

5 February 2019

Ms Natalie James
Inquiry Chair - Inquiry into the on-demand workforce
Industrial Relations Victoria
1 Spring Street
Melbourne
Victoria 3000

Email: OnDemandInquiry@ecodev.vic.gov.au

Dear Ms James

Sidekicker (a partner company of SEEK Limited) has welcomed the opportunity to make a submission to the Victorian Government inquiry into the on-demand economy.

Founded in Melbourne in 2012 Sidekicker's Purpose is to give people the power to reach their potential through creating a more efficient and fulfilling way for people to hire, manage and participate in the casual employment market.

Sidekicker is unique in the 'gig economy' taking on the responsibility of the employment arrangement. The Sidekicker model respects existing employment frameworks and objectively applies them through its digital platform to fulfil the coordination of work. Sidekicker is;

- reducing the friction in the marketplace,
- driving integrity in the marketplace and,
- creating better outcomes for those participating in it.

In our enclosed submission we share our position on:

- How a thriving 'gig economy' is possible for Victoria under the necessary and existing frameworks and laws.
- Why implementing new laws is likely to lead to further misunderstanding, interpretation or non-compliance of employment frameworks.
- Ways in which more rigorous application of current frameworks and laws can be applied to all businesses and digital platforms.

We welcome the opportunity to discuss our submission with you. If you have any questions please don't hesitate to contact Jessica Hackett, Sidekicker Head of Marketing [redacted text]

Yours sincerely



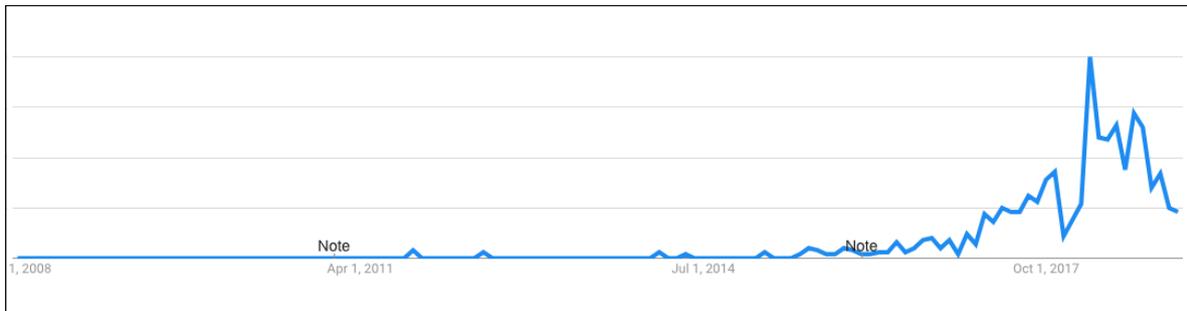
Tom Amos
Co-Founder and CEO
Sidekicker

Introduction

‘Gig economy’ is a popularised term that has been used to cover a multitude of divergent employment types and functions, facilitated through ‘marketplace’ technology platforms.

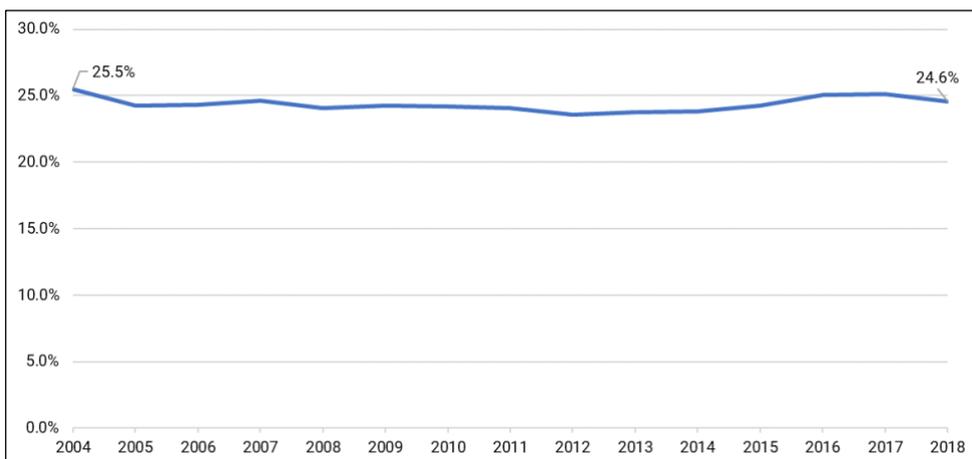
There has been increased commentary around the ‘rise of the gig economy’ as evidenced by Google search results¹ for the term ‘Gig Economy’ in Australia. Much of this has been fuelled by the introduction into Australia of large disruptive businesses from overseas that are aggressively marketing a digital-first solution to participating in pre-existing work arrangements namely *contract, casual and on-hire workers* – collectively defined as work arrangements *without leave entitlements*.

