Superannuation and the Changing Nature of Work: Discussion paper

September 2017

Andrew Craston, Senior Research Advisor
ASFA Research and Resource Centre

The Association of Superannuation Funds of Australia Limited (ASFA)
PO Box 1485, Sydney NSW 2001
T +61 2 9264 9300 or 1800 812 798 (outside Sydney)
F 1300 926 484

ABN 29 002 786 290
ACN 002 786 290

September 2017 Version 01

Contents

Executive summary

The gig economy encompasses markets where buyers and sellers of goods and services are matched or organised via web based platforms.[1]

The gig economy is set to become more pervasive. This will have potentially profound effects on the nature of work and on the relationships between workers and those that engage them. In particular, the rise of the gig economy will see a shift towards more independent work arrangements (for example, independent contractors), where workers may not be covered by the Superannuation Guarantee (SG). For affected workers and in the absence of any policy reforms, this will mean lower superannuation balances at retirement – which will reduce the broader adequacy of the superannuation and retirement income system.

The purpose of this discussion paper is to raise questions about how the superannuation system and related policy settings will need to adjust to best deal with the rise of the gig economy. The Association of Superannuation Funds of Australia (ASFA) is seeking a broad range of views from stakeholders to inform policy development in this area.

This paper outlines the main drivers of the development of the gig economy, the effects on the labour market and employment conditions, and how the current lack of coverage of the SG, with regard to gig economy workers in particular, affects individuals' superannuation balances.

Finally, this paper canvasses options for further discussion, including potential changes to legislative settings.

The rise of the gig economy

Economic activity through web-based platforms represents only a small share of the broader economy, however the volume of activity is growing fast and platforms are expanding to encompass a wider variety of professions and industries.

ASFA estimates there are currently around 100,000 workers in Australia who use web-based platforms to obtain work on a regular basis. This equates to around 0.8 per cent of the Australian workforce.[2] Growth in worker numbers in recent years has been strong. In Australia, as is the case in many other advanced economies, some platforms are recording double-digit rates of growth in worker numbers per year.

The rise of the gig economy will see an increase in the prevalence of independent work arrangements. On the one hand, workers who already operate under some form of independent work arrangement will tend to migrate onto web-based platforms. For these workers, little may change. However, new gig economy jobs will also be created.

Gig economy workers will confront trade-offs compared with more conventional work arrangements. On the one hand, gig economy work will typically provide individuals with greater flexibility. However, workers will have lower security of employment and income, and may not be covered by standard conditions (that apply to employees).

The implications for superannuation

The rise of the gig economy will have implications for superannuation. The increased prevalence of gig economy workers—in particular independent contractors—suggests a lower proportion of jobs for which workers will receive SG contributions. This will mean lower or no contributions for affected workers, and lower superannuation balances at retirement.

It is therefore crucial that superannuation settings be adjusted so Australia's superannuation system can best meet the needs of Australian workers.

With respect to superannuation settings, key questions for the industry and government relate to the appropriate mechanisms (and transitional arrangements) that could be introduced to extend coverage of the SG to independent contractors (and the broader cohort of self-employed workers), and issues around removing the $450-a-month wages threshold for the SG to be paid to employees.

In this context, ASFA is seeking feedback to help shape its future work on the issues canvassed in this paper and on possible policy options.

ASFA requests that feedback be provided by Friday 29 September 2017. Responses can be emailed to Andrew Craston: acraston@superannuation.asn.au.

1

1. Introduction

The rise of the gig economy will have potentially profound effects on the nature of work and on the relationships between workers and the entities and individuals that engage them. It will also pose challenges to existing frameworks for regulating work, and for setting and enforcing minimum conditions of work.

In the Australian labour market, the rise of the gig economy will see a shift towards more independent, task-based work arrangements. These types of work arrangements are, of course, not new. In Australia, task-based work has long been highly prevalent in many conventional industries – such as in the trades and building industries, and garment manufacture. Prior to the industrial revolution, work arrangements that would now be considered 'independent' were the norm.[3] From this perspective, the gig economy can be thought of as old work arrangements made 'new'.

For workers, participation in the gig economy involves trade-offs compared with more conventional work arrangements. On the one hand, gig economy work will typically provide individuals with greater flexibility. However, workers will have lower security of employment and income, and may not be covered by standard conditions (that apply to employees). In particular, low-paid, low-skilled workers may be disadvantaged in this regard, but may not have many alternative work options.

The rise of the gig economy will challenge the efficacy of regulatory settings for the superannuation system. This includes, in particular, coverage of the system of compulsory superannuation contributions (the Superannuation Guarantee, or SG). For affected workers, without changes to policy settings this will mean lower or no superannuation contributions, and lower superannuation balances at retirement.

It is therefore crucial that superannuation settings are adjusted to ensure the superannuation system remains fit-for-purpose, and can best meet the needs of all Australians.

2. What is the gig economy?

The gig economy encompasses markets where buyers and sellers of goods and services are matched or organised via web based platforms.[4] Gig economy workers typically derive income by using their skills to complete discrete tasks – for firms or other entities, or for consumers (end-users).

Web-based platforms have developed to cater for specific skills and types of work. Thus far, two main types of platforms have emerged:

- **online-work platforms:** where workers bid for and complete work through open websites. For such platforms, the key function is one of matching workers with end users. Examples include Freelancer and Expert360
- **work-on-demand platforms:** through which physical 'real world' tasks are organised. Examples include Uber and Deliveroo.[5]

To date, platforms of the latter type have tended to retain a greater degree of control over certain aspects of work arrangements – such as setting job prices and scheduling work shifts. This is important with respect to the broader debate around whether particular gig economy workers should be considered employees rather than independent contractors (see Section 5).

A broader definition of the gig economy includes platforms where people directly sell goods (for example, eBay and Etsy) and rent-out assets (for example, Airbnb for accommodation).

Economic activity through platforms represents only a small share of the broader economy, however the volume of platform activity is growing fast and platforms are expanding to encompass a wider variety of professions and industries.

