fair Work Act 2009* (Cth) was amended by the *Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2024* to empower the Fair Work Commission to make orders setting enforceable minimum standards or voluntary guidelines for classes of 'employee-like' workers.² This includes the ability to set minimum standards or guidelines for personal injury insurance. Personal injury insurance is not the same as workers' compensation and does not provide the same level of benefits. Beyond monetary compensation for salary or wages, workers' compensation includes assistance with rehabilitation and return to work and can cover a wider range of work-related injuries or illnesses. The Fair Work Commission is currently considering several applications for minimum standards orders for gig workers who perform food and beverage delivery and 'last mile' courier work. The outcome of these applications may impact how schemes view the risks posed to these workers when deciding whether to extend workers' compensation coverage.
- 1.3 Workers' compensation is an important safety net for workers who suffer injuries or illnesses that arise out of and in the course of their employment. It is a mandatory form of insurance which is generally based on the employer/employee relationship and funded by premiums paid by the employer. Independent contractors, such as those engaged in the gig economy, are usually not covered by workers' compensation and must arrange their own personal injury insurance.
- 1.4 To be eligible for workers' compensation, a worker must be within the scope of the relevant scheme's definition of 'worker' or 'deemed worker'. While there is no consistent definition of a worker across workers' compensation schemes, most schemes will consider whether a person is engaged through a contract of service or is an employee for the purposes of assessment of PAYG tax to determine if they are a worker. Most schemes can deem workers who do not fall within their definition of 'worker' to be a 'worker' for the purposes of the scheme, which enables their eligibility to receive workers' compensation.

¹ N Zhou, '[Call for federal regulator for Australia's gig economy after sixth delivery rider death revealed](#)', *The Guardian*, 27 June 2021, accessed 1 March 2024.

² *Closing Loopholes Act 2023* and *Closing Loopholes No.2 Act 2024*.

- 1.5 The national policy approach to workers' compensation and the gig economy, as set out below, was informed by consultation with workers' compensation authorities, employee and employer representatives and representatives of digital labour platforms and gig workers engaged on digital labour platforms. This consultation aimed to develop a shared national understanding of the issues facing gig workers engaged on digital labour platforms and explore the pathways to progress a coordinated approach in the form of national policy principles.
- 1.6 The purpose of the principles is to provide a nationally consistent framework to assist jurisdictions to progress policy development related to coverage for gig workers engaged on digital labour platforms. It is acknowledged that developing a national policy approach to address workers' compensation and the gig economy is a complex policy issue which creates unique challenges in each workers' compensation jurisdiction. The principles also provide jurisdictions with the necessary flexibility to implement coverage in a way that accounts for the unique needs and context of individual schemes.
- 1.7 Ultimately, the Commonwealth, states and territories are responsible for determining the scheme arrangements in their jurisdiction, including the potential expansion of workers' compensation coverage to gig workers engaged on a digital labour platform.

2. National Principles

Principle 1:

The emergence of digital labour platforms has changed how some people are engaged to undertake work, resulting in less protections for these workers when they sustain an injury or illness at work or because of work when compared to employees performing the same kind of work.

- 2.1 Traditional workforce arrangements have been challenged by the emergence of digital labour platforms. There is a significant group of workers within Australia undertaking gig work through digital labour platforms. It is estimated that there are over 100 digital labour platforms operating within Australia³ and up to 250,000⁴ workers on those platforms. Recently, the Australian Bureau of Statistics found that in 2023-24, 1.2% of employed people (~164 400)⁵ had undertaken digital platform work in the last 12 months.⁶ The work available on these platforms span many industries such as rideshare, food delivery and transport, clerical and data entry, creative and multimedia, health care, sales and marketing, software development and professional services.⁷
- 2.2 Currently, most gig workers engaged on digital labour platforms are independent contractors. Engaging in work on digital labour platforms can provide increased flexibility for gig workers in scheduling work and greater access to work for those unable to easily access other forms of employment. However, due to their engagement status, they do not receive the benefits and protections of workers' compensation. For some gig workers, their engagement as independent contractors is contentious given the variation in the control platforms exercise over their workers. This issue has been recognised in the industrial relations context with the introduction of minimum standards orders or guidelines for certain gig workers engaged on a digital labour platform.⁸
- 2.3 However, minimum standards would not provide gig workers engaged on a digital labour platform with access to workers' compensation coverage. The lack of access to workers' compensation leaves many gig workers engaged on digital labour platforms without adequate protection in the event of a work-related injury or illness when compared to employees performing the same type of work.⁹

³ Australian Government Productivity Commission, '[5 year Productivity Inquiry: A more productive labour market](#)' 7 February 2023, p. 134.

