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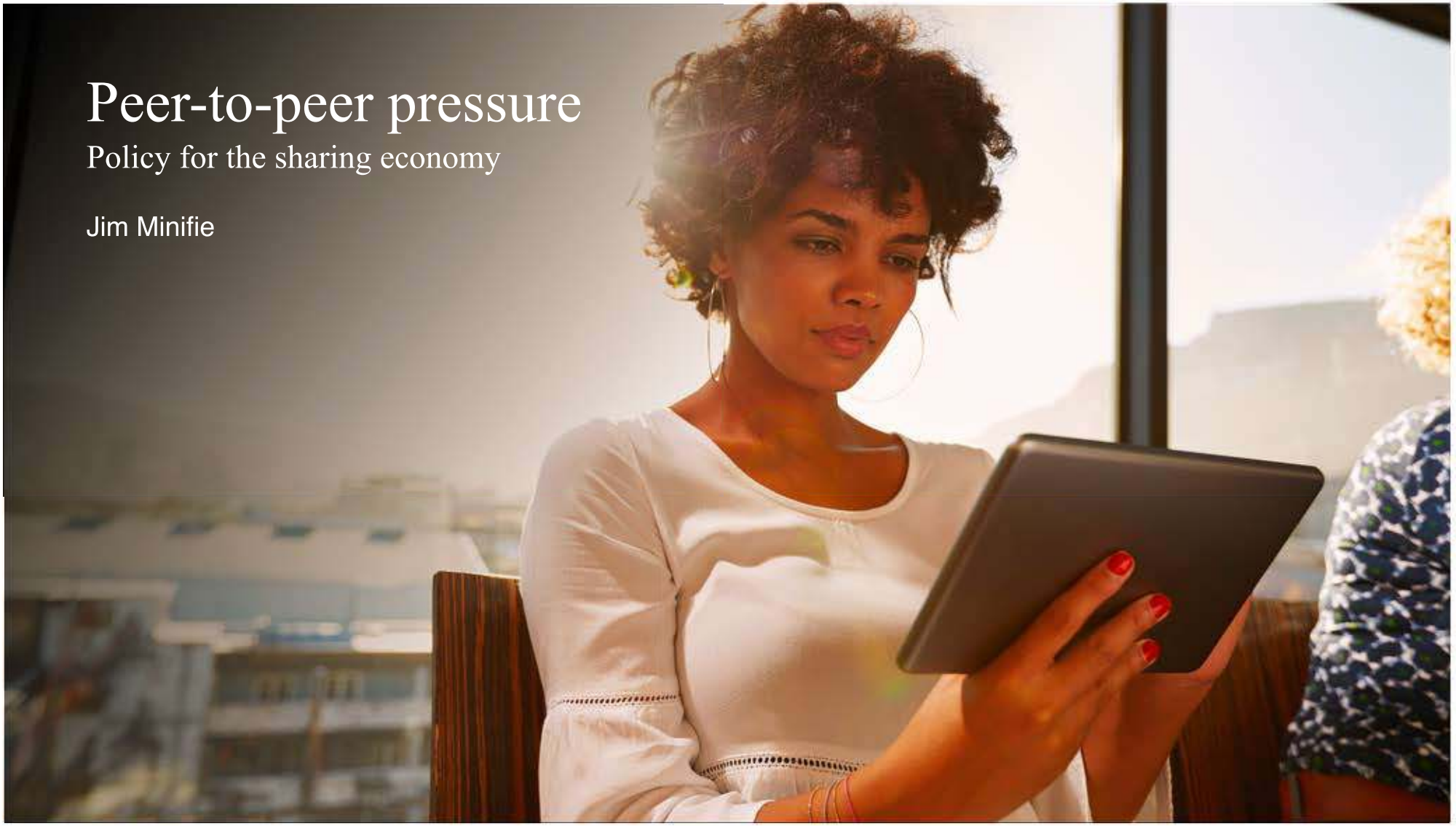
Peer-to-peer pressure

Policy for the sharing economy

Jim Minifie



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Overview

Peer-to-peer platforms use online technology to help strangers interact and do business. If you have booked a holiday rental, a car ride, or even a tradesperson to replace a broken window in recent years, it's increasingly likely you have done so on a platform. Two of the world's best-known platforms, Airbnb and Uber, enable millions of users to find cheaper and more convenient accommodation and travel. Others host markets in everything from art to freelance work to finance.

The prize for getting the peer-to-peer economy right is likely to be large. Ride-sharing businesses such as Uber can cut more than $500 million from Australian taxi bills. Other platforms are already boosting employment and incomes for those on the fringe of the labour market, and putting thousands of underused homes and other assets to work.

Some say peer-to-peer platforms bring hidden costs by risking work standards, consumer safety and local amenity, and eroding the tax base. These worries are not groundless, but they should not be used as excuses to retain policies, such as taxi regulation, that were designed for another era and no longer fit. Governments should not try to hold back the tide to protect vested interests.

Yet governments do have a role to play in ensuring the peer-to-peer economy can flourish. In **transport**, other states should follow the lead of New South Wales, the Australian Capital Territory and Western Australia and legalise ride-sharing. They should mandate safety checks and insurance for ride-sharing. They should cut annual taxi licence fees and may need to increase disability service funding. Only recent purchasers of licences who are in hardship should be compensated.

In **peer-to-peer accommodation**, states need to do more to get the balance right between short-term use of property and the amenity of neighbours. They should give owners' corporations more power to limit disruptions caused by short-stay letting and streamline dispute resolution. Councils should prohibit short-stay rentals only as a last resort.

Peer-to-peer platforms will mostly improve an already flexible **labour market**. Governments should not create a new labour category for peer-to-peer contract workers. But they need to strengthen rules that prohibit employers misclassifying workers as contractors. Some platforms should be obliged to provide work safety insurance, much as labour-hire firms are today.

Today's laws are mostly adequate to address **competition and consumer** challenges posed by platforms. Regulators need to monitor platforms' market power, and ensure they inform users of their rights and responsibilities and deal fairly with users.

Peer-to-peer platforms can boost the economy, but tax as a proportion of output may fall. **Tax rules** must be tightened to ensure international platforms pay enough tax.

If governments act fast, Australia can make the most of the peer-to-peer economy. Not all traditional industries will be happy – but consumers, workers, and even the taxpayer can come out ahead.

Main recommendations

All state governments should legalise ride-sharing, following the lead set by ACT, NSW and others. (Chapter 2)

Governments should allow ride-sharing to operate but set minimum safety requirements. Governments should remove restrictions on taxi licences (or cut their prices) and deregulate pre-booked fares, but retain maximum fares for rank-and-hail trips. Disability service funding models will need to be adjusted. Any compensation should be limited to people who bought taxi licences recently.

Laws concerning short-stay accommodation need to do more to help people limit noise and loss of amenity. (Chapter 3)

State governments should give owners' corporations more powers to control short-stay rentals, possibly even the power to ban continuous, whole-premise short-stay rentals if agreed to by members. Local governments should focus on controlling disruptions and protecting amenity, not primarily on limiting short-stay rentals.

Governments should adapt labour regulations to help people participate at low risk on platforms. (Chapter 4)

The Commonwealth should tighten 'sham contracting' provisions in the Fair Work Act, and require platforms to supply peer-to-peer workers with more information about the risks and responsibilities of being a contractor. States should ensure peer-to-peer workers in riskier occupations have workers' compensation coverage.

Competition and consumer laws are mostly fit to deal with the peer-to-peer economy. (Chapter 5)

The Australian Competition and Consumer Commission should adapt existing competition law principles to the peer-to-peer economy. Regulators will need to ensure platforms do not abuse the power they acquire as their user bases grow. The Australian Consumer Law will apply to all peer-to-peer suppliers and platforms.

Taxation laws should be tightened to ensure that the tax take does not fall as the peer-to-peer economy grows. (Chapter 6)

The peer-to-peer economy may pay a low tax rate under today's rules. The Commonwealth should limit tax minimisation by multinational firms and should oblige platforms to share with the Australian Taxation Office information about the taxable activity of their users.

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1 How to build a better market

Peer-to-peer platforms help strangers to connect and do business.[1] They can improve on existing markets and foster new ones by solving the three problems any market faces. They:

- bring together a 'critical mass' of sellers and buyers, connecting thousands or millions of participants;
- make it easy to find a match and establish a price; and
- make it safe to do business, by verifying identities, pre-screening suppliers, and providing rating and payment systems and even insurance.

By hosting big markets that are easy to navigate and safe to use, peer-to-peer platforms help people obtain more and cheaper services, and find work that suits them.

Platforms also help people access under-used assets, leading some to herald the rise of 'the sharing economy'. In reality, transactions on platforms are usually on commercial terms. But whether they are used for sharing or commerce, peer-to-peer platforms can increase productivity and incomes.