The number of gig economy workers is small, but growing fast

Currently, gig economy workers represent a small proportion of Australia's workforce. Only with regard to workers who sell their labour services, ASFA estimates there are around 100,000 workers in Australia who use web-based platforms to obtain work on a regular basis (Box 1). This equates to around 0.8 per cent of the Australian workforce.[6]

This finding is consistent with data for other advanced economies. For example, a recent US study concluded that workers who provided services through online intermediaries accounted for 0.5 per cent of all US workers in 2015.[7]

Growth in worker numbers in recent years has been strong. In Australia, as is the case in many other advanced economies, some platforms are recording double-digit rates of growth in worker numbers per year.

Box 1: The number of gig economy workers in Australia

The estimate for the number of 'regular' gig economy workers is derived from worker numbers for discrete platforms. Some platforms report the number of 'active' workers. However, others only report the number of registered workers – not the number of workers that utilise the platform on a regular basis (that is, once per week). For these platforms, the number of 'regular' workers has been derived.[8]

- Uber (ride-sharing): number of 'regular' drivers is around 20,000.[9]
- hipages (tradesperson hiring): number of 'regular' tradespeople is around 25,000.[10]
- Airtasker (various services): number of 'regular' workers is around 25,000.[11]
- Sidekicker (various services): number of 'vetted' workers is around 7,000.[12]
- Foodora and Deliveroo (delivery services): number of riders is around 2,000.[13]
- Freelancer (various services): number of workers is up to 10,000.[14]

There are a number of other major platforms for which there is little data.[15]

- Upwork (various professional services) is a global platform that boasts over $1 billion in jobs completed each year. However, there is no data on the number of workers in Australia.
- Export360 (consultant hiring) has around 15,000 'vetted' consultants worldwide on its platform, but there is no data on the number of workers in Australia.
- 99designs (design services) is a global platform that has hosted almost 500,000 jobs, but there is no data on Australian-based workers.

3

3. The drivers of the growing gig economy

The gig economy is set to become more pervasive. Web-based platforms will continue to develop, and will cater for an increasingly wide variety of skills. The amount of work hosted will increase, and workers will migrate onto platforms.

These trends will be facilitated by advancements in information and communications technology (ICT), but will also be driven by demand from firms for more flexible workplace arrangements. Consumers, attracted to the greater convenience of 'on-demand' services, will also drive demand.

For workers, the willingness to participate in the gig economy will differ according to individual circumstances. Gig economy work involves trade-offs compared with more conventional work arrangements.

Technology is the key enabler of the gig economy

Web-based platforms are becoming more sophisticated. More advanced algorithms are providing better matches – for firms and consumers to their needs; for workers to their work preferences. Platforms are also developing more sophisticated ancillary services – for firms and consumers, richer information on worker profiles; for workers, more efficient mechanisms to manage clients and accept payment.

For firms, advancements in ICT are making work more modular and task-driven, rather than job driven. Increasingly, firms are able to break up work into component tasks, and allocate those tasks to people with specific skills.[16]

In addition, it is becoming easier for people to undertake work outside the traditional office environment. Mobile computing tools are becoming more powerful, and internet connections are becoming faster and more reliable (although with regard to the latter, some parts of Australia—particularly rural areas—remain relatively disadvantaged). Crucially, collaboration in the digital environment is becoming easier.

Over the longer term, broader-based technological change will tend to generate the need—particularly from workers—for more flexible work arrangements and for gig economy jobs in particular. Technological advancement will change the types of jobs in the economy. New technologies and ways of doing things will make certain professions redundant, but will also create new professions. This has always been a feature of technological change – one in 10 Australians have jobs that did not exist a century ago.[17] However, the increasing pace of ongoing advancements in automation and computerisation may lead to particularly significant disruptions. For workers, the need for re-education and re-training will only increase.

Firms want more flexible workplace arrangements

For a firm, there are numerous potential benefits of reducing the relative size of its core workforce and utilising 'outsourced' workers to a greater degree (irrespective of whether the workers are in the gig economy or not). Broadly speaking, these benefits relate to greater flexibility, lower costs and improved efficiency.

In general terms, adopting an organisational strategy that increases use of 'outsourced' workers may enable a firm to better meet surge capacity and more easily obtain specialised personnel for specific tasks. By extension, a firm that can better meet surge capacity would be able to make more efficient use of its core resources.

Use of web-based platforms is likely to amplify these benefits. Web-based platforms allow for much faster recruitment times. For instance, a UK study suggests it takes a firm only three days, on average, to hire an independent contractor from an online marketplace, compared with around 30 days using traditional recruitment methods.[18] In addition, web-based platforms will likely provide firms with access to larger pools workers, and so enable firms to better match their specific needs with specialist workers.

Secondly, for a firm, greater utilisation of 'outsourced' workers is likely to lower the costs of sustaining its overall workforce. This includes the cost of internal functions (such as performance management), but also the cost of various conditions to which employees are typically entitled (this is discussed in more detail in Section 5). These include compulsory superannuation contributions.

That said, firms also derive specific benefits from having permanent employees. All else being equal, a larger permanent workforce is likely to enhance business continuity and reduce uncertainty, and better facilitate a positive workplace culture. In addition, firms may want to avoid losing certain workers to competitors – where those workers possess valuable skills or intellectual property.

Improved job matching will encourage worker participation …

As the gig economy develops, web-based platforms will enable more people to find work that better matches their preferences. This will encourage individuals' participation in the gig economy.

The benefits of the gig economy will extend beyond a convenient mechanism to find the 'right' job. The gig economy will allow people to more easily shift in and out of the workforce as personal circumstances change. This could include when an individual is caring for family members, undertaking study or training, or even travelling. Surveys suggest that a majority of Australian workers would prefer more flexible work arrangements (of some sort), and some would even sacrifice income for greater flexibility.[19]

The potential of web-based platforms to improve job matching also applies to people who are unemployed or want to work more hours.