⁴ Actuaries Institute, '[The Rise of the Gig Economy and its Impact on the Australian Workforce](#)', December 2020, p. 5.

⁵ Based on the 2023-24 employed people statistic of 13.7 million found at [Barriers and Incentives to Labour Force Participation, Australia, 2023-24 financial year](#).

⁶ Australian Bureau of Statistics, '[Digital platform workers](#)', 9 December 2024, accessed 23 December 2024.

⁷ Australian Government Productivity Commission, '[5 year Productivity Inquiry: A more productive labour market](#)' Inquiry report volume 7, 7 February 2023, p. 134.

⁸ [Closing Loopholes Act 2023 and Closing Loopholes No.2 Act 2024](#).

⁹ Queensland Office of Industrial Relations, '[Decision Impact Analysis Statement – Gig workers and bailee taxi and limousine drivers](#)', p. 20.

- 2.4 Ultimately, gig workers engaged on digital labour platforms can be considered at risk as:
- they lack the entitlements and protections that employees have
 - they do not necessarily have the control and autonomy over their work that independent contractors are typically afforded, as digital labour platforms exercise varying levels of control over their work, working conditions, and income, and
 - they are generally ineligible for workers' compensation and lack adequate protection in the event of a work-related injury or illness.
- 2.5 Gig workers may also work in isolated, individual settings, and have limited awareness of their legal rights and protections. This workforce includes high numbers of young workers and temporary and permanent residents: 2 groups with limited knowledge about their rights, and how to defend them.¹⁰
- 2.6 Some digital labour platforms, such as rideshare or food delivery platforms, are also more likely to attract vulnerable workers as they feature lower barriers to entry and provide ready access to flexible work. Vulnerable workers include young workers, Aboriginal and Torres Strait Islanders, people living with a disability, temporary and permanent residents, and unemployed people only working on platforms.¹¹ This type of platform work enables workers without formal educational qualifications or with qualifications that are not recognised in Australia to work around their study, care or other responsibilities.¹²

Principle 2:

Workers' compensation coverage should be considered for gig workers engaged on digital labour platforms.

- 2.7 There are different mechanisms to extend workers' compensation to gig workers engaged on digital labour platforms. Workers' compensation authorities should consider the most appropriate mechanism to extending workers' compensation coverage arrangements to gig workers engaged on digital labour platforms in their jurisdiction, to assist government consideration and decision making on this issue. It is acknowledged that due to the differences in legislative and operating arrangements across jurisdictions, there is no national consensus or preferred mechanism advanced for determining coverage.

¹⁰ A Stewart, J Stanford, '[Regulating work in the gig economy: what are the options?](#)', The Australia Institute's Centre for Future Work, 2017, p. 8.

¹¹ P McDonald, P Williams, A Stewart, D Oliver, R Mayes, '[Digital Platform Work in Australia: Preliminary findings from a national survey](#)', June 2019, p. 13.

¹² NSW Senate Select Committee on Job Security, '[First interim report: on-demand platform work in Australia](#)', June 2021, p. 90.

- 2.8 Broadly 3 different options were considered for extending workers' compensation coverage to gig workers on digital labour platforms:
1. consideration of extending workers' compensation to digital labour platforms that exert *meaningful control* over their workers
 2. consideration of extending workers' compensation for workers who are determined by the Fair Work Commission as 'employee-like' on a case by case basis, or
 3. consideration of a legislative test that provides workers' compensation coverage to all gig workers unless the platform can prove they do not exert control over the worker.
- 2.9 The first policy option proposes a broad range of factors specific to the gig economy to determine whether the totality of the relationship between digital labour platforms and gig workers meets the threshold of 'meaningful control' to provide a basis of workers' compensation coverage. This approach would aim to capture digital labour platforms who engage gig workers in a manner that resembles traditional employment. However, it is noted there may be an inconsistent application of this test between jurisdictions without further guidance on specific factors and ongoing national collaboration (and calibration) concerning the application of a 'meaningful control' test.
- 2.10 The second policy option proposes that schemes consider each Fair Work Commission minimum standards order or guidelines related to 'employee-like' workers on a case by case basis to determine whether it would be appropriate to extend workers' compensation coverage to this cohort, and considering the content of the order or guideline. This approach could facilitate national consideration of extending workers' compensation to select cohorts of workers on an incremental basis. However, this approach relies on a proactive application to the Fair Work Commission, then a determination by the Commission of whether a class of workers is 'employee-like', and then a corresponding order or guidelines.
- 2.11 The final policy option proposes a legislative test that assumes coverage for gig workers engaged on digital labour platforms, unless the platform can demonstrate they do not exert control over their workers. This approach would likely result in the broadest coverage of gig workers engaged on digital labour platforms in comparison to the other options proposed and may prove challenging for scheme to implement due to the large unquantified number of gig workers engaged on digital labour platforms. Further, this approach may not be fit for purpose for all schemes and their legislative frameworks.
- 2.12 Regardless of the mechanism, extending workers' compensation coverage to cohorts of gig workers would protect these workers in the event of a work-related injury or illness. Schemes are best placed to determine the most appropriate mechanism to extend workers' compensation coverage to gig workers, including whether the use of existing deeming provisions or if broader legislative reform is required. There are also a range of complex policy and operational issues associated with the implementation of these arrangements which may inform the approach taken in each jurisdiction.