Figure One: Google searches for the term ‘Gig Economy’ in Australia, 2008 - 2019



The sharp increase in the promotion of digital platforms that facilitate these work arrangements, has brought a lot of attention to - and created hype around - the suggested explosion of ‘gig’ work. The reality is that as a percentage of the total workforce, those participating in the ‘gig economy’ has remained relatively flat. From 2004 to 2018 the casual² employee share of total employed persons is largely unchanged.

Figure Two: Percentage of employed persons in Australia without leave entitlements, 2004 - 2018



Source: ABS, *Australian Labour Market Statistics*, cat. no. 6105.0 ABS, *Characteristics of Employment*, cat. no. 6333.0

¹ <https://trends.google.com/trends/explore?date=2008-01-01%202019-01-23&geo=AU&q=gig%20economy>

² <https://www.fairwork.gov.au/employee-entitlements/types-of-employees/casual-part-time-and-full-time/casual-employees>

There has always been contractors (sometimes referred to as 'freelancers', or 'independent contractors'), on-hire workers (often referred to as 'temp workers') and casual workers, and there have always been challenges, as with any labour sector of the economy, in governance and regulation to ensure fair working and employment conditions.

What *has* radically changed is the impact technology is having on;

- the way in which these employment arrangements are facilitated
- the transparency which can now occur in employment arrangements
- the ability to aggregate workers and opportunities in this sector into single ecosystems

The makeup of the gig economy

Like other sectors of the employment market, the gig economy is made up of:

- workers
- businesses
- consumers
- facilitators

Workers: there have always been people that have chosen to sell their labour, time and skills by the hour. This ranges from tradespeople operating as individual contractors through a contracting company, to hospitality workers hired for casual work by an individual business or a temporary staffing firm to work across multiple businesses. It even spans as wide as to include a teenager mowing their neighbours' lawns for a cash payment.

Businesses: there has always been the need for businesses to engage with labour for short-term needs, whether by the hour, day, or week, to accommodate fluctuations in business conditions and demand for specific skills.

Consumers: there has always been the need for consumers to engage with skilled workers by the hour, whether it be hiring a private driver to take them to the airport or paying a cleaner to clean one's house on a regular, ongoing basis.

Facilitators: businesses have long existed to facilitate the connection of companies with hourly and short-term workers. Classified media has enabled these businesses to advertise directly to workers requesting their services, and conversely these workers to promote their labour.

Relevance of employment frameworks in the Gig Economy

Looking more closely at the work arrangements in the gig economy, the existing [Fair Work 'Types of Employees'](#) definitions indicate that they can be categorised as follows:

1. A business hiring a skilled worker for a temporary period as part of their core business
2. A business hiring a worker for a single job or service that is outside of their core business
3. An individual hiring a worker for a service

4. A business paying a labour hire firm for a worker (short-term positions)

These employment arrangements all existed well before the rise of the gig economy and are already regulated by employment law and the Fair Work Commission. Applying these frameworks to the above, these work arrangements can be considered as:

1. A business hiring a skilled worker for a temporary period as part of their core business → *the worker should be hired by the business as an **employee***
2. A business hiring someone for a single job or service that is outside of their core business → *the worker should be hired by the business as a **contractor***
3. An individual hiring someone for a service → *the worker should be hired by the individual as a **contractor**.*
4. A business pays a labour hire firm for a worker to perform hourly work → *the worker should be paid as an **employee** by the labour hire firm.*

Many resources exist to assist businesses and workers with identifying what 'type of worker' they are to ensure appropriate employment frameworks and laws are applied. An example of this is the ATO's 'Employee or Contractor' help sheet found here:

<https://www.ato.gov.au/Business/Employee-or-contractor/>

How digital platforms are shaping the Gig Economy

Across the gig economy digital platforms are shaping;

- **the ability to aggregate workers and opportunities**

Workers can now be on a single digital platform and access one to many work opportunities with one to many different businesses.