For example, there are many unemployed Australians who would like a job but cannot work full time hours. This includes people who are caring for children or family members, and as such may only be able to work a small number of hours in a day and/or only work outside standard business hours. Indeed, there are just over 250,000 people who are unemployed and looking for part-time work,[20] and more—up to 450,000—who would like to work but may be prevented from doing so due to family circumstances.[21] Further, of the 3.9 million people in Australia who work part time hours, around one quarter would like to work more hours.[22]

That said, for many such people, the gig economy might provide the only options for work or for more hours, rather than the work involved being particularly attractive.

… but people will face trade-offs

For individuals, participation in the gig economy will involve trade-offs compared with more conventional work arrangements.

It is certainly the case that gig economy work typically provides workers with greater flexibility compared with more conventional work arrangements – including permanent, casual and fixed-term employment. Indeed, for many current gig economy workers this is the main attraction.[23] That said, the reality for gig economy workers on some 'work-on-demand' platforms is that work tends to be most available at certain 'peak' times, which effectively limits flexibility.

On the other hand, gig economy workers bear greater risks compared with workers in more conventional work arrangements. Gig economy work is typically less secure (although casual employees do have relatively low levels of job security). Further, gig economy workers may not be covered by standard conditions that apply to employees.

On balance, some workers—low-paid, low-skilled workers in particular—may be disadvantaged with their involvement in the gig economy, but may not have many alternative work options.

4

4. The gig economy and the changing labour market

Gig economy workers will increase as a share of the broader labour market (currently there are only around 100,000 ‘regular’ gig economy workers). For some workers, gig economy work will be their main, or even sole, source of income. For others, income from gig economy work will supplement income from more conventional work arrangements, such as a permanent full time job.

Workers will shift into the gig economy

The rise of the gig economy will see workers who already operate under some form of independent work arrangement (largely independent contractors) migrate onto web-based platforms. For many of these workers, their working experience may not change appreciably. This would include, for example, sole tradespersons who obtain work from web-based platforms such as hipages, or freelance management consultants who gain work via Upwork.

A broad indication of the relative potential (among sectors) for migration of existing independent workers to the gig economy is borne out in Australian Bureau of Statistics (ABS) data on independent contractors (Table 1). The highlighted sectors are those for which independent contractors are particularly over-represented compared with total employed persons.[24]

The cohort of independent contractors in the *Construction* category includes tradespersons who have their own business (and may or may not employ other workers). Anecdotal evidence suggests a significant number are engaged under a commercial contract, but have work arrangements that resemble those of an employee (so called ‘dependent contractors’ – see Section 5). This is also the case for drivers in the *Transport* sub sector. Independent contractors in the *Professional, scientific and technical services* category include accountants, architects, designers, engineers and management consultants.[25]

Table 1: Shares of independent contractors and total employed persons, by industry

Sector	Independent contractors	Total employed persons
Agriculture, forestry and fishing	2.6	2.4
Mining	0.3	1.8
Manufacturing	3.4	7.3
Electricity, gas, water and waste services	0.3	1.1
Construction	30.4	8.9
Wholesale trade	1.7	3.2
Retail trade	1.1	10.1
Accommodation and food services	1.7	7.2
Transport, postal and warehousing	8.4	5.0
Information media and telecommunications	1.7	1.8
Financial and insurance services	1.3	3.5
Rental, hiring and real estate services	2.2	1.8
Professional, scientific and technical services	15.9	8.8
Administrative and support services	8.7	3.8
Public administration and safety	0.8	6.4
Education and training	4.0	8.4
Health care and social assistance	8.0	12.7
Arts and recreation services	2.7	1.9
Other services	4.9	4.1

Source: ABS.[26]

New gig economy jobs will also be created. This includes jobs that are currently performed by employees which will be transformed into gig economy jobs, and jobs that do not currently exist.

Thus far, many new gig economy jobs have been at the low-paid end of the labour market – for example, service jobs on platforms such as Uber and Airtasker. For such jobs, formal training requirements can be low and personal interaction limited or absent.[27] There has been less job growth in professions that require extensive teamwork with, or knowledge of, workplaces that engage them.[28]

However, gig economy jobs for workers that are higher up the occupational ladder will become more prevalent. For jobs that require extensive teamwork and collaboration, advancements in ICT are likely to reduce barriers to gig economy activity. There is evidence the 'platform model' is capable of adapting itself to a wider range of more sophisticated labour markets by the emergence of platforms that specialise in legal and accounting services.[29]

Gig economy jobs dominated by independent contractors

In terms of job types, the rise of the gig economy will see an increase in the prevalence of so called independent work arrangements – most of which will be independent contract arrangements. It should be noted that independent work arrangements are not new. They encompass a variety of work arrangements in the modern Australian economy (Box 2).

Independent contractors are defined as people who are engaged under a contract for services (a commercial contract), rather than a contract of service (an employment contract), and who operate their own business.[30] As is discussed in Section 5, this cohort of workers includes those who although engaged under a commercial contract, have work arrangements that resemble those of an employee – so-called 'dependent contractors'.[31]

Arguably, in this regard, the concept of a gig economy worker could be extended to incorporate certain employees. These could include, for example, workers engaged via a web-based courier service that organises workers as employees rather than contractors. For these workers, the day-to-day working experience may be no different from workers on a comparable platform who work as contractors. Of course, for the former set of workers, the broader issues that are the subject of this paper would generally not apply.

Gig economy workers should arguably include some temporary employees – those who work for multiple employers over time, but on a temporary, short-term basis in each case. This would include a person who obtains work via a web based labour-hire firm—for example as an administrative assistant—and who is engaged under a contract of service (an employment contract) with that firm.[32] However, this cohort of workers would be expected to account for a relatively small share of total gig economy workers.

Box 2: Australia's independent work arrangements

There are at least 2.7 million people in Australia with some form of independent work arrangement, out of around 12 million employed persons.[33] Although historical data on independent workers is limited and not directly comparable with current data, the available evidence suggests that such arrangements have been an ongoing feature of the Australian labour market. For example, in 1998, the Productivity Commission concluded that eight per cent of all employed persons were 'self-employed contractors'.[34] This compares with around nine per cent today.