Principle 3:

Digital labour platforms would be the most appropriate party to meet workers' compensation employer obligations for gig workers, including premium payments and rehabilitation and return to work obligations.

- 2.13 Digital labour platforms are the most 'employer-like' entity in the relationship between worker, platform and consumer or end user. Platforms have similar attributes to employers as they can exert control over the worker's access to work, their rate of pay, how the worker performs their work and unilaterally change the terms of the worker's contract.¹³ Workers can only access work through the digital labour platform. Platforms facilitate payment between the worker and the consumer or end user. Platforms can generate revenue through various methods, including taking a portion of the income paid by the consumer for the gig work¹⁴ or charging workers and the consumer or end user a membership subscription.¹⁵ As such, digital labour platforms are the most appropriate party to be responsible for workers' compensation employer obligations, including premium payments and rehabilitation and return to work obligations.
- 2.14 The alternatives to requiring platforms fulfil the employer obligations of workers' compensation include requiring these obligations be fulfilled by the gig worker, or the consumer or end user. Neither option is practical. It is well established that gig workers engaged on digital labour platforms are likely to be low income earners.¹⁶ It may not be feasible for those workers to afford their own workers' compensation policy, leaving them unprotected in the event of a work-related injury or illness. Additionally, similar workers engaged as employees are not required to purchase their own policies to be covered by workers' compensation or are required to fulfil employer obligations related to rehabilitation and return to work.
- 2.15 Requiring the consumer or end user to fulfil the workers' compensation employer obligations would also be unusual. The relationship between the gig worker and the consumer or end user, unlike the platform, is often one-off and over a short period. It is inappropriate and impracticable for a consumer or end user to need to take out and maintain a workers' compensation policy for each occasion they engage a gig worker's services via the platform. It is acknowledged some consumers or end users may also request the services of a worker over a longer period (e.g., weekly sustained care). However, due to the other factors set out above relating to facilitation of payments and the ability to monitor and control how and when the worker performs their work across a platform, beyond just a single client, it is still on balance more appropriate for the digital platform to retain employer obligations rather than the consumer or end user.

¹³ Victorian Government, '[Report of the Inquiry into the Victorian On-Demand Workforce report](#)', 15 July 2020, p. 66-68.

¹⁴ D Peetz, '[The Operation of the Queensland Workers' Compensation Scheme](#)', 27 May 2018, p. 106.

¹⁵ F Macdonald, '[Unacceptable Risks: The Dangers of Gig Models of Care and Support Work](#)', The Centre for Future Work at the Australia Institute, May 2023, p. 15.

¹⁶ '[Fair Work Legislation Amendment \(Closing Loopholes\) Bill 2023 Explanatory Memorandum](#)', p. 68.

Principle 4:

Workers' compensation authorities should consider the unique aspects of gig work when extending workers' compensation obligations to digital labour platforms.

- 2.16 Schemes must determine if existing workers' compensation arrangements can be adapted to fit the circumstances of the gig worker and digital labour platforms or if new arrangements will need to be created to provide equitable (so far as reasonably practicable) workers' compensation entitlements to these workers.
- 2.17 Where possible, gig workers engaged on digital labour platforms should start from the basis of having the same benefits and protections as other workers covered for workers' compensation. However, digital labour platform work (and workers' status as contractors) has unique characteristics that may need to be considered by workers' compensation authorities. These characteristics include the gig worker's ability to work for multiple platforms and to decide whether they work on an irregular, intermittent or full-time basis on a platform or across platforms. If schemes are unable to provide gig workers engaged on digital labour platform with the same benefits and protections as other workers due to these characteristics, schemes may need to develop bespoke arrangements for gig workers.
- 2.18 There are also technological and operational elements of digital labour platforms that workers' compensation legislation was not drafted to anticipate. The introduction of the digital intermediary and its relationships with the worker and consumer or end user may complicate the application of existing workers' compensation legislation and operational arrangements to gig work.¹⁷ Workers' compensation authorities may need to consider the following features:
- how to determine liability when a worker is injured while simultaneously working for more than one platform
 - when are gig workers 'working' for the purposes of workers' compensation, and
 - determining the pattern of work when calculating average weekly earnings for injured gig workers when gig work can be undertaken on an irregular or intermittent basis.¹⁸
- 2.19 A digital labour platform's operating model may influence how workers' compensation is applied. Vertical, horizontal and hybrid platforms operate differently and aspects of workers' compensation may need to be altered to suit the different models. Generally, there are a broader variety of tasks that can be performed on horizontal or hybrid platforms in comparison to vertical platforms, such as care work. This may mean it is easier to design a return to work plan and develop suitable or alternate duties for workers injured on those platforms in comparison to workers on vertical platforms undertaking very short term and specific gigs.