Similarly, businesses can now be on a single digital platform and access many different workers with varying skill sets and availability.

This aggregation is one the major causes for the perceived 'rise of the gig economy', as the platforms provide visibility to the number of people participating in this sector of the labour market and the number of services leveraging these 'on demand' work arrangements.

Comparatively, before digital disruption such 'on-demand' work arrangements were done through temporary labour hire firms, or directly - a single pizza shop hiring a delivery driver.

- **can give workers access to opportunities to earn an income at their discretion**

Digital platforms make it easier for people to identify, coordinate and carry out work to earn money or work on paid projects as and when required.

- **most platforms guarantee payment of work and offer insurances for workers**

Digital platforms are primarily built on a business model whereby businesses are required to provide payment details up-front. They guarantee that workers will be paid for their service.

The relationship between existing employment frameworks and digital platforms

The digital platforms in the gig economy have varied operating models and value propositions:

- The obligations the platform takes on within the employment arrangement are different and,
- The degree to which they monitor and report on these arrangements varies.

It is for this reason that we strongly encourage the Chair of the Inquiry to recognise each digital platform individually, not as a collective group. This will allow a fair and accurate understanding of the role they play in supporting worker welfare and their application of employment frameworks where appropriate.

Unfortunately, there are examples of some digital platforms that are making it easier for businesses to ‘dodge’ the application of appropriate employment frameworks relating to the labour they facilitate through the platform³. Further, these digital platforms are not taking responsibility for this conduct.

In such circumstances, often the employment obligations are ‘pushed’ on to the worker. This can lead to the worker not fulfilling their obligations or doing so but to substandard levels – often unknowingly implicating themselves. We have seen this occur and represented as ‘sham contracting’.

Businesses should not use technology as an excuse to ignore the applicable laws. If participating in the coordination of work, all businesses (digital platforms or otherwise) have a responsibility to provide appropriate education on employment frameworks to their users and ensure the application of them.

³ <https://www.fairwork.gov.au/about-us/news-and-media-releases/2018-media-releases/june-2018/20180612-foodora-litigation>

Case Study: How Sidekicker participates in the Gig Economy

Sidekicker was established to use technology to reduce friction that existed in the hiring, management and participation in the casual employment market.

To deliver on this purpose, Sidekicker's digital platform is built around two core necessities:

1. Risk reduction

- Designing a platform and model that reduced the administration and compliance obligations to the businesses and workers
 - i. *Reducing the likelihood of worker exploitation and/or intentional and unintentional non-compliance of employment frameworks for both parties.*

2. Transparency

- Creating a higher level of transparency and control in the hiring, management and participation in the casual workforce for workers and businesses
 - i. *Improving the earning potential, job fulfillment and career development opportunities for workers and improving the business outcomes achieved through accessing more relevant casual workers.*

This has led to Sidekicker operating a model whereby all the staff ("Sidekicks") who work through the platform are treated as **casual Sidekicker employees**.

Sidekicker is unique in the 'gig economy' in this respect; taking on the responsibility of the employment arrangement. By respecting existing employment frameworks and objectively applying them to the nature of the employment arrangement, then coordinating this through a digital platform, Sidekicker is;

- reducing the friction in the marketplace,
- driving integrity in the marketplace and,
- creating better outcomes for those participating in it.

Sidekicker for businesses

Sidekicker offers a seamless way to hire, schedule and pay staff by the hour.

Overview: the Sidekicker experience

1. All people that apply to become 'Sidekicks' go through a six-stage screening process including in-person interviews and skill testing in local onboarding centres.
2. Only those who meet a certain standard are approved to work on the platform.
 - a) *Current reporting shows only 15% of applicants make it through to become Sidekicks*
3. Sidekicks are approved for specific work categories based on their skills and experience, and set up with a 'Sidekick profile', containing their experience, verified skills and overview of their work ambitions.
4. Businesses make requests for Sidekicks on the Sidekicker platform, specifying the skills and certifications required (plus other requirements such as uniform), and outlining the hours to be worked.
 - a) Businesses are shown a full breakdown of cost, based on the appropriate award and number of hours to be worked
 - All labour categories are assigned the appropriate award in the Sidekicker platform, and penalty rates are automatically applied where appropriate
 - Hourly rate to Sidekick, Super, Payroll Tax, Insurance, Sidekicker service fee, Total Hourly Rate are all accounted for through the platform
5. Requests are instantly sent to Sidekicks that are available to work during the specified hours and have been approved for the requested skills.
6. Through the Sidekicker iOS and Android app Sidekicks get alerts for opportunities and have full control to accept or decline any shift.
 - a) A Sidekicks response to an opportunity has no impact on their future work opportunities. Sidekicks are not penalised for not accepting opportunities.
7. After Sidekicks apply to work, businesses receive a notification. Businesses can review Sidekick online profiles to select the best person(s) most relevant for the job.
 - a) Businesses using Sidekicker have expressed great value in the ability to see and review the workers. This level of transparency and control hasn't previously been readily available for businesses organising temporary workers
8. To build trust, reputation and accountability, businesses and Sidekicks review each other after each shift is complete.