Independent contractors: These workers comprise the major cohort of independent workers. There are around 800,000 people who work as independent contractors with no employees for their main job, and around 200,000 people who work as independent contractors (for their main job) who have one or more employees.[35]

Temporary workers: Some employees should be considered independent workers – in particular, workers who have multiple employers over time, but on a temporary, short-term basis in each case. This would include, for example, labourers employed by a labour-hire agency for short-term jobs. Freelancing Australia estimates that there are up to 650,000 temporary workers in Australia.[36]

Multiple jobs: There are many people who would work as an independent worker as a second (or even third) job. The ABS reports that there are around 760,000 people in Australia who have a second job (or around six per cent of the workforce), although this is likely to be an underestimate of 'additional' jobs.[37] Other sources suggest there are around two million people with multiple jobs.[38] Although not all these people would undertake contract work for their second job, a substantial proportion would – after all, contract work is particularly flexible. Nine per cent of employed persons are independent contractors for their main job – assuming a similar proportion for second jobs equates to up to 200,000 people.

A broader definition of independent worker includes people who directly sell goods and/or directly rent-out assets. For Australia, there is little data on the number of people who undertake these activities on a regular basis. Interestingly, US data suggests that two to three per cent of the US working age population sells goods, and one per cent rents-out assets (largely accommodation).[39] If one assumes a similar incidence of such activity in Australia, this implies 600,000 to 800,000 such people.[40]

5

5. Employment conditions for gig economy workers

For an individual worker, the legal determination of whether he/she is an employee has significant implications for the conditions under which he/she is engaged. With respect to the expected trends in Australia's workforce composition, the increased prevalence of gig economy workers will have significant implications for the coverage of standard conditions (that apply to employees).

Under Australian law, where a worker is considered an employee, his/her employer is required to extend particular conditions to the worker. Most of the protections and obligations in this regard are set out in the *Fair Work Act 2009* (the Fair Work Act), including for minimum wages, leave entitlements and protections against unfair dismissal.

In general, whether a particular worker is considered an employee or an independent contractor under the law, depends on the totality of the relationship between the worker and the entity (or individual) that engages the worker. These issues have been the subject of much judicial consideration, as evidenced by a substantial and well-developed body of case law.[41]

For an individual gig economy worker, the determination of legal status is complex – it depends on the specific nature of the relationship between the platform, the worker and the end-user(s). In particular, it depends whether the platform merely matches the worker and end-user(s), or whether the platform retains some degree of control over the worker.[42] This could include such matters as setting job prices, scheduling work shifts, and requirements for workers to attend training and to wear uniforms.[43]

These issues highlight the legal 'grey area' in Australia concerning the status of gig economy workers, and suggests that the rise of the gig economy will accompanied by an increase in workers that could best be described as 'dependent contractors' – that is, workers who are engaged under a commercial contract but who have work arrangements, particularly with respect to the degree of worker autonomy, that resemble those of an employee.[44] Such workers are likely to be most prevalent on 'work on demand' platforms – particularly those platforms that attract younger workers, and workers for whom English is a second language.

Some jurisdictions are looking to clarify this particular matter. For example, the UK Government's recent review of modern working practices (the Taylor Review) recommends that 'dependent contractor' be adopted in legislation to better account for workers that lie somewhere between the full-time employed and the self-employed, and to prevent bogus forms of self-employment.[45]

It should be noted that Australia does have protections (under the Fair Work Act) for workers where an employer attempts to disguise an employment relationship as an independent contracting arrangement (usually) to avoid responsibility for employee entitlements – that is, 'sham contracting'.[46]

Indeed, the Fair Work Ombudsman is currently conducting an investigation into whether Uber drivers should be employees.[47] Uber has faced similar issues in other jurisdictions – both the UK Employment Tribunal and the California Labor Commission in the US recently decided that an individual Uber driver was an employee of Uber.[48]

Employment conditions: superannuation

Australia's SG system requires employers to make superannuation contributions on behalf of their employees, equivalent to 9.5 per cent of gross ordinary-time earnings.

The SG was developed for broad coverage of the workforce, using wide definitions of employer and employee. As is the case for the broader employment conditions discussed above, it is the totality of the relationship between the parties that matters in determining whether a worker is an employee for the purposes of SG (see Box 3).[49]

However, even for workers who are considered employees under the law, employers may not be required to pay SG contributions (under certain conditions). Of most relevance to gig economy workers is that employers are not required to pay SG contributions for employees who earn less than $450 in gross earnings in a particular calendar month. This would affect some gig economy workers who have temporary employee arrangements, but also some contractors if the SG regime was ultimately extended to such workers (this issue is discussed in Section 7).

For the individual worker, the absence of particular conditions means the worker must either bear the direct cost of providing these conditions, or bear the risk of not having coverage. With respect to superannuation, a worker would choose either to fund superannuation contributions out of his/her income, or choose not to make contributions (and face an elevated risk of a lower balance at retirement).

Box 3: Who is a contractor for the purposes of SG?[50]

The fundamental issue is the nature of the contract between the worker and the entity (or individual) that engages the worker. Contractual arrangements may contain a clause that characterise the relationship between the parties as that of principal and independent contractor (rather than employer and employee). However, for the courts, it is the underlying nature of the relationship that matters.

An employer is not obliged to make SG contributions for a worker unless the worker is hired wholly or principally for their labour, which includes physical and mental effort. This excludes, for example, people who are hired principally for supplying goods.

Beyond this, there are a number of indicators that have been regarded by the courts in determining whether an individual is employee or an independent contractor for the purposes of SG. In this regard, it is the totality of the relationship between the parties that is considered.

The classic 'test' for determining the nature of the relationship between a person who engages another to perform work, and the person that is engaged, is the degree of control which the former can exercise over the latter. Other indicators of whether a worker is a contractor rather than an employee are:

- whether the worker carries on his/her business or trades on his/her own account
- whether the work undertaken is to achieve a specified result (rather than engaged for a period of time irrespective of the result)
- whether the worker is permitted to delegate or subcontract his/her work
- the degree to which the worker bears commercial risk of carrying out the work
- whether the worker provides his/her own tools and equipment.