[1] The term 'platform' denotes the bundle of technologies that let people find partners and complete transactions. The term 'peer-to-peer' describes any platform that lets consumers and smaller businesses transact with each other. See Roth (2008) on critical mass, congestion and safety in market design.

1.1 From market fairs to smartphones

Market fairs, stock exchanges and intermediaries have long brought buyers and sellers together. They still perform vital functions, but the online revolution is transforming how people interact. The peer-to-peer service trade platforms that are the subject of this report follow two earlier generations of online platforms. The first generation created **marketplaces for products.** Its leaders launched in the 1990s and are now major global businesses:

- **eBay** launched as an online auctioneer in 1995. It was the first large firm to combine the search, review and transaction tools that all peer-to-peer platforms now use.
- **Amazon** launched as a book retailer in 1994. Nearly half of the products purchased on Amazon today are sold by third party sellers. It is valued at about US$200 billion.
- **Alibaba**, a Chinese company, launched in 1999 as a business marketplace for international trade. It is valued at about US$150 billion.

The second generation of online businesses are the **social media platforms** that emerged in the mid-2000s. They enable billions to communicate and share content. Their business models are not funded by peer-to-peer exchange but mainly by advertising. Today's giants include:

- **Facebook**, the leading social media platform, launched in 2004. It has more than 1.5 billion active users, and earns advertising revenue of US$4 billion a quarter. Its market value has risen to over US$300 billion.

- **Twitter** launched in 2006. It has more than 300 million users and revenue of US$700 million a quarter. Its market value is about US$10 billion.

The third generation of online platforms are the **peer-to-peer service trade platforms** that have emerged in the late 2000s, mostly thanks to the smart phone.[2] These are the focus of this report. An astonishing range of platforms has emerged. Table 1.1 summarises the size and growth of some major platforms. The most successful are the transport and accommodation platforms:

- **Transport:** Uber Technologies, a ride-sharing service, launched in 2009 and now handles over 5 million trips each day in about 70 countries. It has privately raised capital at a valuation of over US$60 billion.[3] While its revenue is estimated to be growing at over 250 per cent each year, Chinese ride-sharing firm Didi Kuaidi claims even more users and more rapid growth.

- **Accommodation:** Airbnb, launched in 2008, lists more than two million premises around the world. It is privately valued at about US$25 billion, higher than all but one hotel chain, and its revenue is reported to double each year.

[2] Botsman and Rogers (2011)
[3] Shontell (2015)

Although none have yet had the transformative impact of Uber and Airbnb, platforms in other sectors are growing. They include:

- **Finance**: The revenues of the largest peer-to-peer platforms, Lending Club and Prosper, are reported to be doubling each year. Early in 2015, the top six global peer-to-peer finance firms were valued collectively at more than US$15 billion though valuations have dropped sharply since then.[4]

- **Work** platforms are smaller and slower-growing still. Listed Australian-based Freelancer claims almost 19 million registered users and revenues of $40 million. Freelancer's US-based competitor Upwork maintains that its 10 million registered workers earn US$1 billion through the site.[5]

More than a thousand other platforms have sprung up to serve niches from clothing and tool rental to bandwidth, food deliveries and pet services.[6] To take art and design: Etsy (a handmade art and craft marketplace) is valued at about US$500 million; Australian firms Redbubble (a design marketplace that also handles logistics), 99 Designs (a graphic design marketplace), and Envato (which operates marketplaces for website templates and other code products) are all growing fast.

[4] Bruene (2015)
[5] Australian firm hipages (which specialises in home improvement jobs) hosted over $1 billion of work in the 12 months to March 2015 and was recently valued at over $160 million (Tucker (2016)). hipages's providers are skilled tradespeople but it could be considered a 'peer-to-peer' platform.
[6] AngelList (2016)

Table 1.1: Estimated global size, growth and value of selected leading peer-to-peer service platforms, 2015

Industry	Platform	Buyers (million)	Sellers (million)	Revenue (US$ million)	Revenue growth (year-on-year, per cent)	Value (US$ billion)
Transport	Uber	-	1	1,800**	260	62
	Didi Kuaidi	-	10	450*	1000+	20
Accommodation	airbnb	60	2	900	90***	25
	HomeAway	-	1	500**	10	3
Finance	LendingClub	1	-	430	100	3
	PROSPER	2 (both sides)		200	150	2
Work	freelancer	19 (both sides)		30	50	0.5

*Notes: Many companies are not publicly listed; reporting is not as comprehensive as for listed firms. Non-US dollar figures converted to US dollars using 29/03/16 exchange rate (of 1 AUD = 0.76 USD). Buyers and sellers are latest available, global, and rounded to nearest million; some may not be active. For accommodation platforms, sellers represent the number of property listings, (the number of users will be lower as some users list multiple properties). Revenue is full-year 2015, rounded to nearest $5m (except * full-year revenue extrapolated from January-May 2015 revenue; ** full-year revenue extrapolated from Q1-Q3 revenue 2015). Revenue growth is full-year 2015 compared to 2014 (except *** two year annualised growth from 2013 revenue estimate), rounded to nearest 10 per cent. Finance revenue is net interest income. Valuations are latest available, from private transactions, or market capitalisation on 29/03/16; rounded to nearest billion, except Freelancer.*
Sources: media articles; company websites; annual reports

1.2 Why platforms matter to policymakers

Policymakers need to pay attention to peer-to-peer platforms for at least four reasons. First, some regulations obstruct people who want to use platforms, and that limits productivity and income growth. Chapter 2 focuses on transport, and proposes that state governments should rewrite taxi regulations to help realise the benefits of peer-to-peer transport.

Second, some peer-to-peer platforms can lead to tensions as the market grows. Chapter 3 focuses on accommodation, and examines how owners' corporation and local councils should respond to short-stay accommodation platforms. Platforms can also circumvent regulations that governments put in place to achieve social goals, such as in employment. Chapter 4 proposes adjustments to labour market regulation in light of peer-to-peer work platforms.

Third, peer-to-peer platforms are only the most visible part of a broader shift towards platforms across the economy.[7] Consumer, civil society and business functions – from navigation to communication and finance, as well as increasingly sophisticated computing – are increasingly managed on platforms. Because the value to a platform user may increase as the number of other users increases, a leading platform may acquire a strong competitive position. But by the same token, platforms may compete strongly with one another, to the benefit of consumers.[8] Data access and privacy also become complex challenges when more work is done through online platforms. Chapter 5 examines some of the challenges for competition and consumer regulation posed by the rise of peer-to-peer platforms.

Finally, platforms pose tax challenges. By growing the economy and handling payments electronically, they can grow the tax base. But multinationals may not pay much local company tax and smaller peer-to-peer providers may not pay much GST. Chapter 6 recommends changes to the tax system.

1.3 Scope of this report

The peer-to-peer world is developing fast. This report does not cover all of it. Important areas not covered include the opportunity in peer-to-peer finance and the emerging frontier of 'peers without platforms', using fully decentralised computing approaches such as blockchains.[9]

Instead, the report focuses on the main challenges posed by peer-to-peer platforms to policymakers in the worlds of transport, accommodation and work. It then considers broader competition, consumer, and tax challenges posed by the peer-to-peer economy.

[7] Evans and Gawer (2016)
[8] Weyl (2010)

[9] A blockchain is a software technology that permits transactions to be verified by many distributed peers.

2 Urban transport: point-to-point, peer-to-peer

Peer-to-peer 'ride-sharing' platforms such as Uber and Lyft are revolutionising city transport around the world, challenging taxi industry incumbents and regulators alike.[10]

Ride-sharing platforms connect commercial drivers and people seeking transport. Passengers use a phone app to estimate their fare, request a ride, see the driver's rating summary, monitor the driver's approach, confirm the route while they are in progress, pay, receive a receipt, and rate the driver's performance. Drivers use an app to guide them on where jobs are likely, to see their passenger's rating, get directions, rate the passenger, and monitor fares and earnings.

Australian consumers have enthusiastically embraced ride-sharing, even in states where drivers are breaking the law by offering the service (Box 1). Many customers say they find ride-sharing cheaper, more reliable and convenient than taxi travel.[11] UberX served about 6 per cent of the Australian point-to-point transport market by August 2015, at a rate of about 15 million rides per year, and is growing fast.[12] Drivers can also benefit from ride-sharing, as Chapter 4 discusses. Uber has more than 20,000 monthly active Australian drivers.[13]

Box 1: Australia's point-to-point transport market

Australians spent about $5.5 billion on 230 million taxi trips in 2014, at an average fare of $24. There are about 21,000 taxis licensed across the country.

In the taxi **rank** segment, taxis pick up passengers at a designated point. The **hail** segment involves pick-ups off the street. If a customer orders a taxi for 'first available' pick-up, this is called a **ready-to-ride** order; a taxi ordered for a later time is a **pre-booked** ride. About 70 per cent of taxi trips in metropolitan areas are rank or hail trips. **Network companies** take bookings and dispatch taxis. There are about one-quarter as many **hire-cars** as there are taxis. Some states impose vehicle standards or minimum fares on hire car licences; hire cars may not do rank-and-hail work.