Compliance is managed in the following ways:

\$20,000,000 insurance coverage

Sidekicker provides public liability and professional indemnity insurance covering claims of up to \$20,000,000. This insurance is for the unlikely event that a lawsuit or claim is made against the business for personal injury, property damage or financial loss during a shift.

Inbuilt payroll, award rates and Superannuation

Sidekicker takes care of employer responsibilities including payroll, award rates and Superannuation. Award rates are built into the platform, for full transparency, businesses can see a total pricing breakdown before posting a request.

Businesses are not charged until the shift is complete, the Sidekick has submitted their timesheet and the hirer has approved it. This ensures all necessary overtime and penalty rates are applied.

Right to work compliance

Sidekicker's permissions engine ensures that Sidekicks are only ever notified about shifts that match their skills and qualifications. Sidekicker verifies the working rights of all Sidekicks and handles work restrictions and expiry dates. Industry specific qualifications are captured on the system and visible in the Sidekicks profiles, so businesses can hire with confidence.

In addition to this, Sidekicker provides the following:

- Efficiency;
 - Request staff 24/7 on a mobile device or desktop
 - Faster hiring as workers are immediately notified of opportunities online
 - All administration and payroll managed
- Quality
 - Access to appropriately qualified workers that have been checked for all relevant certifications before being eligible to work in certain industries (e.g. RSA, Right to Work, Working with Children)
 - Sidekicks have ratings and reviews from previous hirers, so businesses have confidence in the worker
 - Businesses can create private talent pools and request specific workers time-again

CASE STUDY: *Bike n' Blend is a pedal-powered smoothie company with a unique mission to 'blend fun with fitness'. Bike n' Blend provide entertaining catering and brand exposure at events for clients including Crown, Lion and Optus, while promoting sustainability and health.*

"When I first used Sidekicker, I instantly loved the ability to post jobs and suddenly delegate tasks. I was able to focus on growing [text redacted] without burning out for the first time.

The most beneficial thing about the Sidekicker platform was the ability to launch into different cities. We had a lot of customers wanting us in Sydney and Brisbane, but we didn't have the staff or the resources to grow in those cities. Luckily, Sidekicker had a talent pool already in the cities we wanted to expand into, so it allowed me to tap into their talent to grow and be able to run our events in those cities." – [text redacted] Bike & Blend

Sidekicker for workers

Administration and compliance managed by Sidekicker - relieving workers of this obligation

- Workers are employed by Sidekicker as casual staff under existing employment frameworks
- Workers are paid in line with the relevant modern awards
- Workers receive superannuation payments
- Workers are covered by WorkCover
 - Sidekicker's illness and/or injury policy and grievance / dispute process follows the existing WorkCover frameworks
- Workers have Sidekicker withhold their taxation
- Sidekicker guarantees payment for workers. On the rare occurrence a business does not make payment, Sidekicker covers the payment to ensure the Sidekick is fully compensated for their time worked

Sidekicker extends its support to workers by offering:

- Ability to control their own schedule and choose when and where they work
- Access to work with some of Australia's most innovative businesses via a mobile app
- Experience across a huge variety of locations, events and industries
- An online hub that keeps a verified track-record of their experience, ratings and reviews to support their career objectives and job applications outside of Sidekicker
- Access to the Unleash Program

About the Unleash program (Australia's first benefits program for temporary staff):

The 'Unleash' program is built on partnerships Sidekicker has forged with the likes of car sharing service GoGet, financial planning firm Wealth Enhancers and mental health and wellbeing community The Mind Room. Sidekicks receive free GoGet memberships to assist with their transportation needs, have access to financial advice from the team at Wealth Enhancers and also get the support they need for their mental wellbeing.

All benefits are outlined on the Sidekicker website [here](#).