6

6. The effects on workers' superannuation

Under current settings, an increased prevalence of gig economy workers suggests a lower proportion of jobs for which workers will receive SG contributions. Some workers may be able to negotiate additional remuneration that is equivalent to SG contributions (or some portion thereof). However, this is not likely to be the general case – that is, it would be more likely for independent contractors with skills that are in high demand. Overall, lower or no contributions for affected workers will mean lower superannuation balances at retirement, which will reduce the broader adequacy of the superannuation system.

There are also implications for insurance cover. For most Australians, the default (opt-out) life insurance cover they have through superannuation is the only life insurance they hold. Under current settings, the rise of the gig economy would likely lead to an increase in the proportion of Australian workers who do not have life insurance cover. In turn, this would increase the degree of underinsurance in the Australian community and the consequential burden on the social security system.

Independent workers have relatively low contribution rates

Even for those workers who do negotiate additional remuneration, the presence of behavioural biases suggests they are unlikely to contribute all additional funds to their superannuation account. Indeed, a key rationale for the SG system is that people are myopic, and so tend to save less in the absence of compulsion.

Data on superannuation contributions of the self-employed provide an indication of the behaviour of people who operate as independent contractors.[51] Data from the Australian Taxation Office (ATO) suggest that only around one-quarter of the self employed made tax deductible contributions to their superannuation accounts in 2014–15. Other ATO data reveal that although the self-employed account for 10 per cent of the workforce, they only accounted for 4 per cent of total superannuation contributions in 2014–15.[52]

Of course, the self-employed can make additional contributions in the run-up to retirement (such as when their business is sold through provisions relating to the rollover into superannuation of realised capital gains). Indeed, given that around 80 per cent of the self-employed have at least some superannuation, the ATO data suggest that a significant portion of the self-employed make ad hoc superannuation contributions, rather than ongoing contributions (which is generally the case for employees). However, the non-superannuation assets of the self-employed, as is the case for superannuation assets, are likely to be relatively highly concentrated among higher-worth individuals.[53]

It should be noted that recent changes to the tax treatment of superannuation make it easier for some gig economy workers to claim income tax deductions for superannuation contributions. The 2016–17 Budget removed the condition whereby a person could only claim a deduction if less than 10 per cent of his/her income was from salary and wages.[54] This means, for example, that a person who works as an employee for his/her main job, and works as an independent contractor on the side, can now claim a tax deduction in respect of contributions from his/her earnings from contracting. While this will improve flexibility for some workers, broader changes are required to deal with the rise of the gig economy.

Potential effects on superannuation balances

With respect to people who operate as independent contractors (irrespective of whether they participate in the gig economy), lower superannuation contributions over a working life would mean lower superannuation balances at retirement (all else being equal).

As noted earlier, individuals' participation in the workforce is likely to become more varied. For example, a worker may be an employee and an independent contractor at different periods in his/her career. Accordingly, the worker would receive SG contributions while an employee, but may not make superannuation contributions while a contractor. Such work patterns are likely to have a significant effect on superannuation balances at retirement.

For example, consider the case of a woman who starts full-time work at 23 years of age, after, say, a period of full-time study, and retires at 67.

- If she earns average wages throughout her working life, she would retire with a substantial superannuation balance of around $710,000.
- If she took a 10-year break from being an employee to work as a contractor at age 45, and did not make contributions during this period, her superannuation balance at retirement would instead be $560,000. A longer break—say of 16 years—would mean a lower balance at retirement of $495,000.

Data from the ATO underscore the potential effects on superannuation balances for people who operate as independent contractors. In general, the self-employed have lower superannuation balances than employees across the entire age distribution. In the run-up to retirement—the 60–64 age cohort—the self-employed have around half the superannuation of employees. In 2013–14, the average superannuation account balance for self-employed males was around $155,000, compared with $386,510 for male wage and salary earners. For women, the difference is just as stark – $86,000 versus $159,000 in 2013–14.[55]

Potential effects on superannuation balances: workers on low incomes

For a person who is on lower wages, the effects on superannuation balances may be particularly egregious. As with the above scenario, lower superannuation contributions over a working life would mean lower superannuation balances at retirement (all else being equal).

For example, consider the case of a man who starts work at 18 years of age for a ride-sharing company as an independent contractor and earns the equivalent of the minimum wage (but does not receive SG contributions). Eventually, he obtains a job with employee status, and receives SG contributions. He retires at 67.

- If he works for 10 years as a contractor, his balance at retirement would be $265,000.
- If he works for 20 years as a contractor, his balance at retirement would be $165,000.

This compares with $385,000 for a person who receives SG contributions for their entire career (assuming the minimum wage is earned throughout).

A person under these circumstances is unlikely to be able to save the equivalent of SG contributions from his/her wage, nor is it likely that the person would have the bargaining power to negotiate wages to include the equivalent of SG contributions.

Further, for many such workers, their only work asset would be their labour – and there would be no business to sell at retirement.

Potential effects on superannuation contributions: the $450-per-month earnings threshold

Workers with temporary employee arrangements would be classified as employees for the purposes of SG. That is, they would be engaged principally for their labour, and would have a low degree of autonomy. However, a proportion would earn less than $450 per month, so employers would not be required to pay SG contributions (this would also be the case for some contractors if the SG regime was ultimately extended to such workers).

As with the above scenarios, lower superannuation contributions would mean lower superannuation balances at retirement (all else being equal).

For example, consider the case of a woman who obtains work as a short-term administrative assistant (as a secondary source of income), via a web-based, labour-matching platform. The woman works sporadically, and earns no more than $450 per month. If the woman earns $5,000 per year, then over four years she would miss out on $1,900 in SG contributions.