Ride-sharing began in Australia when Uber launched its UberX service in Sydney in May 2014. The ACT and NSW governments legalised ride-sharing in late 2015, and the South Australian and Western Australian governments' reforms are scheduled to start in July 2016. Other states are still considering regulatory options.

Notes: Sources: Australian Taxi Industry Association (2014); NSW Government (2015b); Taxi Services Commission (2016); Roads and Maritime Services (NSW) (2015)

[10] The term 'ride-sharing' is in widespread use, though the rides are not shared in any meaningful sense.
[11] Castle (2015); Law and Ma (2015)
[12] Deloitte Access Economics (2016)
[13] Uber (2015e)

2.1 Ride-sharing is likely to lower fares, cut waiting times and improve service

Many studies have shown that taxis in Australia are more expensive than they need to be because **numbers** are limited, **licence fees** are excessive and **competition** is restricted.[14] Waiting times can also be excessive, particularly at peak times.

State governments have long restricted the number of perpetual and long-term taxi licenses in major cities. Most states also sell annual licences at a fixed price, or auction a number of them each year.[15] Restrictions on taxi licences make high taxi fares viable, and increase the fees taxi operators pay to governments or licence owners (see Box 3).

Governments also prevent hire cars from competing with taxis. Some states restrict hire car numbers by selling perpetual hire car licences for tens of thousands of dollars; others cap the number of annual hire car licences they issue. Some prescribe a minimum fare or minimum vehicle cost.[16] Such policies keep the hire car fleet small and push up car costs and fares.

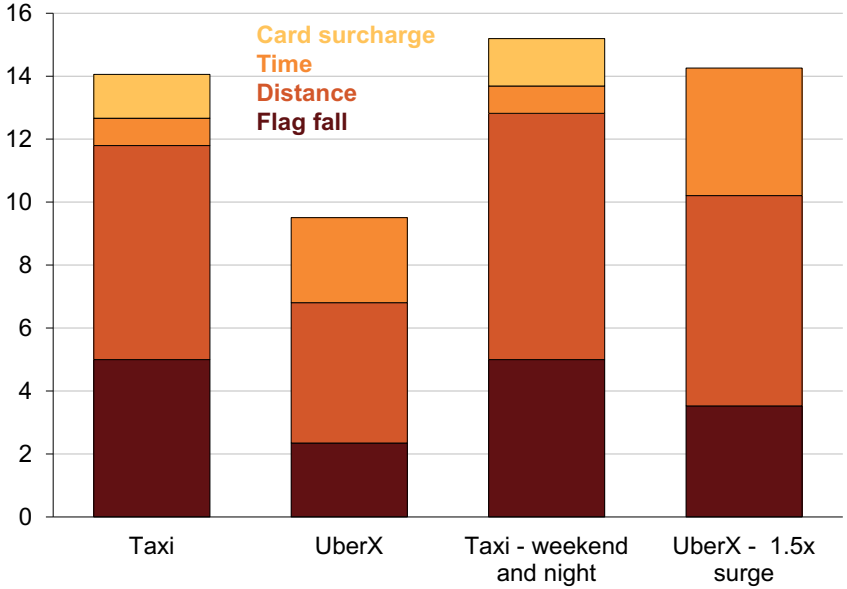
Together, these restrictions push up taxi fares by almost ten per cent, on average. The average taxi fare of $24 includes about two dollars in rental payments to licence owners.[17] The restrictions also make it difficult to manage variations in demand, which can be significant in the point-to-point transport sector. State governments issue peak-period taxi licences, but these do not accommodate unpredictable peaks (due to weather, for example), and the peak-period taxis are costly to provide because they are off the road much of the time.

Legalising ride-sharing is likely to cut average point-to-point transport fares and waiting times. Operators will not pay inflated licence rents; under-used private vehicles can be put to work; and part-time and occasional drivers can drive at times that suit them and when there is most demand. Ride-sharing fares today are usually lower than average taxi fares. Taxi fares in Canberra in late 2015 – after ride-sharing was legalised – were over 30 per cent above standard UberX fares (Figure 2.1). A study for Uber found average taxi fares in Australia were about 25 per cent higher than average UberX fares in August 2015.[18]

At peak times, though, ride-sharing fares can exceed peak taxi fares, sometimes by a large margin (Figure 2.1). Uber increases fares at times and in locations where waiting times would otherwise be unacceptable at standard prices. Uber claims that

[14] For example, Taxi Industry Inquiry (2012) and Abelson (2010).
[15] New South Wales auctions a quota of annual taxi licences. Victoria sells annual taxi licences for about $23,000.
[16] WA charges $170/year for hire car licences and sets a minimum fare of $60, but new rules are set to be introduced in July 2016 (WA Government (2015)). Victoria sells perpetual hire car licences for $40,000.
[17] Licence leasing costs are conservatively $450 million per year, assuming a 6 per cent yield. About $2, or 8 per cent of the fare, goes to licence holders. Australian Taxi Industry Association (2014). Labour supply of drivers is likely more elastic than taxi travel demand, so licence rental costs mostly push up fares rather than cutting driver incomes.
[18] Deloitte Access Economics (2016), p.30

Figure 2.1: UberX and taxi fares in Canberra
Civic to Parliament House, 6 minutes, 3.3 kilometres, dollars



Note: Time estimates includes one minute of waiting time ($52/hour at speeds under 10 km/h for taxis); card surcharge is 10 per cent plus GST (and is optional). Weekend/night fares apply before 6 am or after 9 pm Monday to Friday and all day on a Saturday, Sunday or public holiday. All inclusive of GST
Sources: Grattan analysis of posted fare data on Uber website and ACT Road Transport Authority website, accessed 23 March 2016.

surge fares mobilise drivers, and that fewer than 10 per cent of Uber trips are at surge fares.[19] Average waiting times do tend to be lower for ride-sharing at peak times in more mature US markets.[20] In NSW, average waiting times for an UberX are lower than for a taxi.[21]

Some argue that ride-sharing fares will rise. A platform may seek to raise fares if it achieves a high market share and drivers must pay licensing costs and may face higher insurance premiums in cities where ride-sharing is legalised (see Box 2). But legalising ride-sharing will also attract new drivers and platforms.[22] That may push fares down and cut waiting times, attracting more passengers. It is not yet clear how these competing forces will play out.

2.1.1 Legalising ride-sharing is likely to improve reliability, service and customer satisfaction

Many taxi drivers and booking companies provide good or excellent service today, but regulators and the industry have long struggled to meet consumer expectations of quality, timeliness, reliability and availability:

[19] Hall, *et al.* (2015) find that surge pricing increases the supply of cars. Chen, *et al.* (2015) find evidence that surge pricing limits demand but does not increase the short-run supply of drivers as the 'surge' is too brief for drivers to respond.

[20] Uber (2014); Hall, *et al.* (2015)
[21] Deloitte Access Economics (2016), p.5) calculated that the average waiting time for an uberX ride was 4.46 minutes, compared to 7.79 minutes for taxis.
[22] In early 2016 the operators of Australian taxi app GoCatch released a ride-sharing platform, GoCar; international platforms such as Lyft and Didi Kuaidi may enter the Australian market.

- In Victoria, the 2012 Taxi Industry Inquiry found 'widespread customer dissatisfaction with the quality, reliability, cost and availability of taxi services'.[23]

- In NSW, satisfaction with taxi services is generally below satisfaction with public transport.[24] Customers are most dissatisfied with the price of taxis and with payment system surcharges.

- In Western Australia, 84 per cent of respondents to a 2014 survey had at least one negative association with a taxi in the previous twelve months. Only 34 per cent of survey respondents had a positive association.[25]

Ride-sharing apps and platforms offer improved service. The apps themselves permit a passenger to estimate fares and car arrival times, view the approach of a driver, monitor actual versus advised routes, streamline payments, and review each trip's route, time, driver, and fare.[26] But more importantly, the apps give drivers and passengers strong incentives to behave well: they know they will be rated after each trip, and that prospective ride partners will see their ratings before the next one. It is not surprising that many consumers prefer ride-sharing to taxi travel, and report that they find it more comfortable and more reliable.[27]

Taxi service can be improved in much the same way if rides are booked by smartphone apps such as GoCatch and Ingogo. But relying on them alone to improve point-to-point transport service will short-change consumers. Many people want features that taxis do not offer, including better vehicles and a more diverse driver group. Taxis will always struggle to match the flexibility of ride-sharing in responding to peaks in demand. And competitive pressure from ride-sharing will force taxi operators to improve service.[28]

2.1.2 Smartphone systems improve safety, but regulations are still needed

All Australian states regulate the taxi and hire car industry to make it safer. Taxi and hire car drivers must pass police and medical checks. Vehicles must pass roadworthy inspections and taxis must be fitted with duress alarms, cameras, and GPS locators. Many states require taxi network companies to maintain trip records.