¹⁷ A Stewart, J Stanford, '[Regulating work in the gig economy: what are the options?](#)', the Australia Institute's Centre for Future Work, 2017, p. 2.

¹⁸ Some of these features have been considered in Queensland's Office of Industrial Relations' [Decision Impact Analysis Statement – Gig workers and bailee taxi and limousine drivers](#).

- 2.20 Digital labour platforms may also use algorithms to assist in managing workers. This may make it difficult to apply traditional workers' compensation processes such as those relating to the rehabilitation and return to work process, as there is no human supervisor for gig workers to discuss how to manage their injury and adjust their work duties to suit their return to work.
- 2.21 Implementing workers' compensation arrangements for gig workers engaged on digital labour platform is a complex policy and operational issue. Schemes may consider undertaking further work to assess how they can best respond to the issues and challenges created by extending workers' compensation to these unique work arrangements. This work is best undertaken after schemes determine the appropriate mechanism for extending workers' compensation coverage in their scheme, as this will impact the class of workers covered and the specific implementation issues that arise.

Principle 5:

Where possible, workers' compensation arrangements for gig workers engaged on digital labour platforms should be nationally consistent to provide clarity and equity for workers and platforms.

- 2.22 Various federal and state inquiries¹⁹ have recommended action to address the lack of workers' compensation coverage for gig workers engaged on digital labour platforms. This issue has been recognised in some jurisdictions. For example, both Western Australia²⁰ and Queensland²¹ have amended their workers' compensation legislation to enable the coverage of some gig workers and the New South Wales Government's election commitment to introduce a scheme that provides workers' compensation benefits to gig platform workers akin to those currently provided to employees injured in New South Wales workplaces.²²
- 2.23 Aiming for national consistency, where possible, improves outcomes for schemes, gig workers and digital labour platforms.²³ This approach reduces duplication of work between schemes and helps schemes develop shared solutions. As platforms operate nationally across Australia, gig workers should not be disadvantaged based on their location, or if they choose to move between jurisdictions.²⁴ A nationally consistent approach to workers' compensation also reduces the regulatory impact faced by digital labour platforms.²⁵

¹⁹ Recommendation 25, Senate Select Committee on Work and Care
 Recommendation 6, Senate Select Committee on Job Security
 Recommendation 1, Report of the Inquiry into the Victorian On-Demand Workforce 2020
 Recommendation 20, Select Committee on the impact of technological and other change on the future of work and workers in New South Wales

²⁰ s 13, *Workers Compensation and Injury Management Act 2023*

²¹ s 11, *Workers' Compensation and Rehabilitation Act 2003*

²² Parliament of New South Wales [C918 - Costing Request - Modernise Laws to Respond to the Gig Economy.pdf](#) 2023 NSW Labour Platform p. 78.

²³ Parliament of South Australia, [Report of the Select Committee on the Gig Economy](#), 4 June 2024, p. 27.

²⁴ *Ibid.*

²⁵ NSW Select Committee on the Impact of Technological and other change on the Future of Work and Workers in New South Wales, [Impact of technological and other change on the future of work and workers in New South Wales](#), April 2022, p. 95.

- 2.24 Schemes should also, where possible, implement arrangements that can complement other legislative frameworks, such as the new 'employee-like' framework introduced under the *Fair Work Act 2009* (Cth), including consideration of any future minimum standards orders, minimum standards guidelines and collective agreements relating to personal injury insurance, to reduce regulatory impact or duplication of requirements for platforms.
- 2.25 Workers' compensation authorities should continue to collaborate, where appropriate, beyond the development of the national policy approach to ensure that common operational and implementation issues across schemes are resolved in a nationally consistent manner.