The longer the period without SG contributions, the larger the amount of forgone contributions. Further, some workers may have two such jobs, and so would miss out on SG contributions for both.

Potential effects on insurance cover

Under current settings, the rise of the gig economy would likely lead to an increase in the proportion of Australian workers who do not have life insurance cover.

For most Australians, the life insurance cover they have through superannuation is the only life insurance they hold. This cover enables members (and their families) to manage the financial risks associated with disability and death during working life, while also supporting substantially improved retirement outcomes for claimants.

With the rise of the gig economy, more workers will have increasingly varied careers that will include jobs as an employee and jobs as a contractor. Particularly for those workers who work as employees for short periods, a major risk is their insurance cover (attached to their superannuation) will cease – for example, due to the account being inactive or reaching a low balance threshold. Of course, other workers may never work as an employee, and so may not have a superannuation account and the associated insurance cover.

7

7. The way forward: policy proposals

This paper highlights the shortcomings of current superannuation settings in the context of the rise of the gig economy. It is crucial that superannuation settings be adjusted for changing work arrangements so that Australia's superannuation system can best meet the needs of Australian workers.

Extend coverage of the Superannuation Guarantee

The rise of the gig economy strengthens the case for extending the compulsory superannuation regime to formally include the self-employed.

For many years, ASFA has highlighted the low balances of self-employed persons. Although tax concessions have led to some self-employed saving for retirement through superannuation, average balances and coverage have remained relatively low. Almost one quarter of self-employed people have no superannuation, with no superannuation being more common for females than males.[56]

In addition, a considerable proportion of self-employed people do not own a business with any material goodwill or value, other than their labour.[57] This is particularly relevant for gig economy workers.

As noted previously, the fact that the SG is not payable with respect to the self-employed is exploited by the artificial creation of arrangements whereby individuals are considered to be self-employed to avoid the need to pay SG – or 'sham' contracting. Research suggests there are around 50,000 affected persons.[58] There also is the more general issue of the appropriate SG treatment of individuals who work regularly for an organisation such as Uber or Deliveroo, but who currently do not receive the benefit of compulsory superannuation contributions (who may fall into the category of 'dependent contractors').

Looking ahead, the increased prevalence of gig economy workers—and in particular those who operate as independent contractors—suggests a lower proportion of jobs for which workers will receive SG contributions. This will include people for whom this type of work is their only source of income, and those for whom this type of work is a secondary income source.

Accordingly, the self-employed should be subject to compulsory superannuation. While this may pose some design challenges with respect to the concept of 'income' against which compulsory superannuation is to be applied, and the entity/individual that is responsible for making the superannuation contributions, this should not preclude work being done to progress this important policy issue.

One potential mechanism could be a scheme similar to the Medicare surcharge, whereby a surcharge amount is payable unless a minimum amount of taxable income is contributed to superannuation (Box 4). Utilising a concept of taxable income would ameliorate concerns with respect to potential adverse effects on the cash flow of start-up enterprises.

Box 4: Example of a potential contributions mechanism

One possible mechanism could involve the ATO. A person who receives non-wage or like income from personal exertion would contribute to superannuation the equivalent of 9.5 per cent of their taxable income that is attributable to self-employment. The tax return would also provide an opportunity for affected individuals to claim a tax deduction (up to the applicable cap) for the contributions.

This mechanism could include provision for SG as part of their an individual's quarterly or annual income tax instalments. The ATO, after receiving the payment, could then pay it into the most relevant superannuation account of the individual, following the rules used for the payment of the Low Income Superannuation Tax Offset. If the individual did not have any recorded superannuation account, the ATO could allocate the amount collected to a special account, like the Superannuation Holding Account arrangements provided in the past by the ATO. It would be open to the individual to transfer any amount in their name held by the ATO to a superannuation account they subsequently establish.

There would need to be transitional arrangements, if such a mechanism was to be implemented, like those that were applied when the SG was first introduced in 1992. This could take the form of an annually increasing percentage of taxable income to be contributed to superannuation until the percentage reaches 12 per cent.

Remove the $450-a-month threshold for the Superannuation Guarantee

ASFA considers that the $450-a-month threshold for the SG should be removed.

In general terms, the existence of the threshold penalises low-income earners, permanent part-time workers, and those with multiple jobs who receive little or nothing in the way of SG contributions.

In the context of the gig economy, affected workers would include some workers who have temporary employee arrangements, but also some contractors, if the SG regime was ultimately extended to such workers. It would include people for whom this type of employment is their only source of income—such as students or people with significant family responsibilities—or people for whom this type of employment is a secondary income source.

Removal of the threshold may have to incorporate a brief transitional period for employers to make required changes to cater for affected staff.

A further issue relates to the current treatment of small inactive superannuation accounts. The threshold below, which small inactive superannuation accounts are required to be transferred to the ATO, is $6,000. Removal of the $450-a-month threshold would likely lead to, over time, an increase in the number of small inactive accounts with balances below the $6,000 threshold. As such, it would be prudent to determine what steps can be taken to ensure members' accounts are protected from undue transfer out of the superannuation system.

8

8. Questions for discussion

The policy options outlined above would benefit from more detailed consideration from both the superannuation industry and government to optimise design settings prior to implementation.

In this context, ASFA is seeking feedback in regard to the following questions in order to help shape its future work on the issues canvassed in this paper and on policy development.

A broader question for government is how to ensure that gig economy workers will be extended the appropriate protections and conditions. This could include clarification and enforcement of current law, or new legislation that introduces new categories of workers – such as ‘dependent contractors’.

ASFA requests that feedback be provided by Friday 29 September 2017. Responses can be emailed to Andrew Craston: acraston@superannuation.asn.au.

Extending coverage of the Superannuation Guarantee

Question 1: What type of mechanism could be introduced to extend coverage of the SG to independent contractors (and the broader cohort of self-employed persons)?

Question 2: What are the pros and cons of a surcharge-based scheme (similar to the Medicare surcharge)? Are there better alternatives?