Yet even with these requirements, taxi passengers and drivers have safety concerns. A Western Australian survey found that only 41 per cent of women feel safe catching a taxi alone at night.[29] On the other side, taxi driving is one of the most

[23] Taxi Industry Inquiry (2012), p.40. There has been an increase in satisfaction in taxi services in the past two years (Carey (2015)).
[24] NSW Government (2015a), p.3
[25] Cousins and Fels (2014), p.21
[26] Uber (2015d)
[27] Castle (2015); Law and Ma (2015); IPART (2015)

[28] Wallsten (2015) finds that Uber's rise in New York has been associated with a decline in consumer complaints about taxis, on a per trip basis.
[29] Bruce (2013)

dangerous occupations in Australia – perhaps 15 times as dangerous as the average job.[30]

Ride-sharing apps and platforms can help make transport safer: passengers and drivers are not anonymous; feedback may help weed out riskier drivers and passengers; the app tracks location; and cash transactions are not allowed.[31] Platforms also screen ride-sharing drivers and cars before they are allowed to transport passengers, though in some cases their screens may be inferior to those used for taxis.[32] Platforms typically do not require drivers to install hardware such as in-car cameras or duress alarms.

There is little data on how the safety of taxis and ride-sharing compare. But if ride-sharing drivers pass the same background checks, app-booked ride-sharing seems unlikely to be less safe than pre-booked taxi work. More Uber drivers than taxi drivers are women, perhaps because women see ride-sharing as safer than regular taxi work.[33]

Ride-sharing may offer another safety benefit: some people who would otherwise drink and drive may take a ride instead. People may already be doing so in some US markets: according to one US study, ride-sharing in California may have cut drink-driving deaths by about 5 per cent.[34] Drink-driving deaths in Virginia fell 20 per cent as Uber and Lyft grew rapidly in 2015, even while overall traffic deaths rose.[35]

2.1.3 Ride-sharing may improve disability access if the subsidy model is adapted

Wheelchair Accessible Taxis (WATs) make up 5 to 10 per cent of Australia's taxi fleet.[36] State governments discount WAT licences, allow WATs to charge an extra fee or higher fares when transporting wheelchairs, and subsidise fares for some people who have disabilities.[37] WATs are typically vans, so operators may earn the bulk of their income serving non-wheelchair customers. Regular taxis also participate in disability access schemes.

Many users with disabilities are dissatisfied with the point-to-point services on offer, yet have few alternatives. They say WATs do not arrive reliably and promptly, and that some drivers are not

[30] Frontier Economics (2014), p.4. In Victoria, there were 51 assaults in taxis in 2013/14 (Victoria Police (2014), p.31). Rank-and-hail work is particularly unsafe, as drivers can do little to screen out risky and anonymous passengers.
[31] Uber does permit drivers to use cash in some non-Australian markets where card usage is low.
[32] Uber requires drivers to supply ID, undergo a police check, have a clean driving record, have held an unrestricted driver's licence for at least one year and drive a vehicle less than nine years old (Uber (2016)). The driver-screening processes used by Uber and Lyft in the US has been criticised at times. For example, Uber in the US has been criticised for not using fingerprints and so not picking up some people with serious criminal records (Dougherty (2015)).
[33] Hall and Krueger (2015) finds that in the US women comprise 14 per cent of Uber drivers, versus 8 per cent of taxi and limousine drivers.
[34] Greenwood and Wattal (2015)
[35] Smith (2016)
[36] Cousins and Fels (2014), p.75; Australian Human Rights Commission (2013).
[37] For example, Victorian travelers with a disability receive subsidised fares of up to $60 per trip, and WAT drivers receive a 'lifting fee' of $16.70 (paid by the government) for each wheelchair passenger picked up (Taxi Services Commission (2015)). In Queensland, a disabled passenger receives a subsidy of half the total fare, up to a maximum of $25 (TransLink (2015)). WATs often have conditions attached, such as prioritising wheelchair jobs.

well-trained.[38] Some users instead make their own booking arrangements with individual drivers rather than central booking services.[39]

Regulators may be able to include ride-sharing in schemes that offer cheaper and more reliable point-to-point transport for people with disabilities.[40] Some disability advocacy groups say they believe ride-sharing can help to improve services.[41] Others, by contrast, believe waiting times for WATs have increased since the arrival of Uber due to drivers preferring to drive for Uber rather than drive a WAT, and that WAT numbers may fall as ride-sharing expands.[42]

But ride-sharing may not cut wheelchair-accessible fares much. Wheelchair-accessible vehicles are more specialized, so there may be fewer underused vehicles in circulation for ride-sharing to tap into. And because WAT licences are already discounted, licence rentals do not contribute as much to fares as they do to standard taxi fares. Moreover, if entry restrictions to taxi operation are removed, the subsidy model for WATs will need to be changed, as it will no longer be possible to offer WAT operators licence fee discounts.

2.1.4 Ride-sharing may be a stepping stone to new transport models

Another reason to legalise ride-sharing platforms is that they may pave the way for other new point-to-point transport models. Three are being developed. First, ride-sharing companies have developed **real-time car-pooling** functions. The apps enable travellers to share a car for part or all of a trip. Uber and Lyft introduced their respective real-time car-pooling options, UberPOOL and Lyft Line, in a few cities in the US in 2014.[43]

A second model is **hybrid public-private transport**, with routes that adjust to passenger pick-ups and destinations. Hybrid public-private transport services have begun operating in some US cities.[44] They could complement public transport.[45]

Third, ride-sharing platforms may use or develop **driverless cars**.[46] Some consumers are enthusiastic about the technology,

[38] In Western Australia in March 2015, more than 40 per cent of wheelchair-accessible taxi service were not delivered within the prescribed wait times (Department of Transport (Western Australia) (2015)); Taxi Industry Inquiry (2012); Department of Economic Development Jobs Transport and Resources (Victoria) (2015), p.14.
[39] Australian Human Rights Commission (2013)
[40] Uber offers UberASSIST, which has specially trained drivers to help with passengers with special needs and cars are able to fit foldable wheelchairs and other mobility devices. Uber recently started a trial wheelchair accessible vehicle service in Brisbane (Silva (2015)). The scale of these efforts is not publicly available.
[41] Pro Bono Australia (2015); Uber (2015e)
[42] Willingham (2016)
[43] UberPOOL operates in 29 cities and 100 million UberPOOL trips have reportedly been taken (Manjoo (2016)).
[44] Loup and Chariot operate in San Francisco. Uber has trialled Smart Routes in San Francisco and a minibus service, UberHop in Toronto.
[45] Uber research suggests that 64 per cent of UberX trips started or finished in an area underserved by public transport (Uber (2015e)).
[46] Uber is said to be developing one (Gilbert (2015)), as are Google and various car makers.

but others have concerns about safety.[47] It is unclear how soon fully autonomous cars will be ready for widespread use.

2.2 Peer-to-peer transport platforms will generate consumer and broader economic benefits

Peer-to-peer transport platforms increase productivity in the point-to-point transport market by improving matching efficiency and helping drivers spend more of their working time with paying passengers. In the US, UberX drivers typically spend a higher fraction of their time, and drive a higher share of miles, with a passenger in their car than do taxi drivers.[48] They can also cut waiting times and improve service for passengers. Some of these productivity benefits accrue to passengers, some to the platform and some to drivers.[49]

In a recent Deloitte study commissioned by Uber, consumer benefits of Australian ride-sharing in 2015 were recently estimated at about $5.50 per trip on average, or $80 million per year in total.[50] About 40 per cent of the benefits were attributed to lower prices for people who would otherwise have taken a taxi, and about 60 per cent to service improvements on those trips, and to the value of additional rides induced by price cuts and service improvements.[51] If Uber and other ride-sharing services continue to grow strongly in the years ahead, this consumer benefit may grow.

Drivers can also benefit from work on ride-sharing platforms. Large increases in average hourly incomes are unlikely because platforms will probably not need to pay much above today's going rates to find drivers. However, some drivers value the flexibility ride-sharing driving offers (see Chapter 4 for more information on work on peer-to-peer platforms).

Benefits to consumers and drivers are partly offset by losses incurred by taxi licence owners. About $2 of the average taxi ride covers payments to licence owners. Assuming that about one in three ride-sharing trips would not otherwise have been a taxi ride, then the average loss in taxi licence rental income is about $1.30 per ride-sharing trip, or about a quarter of the consumer benefit estimated for ride-sharing.