"The goal of Unleash is to provide our Sidekicks with easy access to holistic services and tools across education, finance, health, and wellness — all areas that are of importance to them. We created the program to provide our Sidekick community with greater opportunity to learn, upskill and progress both personally and professionally." – Tom Amos, Co-Founder and CEO of Sidekicker

CASE STUDY: *Anna [text redacted] is a mum and highly skilled hospitality worker. After time out of work she suffered self-doubt and guilt about re-entering the workforce. Anna did not know how to approach the transition back, Sidekicker helped her.*

"Finding Sidekicker and having simple access to short-term shift work has given me the opportunity to ease myself back into the workforce. The flexibility of being able to choose the hours I work around my home commitments lets me put my children first. It's opened so many doors and possibilities for me and re-ignited my passion for hospitality. I have been able to find myself again outside of family life, get my confidence back within the hospitality industry and see a real career path for myself." – Anna [text redacted] Sidekick

Recommendation

A thriving 'gig economy' is possible for Victoria under the necessary frameworks and laws which have been designed to support the worker and the business.

The employment law in Australia is already complex and nuanced. Further amendments and introductions only serve to add greater confusion and likely non-compliance.

It is recommended that no new laws are introduced but more rigorous application of current frameworks and laws are exercised.

Steps to do this could include:

1. Review each digital platform operating in the 'gig economy' and apply the employee/contractor decision tool⁴ supplied by the ATO

This will enable easy identification of the appropriate employment frameworks to be applied to the work carried out via the platform.

The benefit of digital platforms is that they can facilitate multiple work arrangement types. In such instances the digital platform will have to support the application of multiple employment frameworks and laws to ensure full compliance of the work arrangements facilitated through its platform.

- 2. Ban businesses hiring casual employees through their platform or,**
- a) put mechanisms in place to ensure their technology prohibits businesses hiring casual employees as contractors, and,
 - b) ensure that the worker is paid the appropriate award and the business pays the appropriate employment on costs.

3. Request data feeds from the digital platforms of businesses that are advertising shifts/work on the platform.

The appropriate governing bodies can audit the end business (i.e. the business hiring the worker) to ensure they are applying appropriate employment law.

This is imperative to ensure good and honest performers in this labour industry are not penalised commercially or "undercut" by unscrupulous providers.

⁴ <https://www.ato.gov.au/Calculators-and-tools/Employee-or-contractor/>

CASE STUDY: A catering company in Victoria hires a chef on a Sunday for a specific event.

Their need:

- 1 x chef, 10am - 5pm (with 30-minute break)
 - A chef falls under the Hospitality Industry (General) Award

A business could choose to find Chef through Sidekicker;

- all workers employed as Casual Workers
- the necessary awards appropriate to a chef

Or, the business could find a chef through another 'gig-economy' platform that does not apply the necessary awards.

- Base rate is set by the hirer with no minimum requirement
- Businesses does not pay Super, insurance and payroll tax
- Business is not required to provide breaks

The below table shows the financial difference in hiring workers through a platform that applies employment awards and law, and one that does not.

Figure three: Cost breakdown Sidekicker vs gig platform

Costs for facilitating worker via Sidekicker (Casual)	Cost	Costs for facilitating worker via another platform (Contractor)	Cost
Base rate (HIGA award) per hour	\$35.39	Base rate	No required minimum
Superannuation	\$3.36	Service fee (approx. 20% ⁵)	No required minimum
Payroll tax	\$1.88	Total rate	No required minimum
Insurance	\$0.78	Total amount paid (7 hours)	No required minimum
Total hourly rate	\$41.41		
Sidekicker service fee (20%)	\$8.28		
Total hour rate	\$49.69		
Total amount paid (6.5 hours)	\$323		

The table shows that financially it can be appealing for businesses to hire staff through platforms operating on a contractor payment model. There is greater autonomy given to the business to choose a base rate that and currently minimal or no enforcement of award rates on gig- platforms.

If the government does not penalise those who are using platforms to get around current employment frameworks, then this problem will only increase.

⁵ <https://www.airtasker.com/blog/service-fees-providing-context-transparency/>

Victoria has a thriving employment market. The attractiveness of both working in and operating a business in Victoria is only enhanced by the broad range of employment arrangements accommodated.

Sidekicker welcomes the opportunity to work the Inquiry Chair and the Victoria State Government to discuss in more detail our experience, insights and recommendations.