Question 3: It is envisaged that transitional arrangements with respect to contributions rates would need to be put in place, such as those that applied when the SG was introduced. In this regard, what would be an appropriate transition path?

Question 4: What other (if any) transition arrangements may need to be incorporated?

Removing the $450-a-month threshold for the Superannuation Guarantee

Question 5: What would be an appropriate transitional period for employers to make the required changes to cater for affected staff?

Question 6: With the removal of the threshold, what steps can be taken to ensure member accounts are protected from undue transfer out of the superannuation system?

References

1. For example, see Secunda, P. M. 2017, *UBER Retirement*, draft paper.
2. For July 2017, the ABS estimates total employed persons numbered 12,201,400 million (Australian Bureau of Statistics, *Labour Force*, July 2017, ABS Cat. no. 6202.0).
3. Stanford, J. 2017, 'The resurgence of gig work: historical and theoretical perspectives', *The Economic and Labour Relations Review*, Vol. 28, Issue 3.
4. For example, see Secunda, P. M. 2017, *UBER Retirement*, draft paper.
5. De Stefano, V. 2015, *The Rise of the 'Just-in-Time' Workforce: On Demand Work, Crowdwork and Labour Protection in the 'Gig-Economy'*, International Labour Organisation, Conditions of Work and Employment series, No. 71.
6. See footnote 2.
7. Katz, L. F. and Krueger, A. B. 2016, *The Rise and Nature of Alternative Work Arrangements in the United States 1995-2015*, NBER Working Paper No. 22667, 29 March.
8. This estimate should be treated with some caution. The estimate is derived from worker numbers for discrete platforms. Generally, platforms report the number of registered workers, but do not report the number of workers that utilise the platform on a regular basis. For these platforms, the number of 'regular' workers has been derived.
9. As at the end of August 2015, Uber had 12,680 active drivers in Sydney, Melbourne, Perth and Brisbane (Deloitte Access *Economics 2016, Economic Effects of Ridesharing in Australia*). At present, Australians use taxis versus Uber at the rate of 3 to 2, and there are just over 21,000 taxis in Australia (see http://www.adelaidenow.com.au/business/companies/australias-love-affair-with-uber-grows-despite-growing-push-to-deleteuber/news-story/9f4e4f5a37861d1d8c0934b60eddef69 and https://www.atia.com.au/wp-content/uploads/2014-State-Territory-Taxi-Statistics.pdf). This suggests that 20,000 Uber drivers is a reasonable estimate.
10. hipages reports it has 92,268 registered tradies, and that it lists 100,000 new jobs each month. If these jobs are cleared each month, then an 'equivalent' worker who completes a job per week equates to 25,000 such workers (see https://www.homeimprovementpages.com.au/advertise).
11. Airtasker reports there are $11.5 million worth of jobs available per month on its site, with an average price of $113 (i.e. 100,000 jobs per month). If these jobs are cleared each month, then an 'equivalent' worker who completes a job per week equates to 25,000 such workers (see https://www.airtasker.com/about/ and https://www.smartcompany.com.au/business-advice/legal/airtasker-slammed-by-consumer-advocate-over-claim-users-can-earn-up-to-20000-a-month/).
12. Sidekicker reports it has 7,000 vetted workers (see https://www.sidekicker.com.au/about-us/?utm_source=http://www.sidekicker.com.au).
13. Foodora had 700 riders in 2016 (Foodora, 'Suppertime becomes Foodora to bring food to hungry foodies – at any time', 8 March 2016). A similar number is assumed for Deliveroo. The Financial Times reported (on 8 September 2016) that Deliveroo had 20,000 riders worldwide (see https://ftalphaville.ft.com/2016/12/13/2181231/guest-post-deliveroo-and-victimisation-in-the-gig-economy/). So for both platforms, 2,000 is reasonable estimate.
14. Freelancer reports that it has just over 10,000 Australian workers, however not all would work regularly (see https://www.freelancer.com.au/freelancers/Australia/all).
15. Websites for Freelancer, Upwork, Expert360 and 99designs.
16. Mason, P. 2015, *Postcapitalism: A Guide to our Future*.
17. Ting, I. 2017, 'These charts show exactly how much Australia's workforce has changed since 1911', *The Canberra Times*, 6 March.
18. AiGroup 2016, *The Emergence of the Gig Economy*.
19. For example research from Hays (a recruitment firm) found that 22 per cent of Australian workers would sacrifice 10 per cent of annual income for more flexible work arrangements (Hays 2016, '3 in 4 Aussies would take a salary drop to work from home', 1 March (https://www.hays.com.au/press-releases/HAYS_322060).
20. As of February 2017, there were 255,400 people who were unemployed and looking for part-time work (Australian Bureau of Statistics, *Participation, Job Search and Mobility*, February 2017, ABS Cat. no. 6226.0).
21. This includes people who have a 'marginal attachment to the labour force': wanted to work and were actively looking for work (but, unlike unemployed persons, were not available to start work in the reference week); or wanted to work and were not actively looking for work but were available to start work within four weeks.
22. As of February 2017, there were 1,047,500 such people, including 447,600 who had home duties or were caring for family members (Australian Bureau of Statistics, *Participation, Job Search and Mobility*, February 2017, ABS Cat. no. 6226.0).