2.3 What policymakers should do

Following the lead set by the ACT, NSW, Western Australia and South Australia (Table 2.1), other state governments should legalise ride-sharing, reduce annual taxi licence fees and remove unnecessary taxi regulations. Consumers will benefit from improved service and lower cost point-to-point travel. Recently announced reforms in the ACT and NSW largely meet the objectives set out below (see Table 2.1 for details on the ACT and NSW reforms).[52] Western Australia has announced that it will

[47] Schoettle and Sivak (2014)
[48] Cramer and Krueger (2016)
[49] Benefit shares are determined by the market power of the platform and the price elasticities of consumers and drivers.
[50] Deloitte Access Economics (2016). Results based on an estimated 14.5 million UberX trips per year, based on 1.2 million UberX trips in August 2015.
[51] This estimate ranged from $54 million to $127 million, depending on the price elasticity of demand estimate used (ibid.).

[52] The Competition Policy Review identified taxis and ride-sharing as a priority area for review (Recommendation 8) (Harper, *et al.* (2015)).

regulate ride-sharing, but has not released details of its approach.[53]

2.3.1 Deregulate fares for pre-booked taxi and ride-sharing services

State governments should partially deregulate point-to-point fares. They should:

- Allow providers to set ride-sharing, hire-car and pre-booked taxi fares. Fares are visible before a booking is made, and operators compete, so there is little case for regulation.
- Continue to set maximum rank-and-hail taxi fares.[54]

Regulators could consider mandating that ride-sharing providers share much the same information as taxi companies about their pricing (including surges), and other performance measures, such as waiting times, in order to allow periodic industry reviews. Taxi and ride-sharing companies would remain subject to standard competition and consumer protections (see Chapter 5).

2.3.2 Retain most taxi safety regulations and set safety standards for ride-sharing services

To regulate safety in point-to-point transport, state governments should:

- Require all taxi, hire-car and ride-sharing drivers to pass the same criminal history and driving history checks and to have zero blood-alcohol concentration
- Require all ride-sharing vehicles to undergo an initial roadworthy inspection and appropriate follow-up inspections.
- Continue to mandate that taxis have in-car cameras, duress alarms, and other technologies to promote passenger and driver safety. Taxi work remains risky because rank-and-hail work is anonymous and drivers must accept and carry cash.

State governments should also set minimum insurance requirements for ride-sharing drivers (see Box 2). Governments should:

- Retain existing compulsory third party (CTP) injury and third-party property insurance, or public liability insurance, requirements for taxis and hire cars.
- Require ride-sharing drivers to hold CTP injury and third-party property insurance.
- Mandate that platforms verify that their drivers have appropriate CTP injury and third party property coverage.

[53] WA Government (2015)
[54] The main reason for regulating rank-and-hail fares is that it can be inefficient for customers and drivers to negotiate or shop around at ranks or on the street (Productivity Commission (1999a), p.36). The New Zealand experience, however, shows that deregulation of rank-and-hail taxi fares can generate good outcomes if customers can easily distinguish taxis operated by different companies (ibid., p.14).

Box 2: Insurance and ride-sharing

Compulsory third party insurance indemnifies vehicle owners who are liable for causing personal injury. States generally include third party insurance in vehicle registration fees. Most states also require taxi and hire-car operators to hold third party property and/or public liability insurance.

Third party insurance premiums are usually much higher for taxis than they are for private vehicles, reflecting that taxis are driven further each year and have more occupants. Hire car third party premiums are also usually somewhat higher than those for private vehicles.

People injured by a ride-sharing driver have injury coverage through compulsory third party schemes and possibly through the ride-sharing platform. Uber's Australian driver agreement requires that drivers hold compulsory third party insurance. Passengers and other road users injured in a ride-sharing vehicle remain covered for personal injury through state third party schemes even if the driver holds only personal third party insurance.

But if a driver is found to not have appropriate compulsory third-party coverage, the insurer may try to recover premiums and impose penalties (for example, in NSW the CTP insurer can claim up to $2000 from a policyholder if an incorrect premium is deliberately paid and the insurer pays out a claim).

Uber also requires its drivers to have third party property damage insurance. Uber also states that it provides coverage of up to $20 million, through the Australian insurer CGU Insurance, for its drivers for third-party personal injury and property damage. There does not appear to be a publicly available product disclosure statement for the coverage, but Uber states publicly that it covers drivers during an UberX trip in the event that the driver's own insurance has been exhausted or is not valid.

Participating in ride-sharing in states where it has not been legalised may void a personal policy (ride-sharing is generally not covered by personal insurance policies if ride-sharing has not been legalised or due to non-disclosure of commercial activities). As a result, ride-sharing drivers in states where Uber has not been legalised may not have valid personal third-party property insurance coverage at all times. Uber has stated in private communications that its contingent insurance policy covers drivers year-round if the insurance company declines coverage due to driving for Uber. Regulating ride-sharing will help enable drivers to obtain appropriate third-party property insurance that covers part-time ride-sharing.

Notes: In NSW, 'green slips' are sold by private insurance companies but conditions are regulated by the state. All states, except Queensland and Tasmania, require taxis to hold public liability or third party property. Hire cars are required to hold public liability or third party property in NSW, ACT, SA and not required in WA and Tasmania. The ACT government introduced a new ride-sharing CTP category on 1 April 2016.
Sources: ACT Government (2015); NSW Government (2015b); Uber (2015b); Uber (2015c); Uber (2015d)

These rules will encourage insurers to offer coverage to ride-sharing drivers in states where it is legal, perhaps through platforms on a pay-as-you-drive basis (using GPS technology included in the ride-sharing app).[55] The pay-as-you-drive model is implicit in the coverage ride-sharing platforms offer today (see Box 2).

Regulators should monitor the emerging safety record of ride-sharing and may need to adjust regulations in light of it.

2.3.3 Adjust the disability access regime to ensure it works when ride-sharing is legalised

State governments will need to change their disability access arrangements for point-to-point transport.[56] As taxi licences become less valuable and average fares fall, discounted licence fees become less effective in attracting and retaining wheelchair-accessible taxi (WAT) operators. Governments may need to adjust all the main elements of their disability access schemes, including 'lifting fees' and fare subsidies (paid to taxi drivers or passengers on a per-trip basis), and subsidies for the purchase of wheelchair-accessible vehicles.

Governments could involve ride-sharing operators directly as disability service providers. The ACT has obliged all taxi and ride-sharing firms to forward any disability-related requests to a registered provider.

[55] NRMA Insurance (2015) has indicated it is prepared to do so.
[56] The Victorian and NSW governments are currently undertaking reviews of their transport subsidy schemes.

2.3.4 Maintain oversight of point-to-point transport safety standards, but allow providers to implement them

Governments should classify ride-sharing platforms with other hire cars as a separate category to taxis, as the ACT has done with its Transport Booking Service (TBS) category.

Governments could allow TBSs to register and check drivers and vehicles, but should retain oversight of platforms' driver and vehicle safety screening processes, operations, and outcomes. That may reduce costs for governments and drivers, and speed up the onboarding process for new drivers. Governments should require platforms to maintain a record of trips. All taxis and ride-sharing trips should be subject to GST (Chapter 6).

Governments should remove luxury car requirements and uniform requirements from hire cars. Fees to become licensed as a ride-sharing driver should be set no higher than an amount to cover administrative costs.

Governments should remove unnecessary driver training requirements for taxi drivers (for example, extensive geographic knowledge tests). They could require new ride-sharing drivers to undergo a short training course, to ensure they understand new regulations.

2.3.5 Compensate only people who purchased licences recently or are experiencing financial hardship

The proposed regulatory changes will cut the market value of perpetual taxi and hire car licences. How far licence values fall depends on whether entry to taxi operation remains restricted

and, if so, how profitable it remains to operate taxis. If, as we propose, state governments price annual taxi and hire-car licences very low, perpetual licence values will be worth very little.