23. Kaine, S. and Veen, A. 2017, 'Study shows the trade-offs in gig work', *The Conversation*, 19 June.
24. Note that the ABS data only include people that identify as being an 'independent contractor' for their main job, and so exclude people who operate as an independent contractor as a secondary source of income.
25. The Victorian Government 2016, *Victorian inquiry into the Labour Hire Industry and Insecure Work*.
26. Australian Bureau of Statistics, *Characteristics of Employment*, August 2016, ABS Cat. no. 6333.0.
27. Healy, J. Pekarek, A. and Nicholson, D. 2017, 'Gig economy businesses like Uber and Airtasker need to evolve to survive', The Conversation, 4 July.
28. Minifie, J. 2016, *Peer-to-Peer Pressure: Policy for the Sharing Economy*, Grattan Institute.
29. Healy, J. Pekarek, A. and Nicholson, D. 2017, 'Gig economy businesses like Uber and Airtasker need to evolve to survive', *The Conversation*, 4 July.
30. Independent contractors are persons who operate their own business and who are contracted to perform services for others without having the legal status of an employee; that is, persons who are engaged by a client, rather than an employer to undertake the work. Independent contractors are engaged under a contract for services (a commercial contract), whereas employees are engaged under a contract of service (an employment contract) – see Australian Bureau of Statistics, *Characteristics of Employment*, August 2016, ABS Cat. no. 6333.0.
31. The term 'dependent contractor' attempts to describe those contractors who despite the nature of their work arrangement, are economically dependent on a single client and/or have little control over their own work (The Victorian Government 2016, *Victorian inquiry into the Labour Hire Industry and Insecure Work*).
32. For August 2016, the ABS estimates there were 600,800 people in Australia that had gained employment via an employment agency/labour hire company. ABS data also shows that people who have obtained work via a specialised recruitment agency tend to have been in their current job for a shorter period compared with the broader workforce. In particular, 30 per cent of such workers have been in their current job for less than 12 months, compared with 20 per cent for the rest of the workforce (Australian Bureau of Statistics, *Characteristics of Employment*, August 2016, ABS Cat. no. 6333.0).
33. For July 2017, there were 12,201,400 employed persons. This includes owner-managers of incorporated and unincorporated enterprises (Australian Bureau of Statistics, *Labour Force*, July 2017, ABS Cat. no. 6202.0).
34. Waite, M. and Will, L. 2001, *Self-employed Contractors in Australia: Incidence and Characteristics*, Productivity Commission Staff Research Paper, AusInfo, Canberra.
35. For August 2016, there were 1,028,800 'independent contractors' (Australian Bureau of Statistics, *Characteristics of Employment*, August 2016, ABS Cat. no. 6333.0). In the ABS's last *Forms of Employment* survey, 79.9% of independent contractors reported having no employees (Australian Bureau of Statistics, *Forms of Employment*, November 2013, ABS Cat. no. 6359.0).
36. The estimate is 639,000 workers (Edelman, *Freelancing in Australia*: 2015).
37. For 2015-16, there were 763,200 people with secondary jobs. This does not include people for whom their second job is in the 'black economy', or people with a third job – which may be some form of independent work (Australian Bureau of Statistics, *Labour Account, Experimental Estimates*, July 2017, ABS Cat. no. 6150.0.55.001).
38. Edelman, *Freelancing in Australia: 2015*.
39. McKinsey Global Institute 2016, *Independent Work: Choice, Necessity, and the Gig Economy*.
40. For July 2017, the ABS estimates the civilian population aged 15 and over was 19,877,500 (Australian Bureau of Statistics, *Labour Force*, June 2017, ABS Cat. no. 6202.0).
41. Riley, J. 2017, *Explainer: What Rights do Workers Have to Getting Paid in the Gig Economy?*', The Conversation, 23 January.
42. Stewart, A. and Stanford, J. 2017, 'Regulating work in the gig economy: what are the options?, *The Economic and Labour Relations Review*, Vol. 28, Issue 3.
43. Smiths Lawyers 2017, 'What Rights do Workers in the 'Gig' Economy Have?' 19 June (https://www.smithslawyers.com.au/blog/work-safety/workers-rights-gig-economy/).
44. The term dependent contractor has no meaning under Australian law.
45. UK Government 2017, Good Work: *The Taylor Review of Modern Working Practices.*
46. Fair Work Ombudsman, Sham contracting arrangements (https://www.fairwork.gov.au/how-we-will-help/templates-and-guides/fact-sheets/rights-and-obligations/independent-contractors-and-employees#sham).
47. In Australia, the Fair Work Ombudsman is conducting an investigation into whether Uber is engaging in sham contracting ('This could be the end of Uber in Australia', *The New Daily*, 30 June 2017).
48. Williams, G. 2017, 'Gig workers – who or what are they, and how do you decide?', *Inside HR*, 28 August (https://www.insidehr.com.au/gig-workers-how-do-you-decide/).
49. ATO 2005, *Superannuation Guarantee Ruling 2005/1, Superannuation Guarantee: Who is an Employee?*
50. ATO 2005, *Superannuation Guarantee Ruling 2005/1, Superannuation Guarantee: Who is an Employee?*
51. It should be noted that according to ABS classifications around 10 per cent of the self-employed – specifically owner managers who receive wages and technically are employees of a company they also control – are subject to SG.

52. As at August 2015, there were around 770,700 individuals who were full-time owner-managers of unincorporated businesses (Australian Bureau of Statistics, *Characteristics of Employment*, August 2015, ABS Cat. no. 6333.0). The ATO reports that 206,952 individuals claimed deductions for personal superannuation contributions in 2014-15 (https://www.ato.gov.au/About-ATO/Research-and-statistics/In-detail/Taxation-statistics/Taxation-statistics-2014-15/?page=5#Table4). ATO data show total member contributions of $122 billion in 2014-15, and deductions for personal superannuation contributions of $4.4 billion (The Australian Taxation Office, *Taxation statistics 2014–15*). As at August 2016, there were around 1,193,100 individuals who were owner-managers of unincorporated businesses (in their main job), compared with around 11,831,700 total employed persons (Australian Bureau of Statistics, *Characteristics of Employment*, August 2016, ABS Cat. no. 6333.0).
53. ASFA 2016, *Super and the self-employed*.
54. The Commonwealth of Australia 2016, *Budget 2016-17: Budget Paper No. 2*. This measure came into effect on 1 July 2017.
55. ASFA 2016, *Super and the self-employed* (using data from Australian Bureau of Statistics, *Survey of Income and Housing*, 2013 14, Unit Record File).
56. ASFA 2016, *Super and the self-employed*.
57. ASFA 2016, *Super and the self-employed*.
58. Tria Investment Partners 2015, *Superannuation Guarantee Non-compliance*, Final Report for CBus, AustralianSuper and REST.