Should governments compensate licence owners? States seem to be under no legal requirement to do so. Governments often change regulations in ways that cut employment, wages, profits or asset values in some sector of the economy, yet governments are not typically obliged to compensate losers.[57] Victoria made this explicit when it inserted a statement in legislation in 1983 that no compensation to taxi licence owners would be payable for changes to regulations.[58]

The ethical case to compensate all taxi licence owners also seems weak. [59] They have long been in a position to appreciate the risk that regulations could change. Taxi licence yields (rents divided by the current licence value) have long been above the yield on risk-free assets, suggesting that many owners did not see them as risk-free (Box 3). Taxi industry associations have even lobbied to have governments make maintenance of licence values an explicit policy goal. That suggests that association members have long been aware that policy affects licence values.[60]

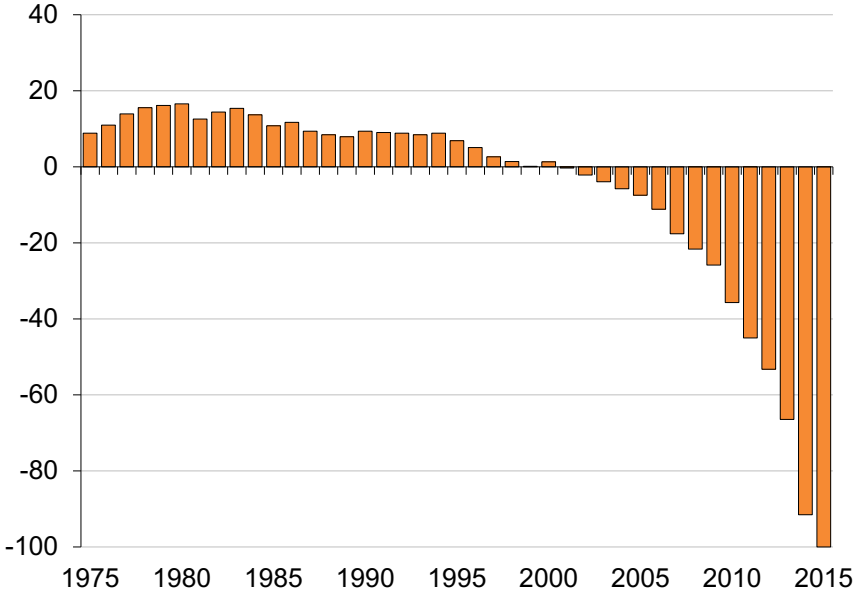
Even if liberalisation reduces licence values and rents to zero, many licence owners will still have earned positive returns. Victoria serves as an example: the after-inflation licence return would still be positive for any perpetual Victorian taxi licence purchased before about 2000, even if licence values and rents drop to zero now (Figure 2.2).[61]

An ethical case may be made for offering partial compensation to taxi and hire-car licence owners who bought licenses recently and who face financial hardship.[62] If governments decide compensation is warranted, it could consider when the owner bought the licence (and the average price prevailing at that time), the number of licences held, and, if feasible, the owner's financial position, including their ability to access other forms of government support.[63] The case should be considered in light of hardships experienced by other community members who may receive no extraordinary support.

Some governments have offered compensation to affected licence holders. The NSW Government's reforms included a compensation fund of $250 million (Table 2.1). $98 million is to pay perpetual taxi licence holders $20,000 for each of up to two licences, and $152 million is for those in financial hardship. NSW has also decided to retain quotas on taxi licences, which could help ensure perpetual licences retain some value if the market segments that are taxis' exclusive preserve (rank-and-hail, and perhaps airport pick-ups) remain valuable to operators.[64]

[57] Productivity Commission (1999b)
[58] Taxi Industry Inquiry (2012), p.14; *Transport (Compliance and Miscellaneous) Act 1983*, (Vic) s 90
[59] Productivity Commission (1999a), p.XI
[60] IPART (2015), pp.18-19
[61] Grattan analysis of data from the Taxi Industry Inquiry (2012), assuming past yields averaged 6 per cent of contemporaneous capital values; and post-2010 from the Victorian Taxi Services Commission.
[62] OECD (2007); Productivity Commission (1999a), Chapter 4
[63] Productivity Commission (1999a) p.XII-XIII
[64] NSW Government (2015c); NSW Government (2015d)

Figure 2.2: Full liberalisation in 2016 would result in negative returns on Melbourne metro licences purchased after 2000
Real annualised returns, percent of starting licence value, by licence purchase year: 1975-2015



Notes: Returns is the internal rate of return of the cash flows: purchase price; annual rent from purchase to 2015; actual licence values and rents to 2015, deflated by the consumer price index; zero rents and licence in 2016 and after.
Sources: Taxi Industry Inquiry (2012); Grattan Institute analysis

NSW's compensation is arguably too broad: some licence holders who have made substantial returns over many years will receive compensation.[65] Victoria's 2012 reforms cut taxi licence values by 40 per cent, or about $500 million in all, and were accompanied by a hardship fund of just $4 million.[66] The ACT's 2015 reforms offered no compensation to licence holders.

NSW will fund compensation with a $1 levy on all point-to-point trips for five years.[67] The levy delays the benefits of reform to customers, many of whom have already paid fares to support the same licence holders for years. Funding compensation from the broader state taxation base may be more efficient, though state taxation also transfers income from taxpayers and creates inefficiencies.[68]

[65] Over 90 per cent of licensees who own only one or two licences will receive compensation payments (NSW Government (2015c), p.3).

[66] Victorian Government (2015)
[67] NSW Government (2015d). The relative elasticities of taxi demand and supply will determine how much of this $1 levy is paid by the consumer and how much is paid by the supplier.
[68] Productivity Commission (1999b). More generally, state governments will experience a loss of revenue from annual licence sales. They also may need to increase disability service funding, because they may will no longer be able to get wheelchair-accessible taxis on the road by offering discounted licences.

Box 3: Taxi licence values and entry restrictions

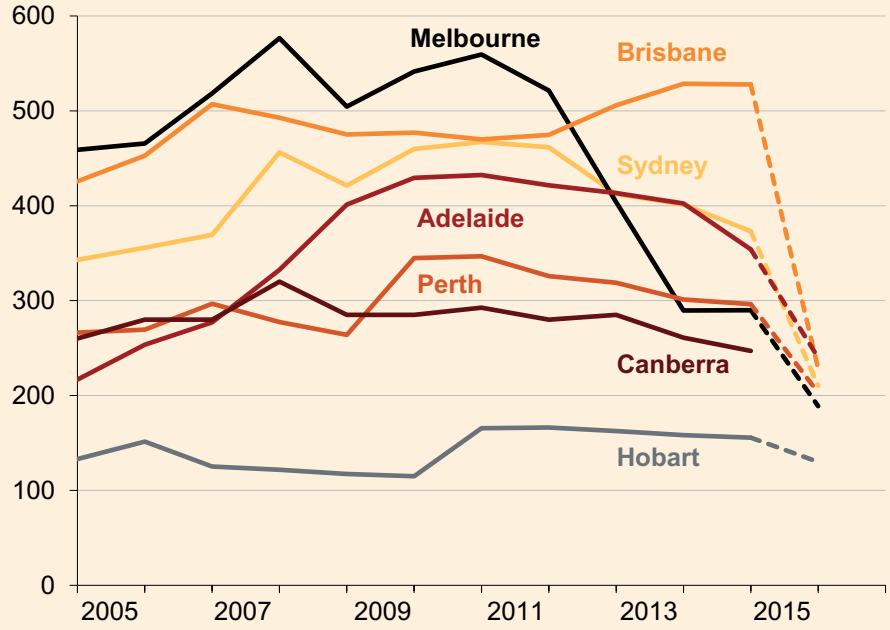
Where governments restrict entry to the taxi industry, taxis are in demand even if fares are high. As a result, taxi operators are prepared to pay to rent taxi licences. Annual taxi licence rents vary widely across cities, because some state governments have imposed tighter entry restrictions than others. In the most restricted cities, annual licence rents have at times exceeded $30,000. The market value of perpetual taxi licences, in turn, reflects expected future rents; they have traded for over $500,000 (Figure 2.3).

The 'rental yield' on taxi licences (annual rents divided by the market price of perpetual licences) has often exceeded the yield on safe assets like government bonds. For example, Sydney taxi licence yields exceeded Australian Government bond yields by 1.5-4 per cent in the 6 years to 2005 (Transport for NSW (2005)). The high yields suggest that licence owners believed that there was a risk that governments would relax restrictions in future.

Some governments have relaxed taxi entry restrictions, triggering large falls in perpetual licence prices. In 2013 the Victorian government made an unlimited number of annual taxi licences for metropolitan Melbourne available at a fixed price ($22,703 in 2015). The value of Melbourne perpetual licences fell from about $500,000 to just under $300,000.

Preliminary data for late 2015 and early 2016 (based on the small number of reported transactions) shows that licence values have fallen across Australian capital cities, even in states that have not yet changed regulations. Market participants appear to expect regulations to change in those states.

Figure 2.3: Capital city perpetual taxi licence values have fallen sharply since the arrival of ride-sharing
$000s, 2015 dollars, annual



Notes: All data points except late 2015/early 2016 data points are from December each year. Latest data points may be unreliable as they reflect a very small number of transactions in some cases. Latest data points for Perth and Hobart are from November 2015. Latest data point for Melbourne is an average of January and February 2016. Latest data point for Sydney is from February 2016. Latest data point for Adelaide is from December 2015. No ACT perpetual taxi licences have been traded since the taxi industry reforms were implemented in September 2015. Deflated using the consumer price index.
Sources: Australian Taxi Industry Association (2014); WA Department of Transport (2016); NSW Department of Transport (2016); Queensland Department of Transport and Main Roads (2016); SA Taxi Council (2016); Taxi Services Commission (2016).

Table 2.1: Point-to-point transport reforms in NSW and the ACT

Reform	NSW	ACT
Fares	• Only taxis permitted to undertake rank-and-hail work. • Regulated maximum fares for rank-and-hail to remain. Fares for pre-booked services to be de-regulated. Booking services must be able to provide a fare estimate.	• Only taxis are permitted to undertake rank-and-hail work. • Pre-booked services must be able to provide a fare estimate. • Surge pricing may not occur during a formally declared emergency.
Safety and insurance	• Ride-sharing drivers subject to a medical test, must hold a hire car driver's authority ($45 application fee) and business registration, undergo a background check, have a blood alcohol concentration below 0.02 and hold CTP and third-party property insurance. • Vehicles must be inspected once per year, and a qualified mechanic must undertake vehicle maintenance.	• Ride-sharing drivers required to purchase a licence ($100 for one year, $400 for five years), undergo a police and driver history check, annual vehicle inspection, have a zero blood alcohol concentration • Drivers required to hold CTP and third-party property insurance • A Transport Booking Service (TBS) will be required to provide workers' compensation insurance for a driver if the TBS restricts a driver from accepting bookings from a competitor.
Disability access	• Review of Taxi Transport Subsidy Scheme to be undertaken • Wheelchair accessible vehicle driver incentive payment to increase from $7.70 to $15 and passenger subsidy cap increased from $30/trip to $60/trip. Interest-free loans for WAT purchases.	• Wheelchair accessible taxi system unchanged.
Licences and compensation	• In Sydney, no new perpetual taxi licences to be issued for four years. For the rest of NSW, annual taxi licences will be issued. • A $250 million industry adjustment package for taxi and hire-car licence holders, financed by a $1 surcharge on each ride-sharing and taxi trip for five years. Compensation of $20,000 for each licence holder (up to two licences, total $98 million), a $152 million hardship fund and a buyback of perpetual hire-car licences.	• Annual taxi licence fees reduced from $20,000 to $10,000 on 30 October 2015 and to $5,000 in October 2016. • Hire car licence fees cut from $4,600 to $100 per annum. • No compensation to licence holders.
Administration	• Geographic knowledge, English language, service, presentation and other training requirements removed. • Establishment of a new regulator to audit and oversee transport companies. Transport companies to oversee service standards.	• All taxi network operators and ride-sharing apps classified as a TBS. Ride-sharing and taxis to operate through a TBS. Independent taxis and traditional hire cars do not need to be affiliated with a TBS. • For ride-sharing apps, an annual accreditation fee of $20 per driver. • Removal of some training requirements for taxi drivers and the removal of regulations, such as the obligation to wear a uniform. • Some minimum training requirements for ride-sharing drivers.

Notes: There is only minimal publicly available information on the Western Australian and South Australian government's interim reforms scheduled to start in July 2016.
Sources: Grattan Institute; NSW Government (2015c); NSW Government (2015d); Han (2015); ACT Government (2015); WA Government (2015).

3 A room of one's own: peer-to-peer accommodation

Peer-to-peer companies such as Airbnb and Stayz not only make it easier to find places to stay – a fold-out couch in someone's lounge room, an entire home or anything in between – they change, even revolutionise, the commercial accommodation experience. Travellers gain the opportunity to stay in private homes and meet local people they would never have otherwise met. These accommodation platforms expand the range of choices for travellers, provide extra income for hosts, and can put otherwise idle real estate to valuable use. They can boost tourism and make it easier to manage temporary surges in accommodation demand – such as for a major sporting event or a natural disaster.[69]

But short-stay rental platforms pose challenges, too. The short-stay rentals can affect neighbourhood amenity, divide members of owners' corporations and displace longer-term renters.[70] They can make it easy to circumvent zoning and other regulations.

More regulation is needed to help secure the benefits of this new market without imposing costs on neighbours. Governments should only restrict short-stay rentals to manage noise or loss of amenity that affect neighbours. Concerns about rents are overblown and are not a valid basis for regulation.

Local governments should respond where disruption from a specific property is troubling neighbours. They should allow occasional or single-room short-stay rentals, and only restrict continuous whole-premise short-stay rentals if there is strong evidence they are damaging neighbourhood amenity.

State governments can also play a role by allowing owners' corporations to be more effective in managing short-stay rentals. They could enable owners' corporations to hold owners liable for disruptions caused by their guests, and consider allowing owners' corporations to control continuous, whole-premise short-stay rentals as they see fit.

3.1 Accommodation platforms create benefits for travellers and hosts, but can negatively affect neighbours

New accommodation platforms, particularly Airbnb, have expanded the traditional holiday house rental market to include homes, apartments and rooms in properties across Australia, particularly in inner-city areas of major cities.

3.1.1 Most properties on accommodation platforms are near the beach and in inner cities

Accommodation platforms are well established in Australia. Airbnb, the biggest global accommodation platform, began

[69] Airbnb listings and occupancy increased during the FIFA World Cup in Brazil and the Sochi Winter Olympics in 2014 (Feeney (2014); The Economist (2016)) and the Cricket World Cup in Australia in 2015 (Dow (2015)). Airbnb has partnered with the Victorian government to help provide emergency accommodation in the event of natural disaster (Airbnb (2014b)).

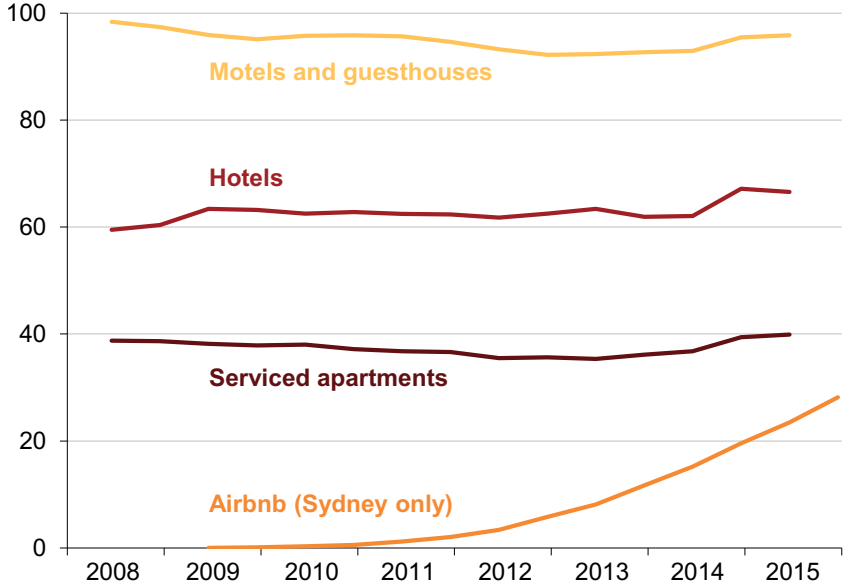
[70] 'Owners' corporations' go by different names across the states: owners' corporation (Victoria, ACT); strata corporation (South Australia); strata scheme (NSW, Western Australia, Tasmania); body corporate (Queensland, Northern Territory).

operating in Australia in 2009 and has more than 66,000 listings (including rooms and entire properties).[71] Stayz has more than 40,000 entire-property listings.[72] The approximately 28,000 Sydney bed spaces listed as available on Airbnb in Sydney in January 2016 may be as much as 12 per cent of commercial beds across NSW (Figure 3.1).[73]

Accommodation platforms have probably taken some market share from hotels, bed-and-breakfasts, and serviced apartments. Hotels in some US cities have cut prices in response to local peer-to-peer competition.[74] But peer-to-peer accommodation is also a distinct product that expands the choices available and encourages people to travel.[75] It appears to be of particular interest to tourists.

Most people travelling to Australian cities want to stay near the beach or in the inner-city, and that is where most Airbnb listings are. In Sydney, for example, the top 20 Airbnb suburbs (accounting for about 40 per cent of listings) are in locations within 5-10 kilometres of the city or near the beach.

Figure 3.1: Airbnb is growing rapidly
Thousands of bed spaces, New South Wales, six-monthly

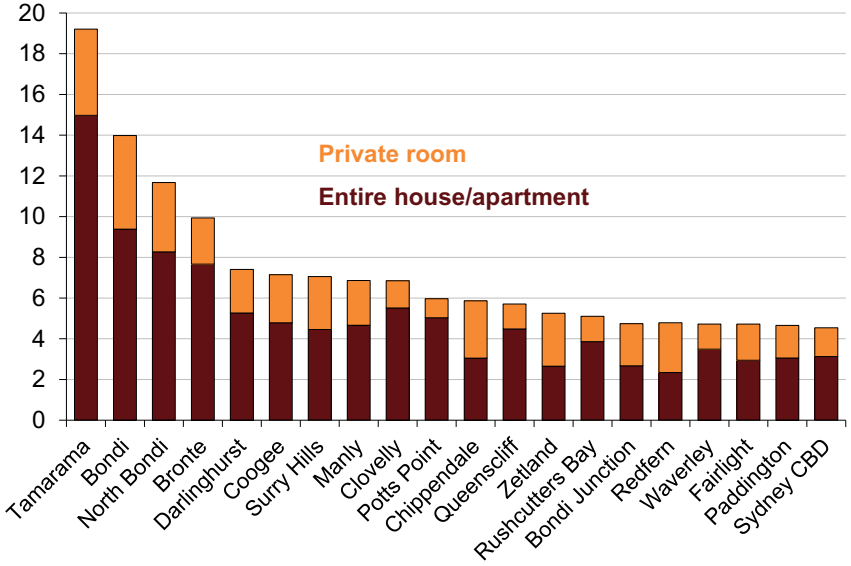


Notes: Latest Airbnb data is from January 2016. Non-Airbnb premises do not include those with under 15 rooms, so is likely an underestimate of total commercial accommodation. The number of people a listing accommodates is used as a proxy for bed spaces, and availability in the year ahead as at January 2016 is used to adjust listings for availability.
Sources: Inside Airbnb; ABS (2014c)

In Sydney's Bondi Beach area, about 9 per cent of residences are listed on Airbnb for at least part of the year, and a further 4 per cent of residences list rooms (Figure 3.2). In other inner Sydney beachside suburbs, up to 5 per cent of residences are listed on Airbnb.

[71] Correspondence with Airbnb; Inside Airbnb data (Inside Airbnb is a website that compiles publicly available Airbnb data for major cities).
[72] Stayz website. Some Stayz listings may also be listed on Airbnb; some Stayz listings are commercial accommodation.
[73] Airbnb bed spaces include those in entire premises, private rooms and shared rooms, adjusted for availability in the year ahead. NSW commercial accommodation with 15 or more rooms total 202,000 bed spaces in medium and large hotels, motels and serviced apartments (ABS (2014b)). The occupancy rate for commercial accommodation is likely to be significantly higher than for Airbnb listings.
[74] Zervas, *et al.* (2014); Freed (2015) and Truong (2015).
[75] Airbnb (2013a)

Figure 3.2: Airbnb listings are in tourist areas and in the inner-city
Dwellings in a Sydney suburb listed on Airbnb as % of total dwellings



Notes: There is a minor upward bias as Airbnb listings in 2016 are compared to 2011 Census data. Some hosts may list multiple private rooms in a single property, or list both rooms in a property and the entire property. Not all listing are available full-time. The suburb of Bondi Beach is included in Bondi.
Sources: Inside Airbnb; ABS (2011)

3.1.2 Most Airbnb bed-nights are in non-primary premises listed for the majority of the year

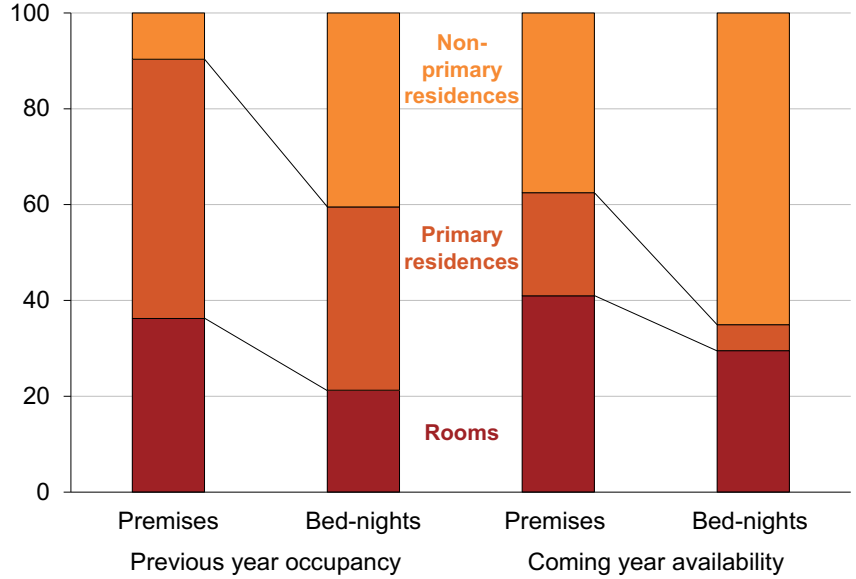
One of the distinctive aspects of peer-to-peer accommodation is that it permits guests to stay with locals in their own homes, or in a unique home while the owners are away.

Yet much Airbnb activity is not in primary residences, even if a primary residence is defined, generously, as any premise available or occupied for short-stay use less than 120 days per year (Figure 3.3). Prior-year occupancy shows that while only 10 per cent of premises are non-primary residences, 40 per cent of bed-nights are in non-primary residences (left panel of Figure 3.3).[76] But that measure probably understates the true frequency of non-primary residence listings, because it includes listings that commenced partway through the year.

Using, instead, coming-year availability data, almost 40 per cent of listed Airbnb premises are non-primary residences, and over 60 per cent bed-nights are in non-primary residences (right panel of Figure 3.3). That measure probably overstates the true frequency, because some people list properties as available that they then do not rent out. So while primary residences and rooms do comprise the majority of Airbnb's listings, they may be less than a third of Airbnb's business.[77]

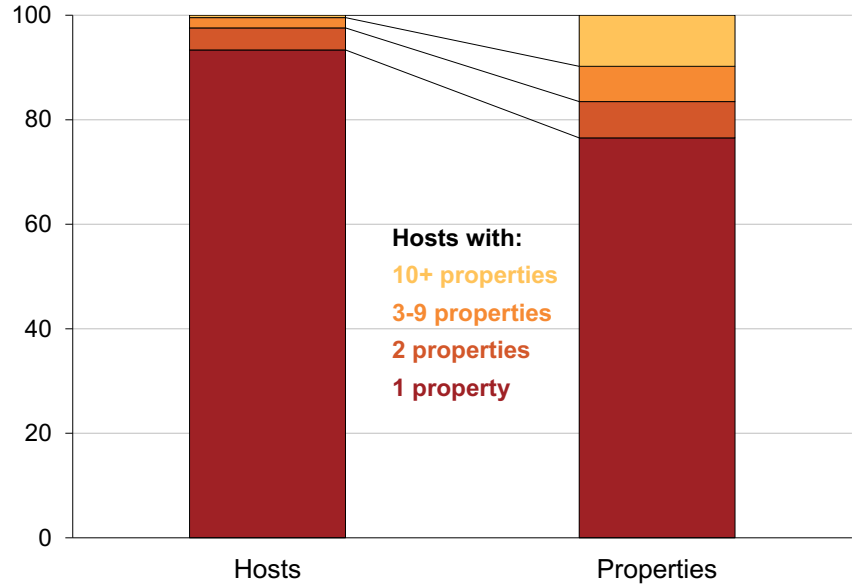
[76] 'Bed-nights' refers to the number of people a property accommodates multiplied by the number of nights listed available in the year ahead as at January 2016, or occupied in the year to March 2016 (Airbnb (2013b); Schetzer and Battersby (2016)).
[77] Others studies also find that non-primary residences make up a significant proportion of Airbnb revenue (Schlesinger (2016); O'Neill and Ouyang (2016)).

Figure 3.3: Non-primary residences make up 40 per cent of occupied bed-nights and 60 per cent of available bed-nights
Per cent of total listings/occupancy/bed-nights



Notes: Non-primary residences defined as those occupied or available for more than 120 days per year. Coming year availability data is from Inside Airbnb, and is Melbourne and Sydney only, as of January 2016. Previous year occupancy is estimated using data supplied by Airbnb, Australia-wide as of the year to March 2016. Occupied bed-nights is occupancy multiplied by the average number of people a listing accommodates. Coming year available bed-nights is the number of people a listing accommodates multiplied by availability in the coming year; excludes already-booked nights and may include nights listed as available that owners do not plan to fully book. Previous year occupancy data may incorrectly include non-primary residences as primary if they joined the platform partway through the year.
Sources: Airbnb; Inside Airbnb; Grattan analysis

Figure 3.4: Multi-premise operators offer 25 percent of entire-premise listings on Airbnb
Hosts/entire dwellings listings, Melbourne and Sydney



Sources: Inside Airbnb; Grattan analysis

Many 'non-primary' residences are listed by people who have more than one listing. In Melbourne and Sydney, just seven per cent of hosts list almost a quarter of all entire-property listings. and hosts with more than 10 properties list almost 10 per cent of properties (Figure 3.4).

3.1.3 Impacts on rents are likely to be modest

Some are concerned that short-stay renters displace long-term residents and push up rents.[78] Long-term tenants have clearly been displaced from the inner-city beachside suburbs where (in a few cases) up to 15 per cent of homes are now listed as available for at least part of the year for short-stay rentals on platforms (Figure 3.2), even if some of the listings may not otherwise have been available for long-term rent.[79]

But any rent increases caused by the rise of short-stay rentals are likely to be localised or small. Short-term use of housing is a small fraction of the city-wide housing stock. The 25,000 Sydney bedrooms – including those listed part-time – listed on Airbnb comprise about half of one percent of Sydney's four and half million or so bedrooms, and about 2 per cent of Sydney's rental housing capacity.[80] A demand increase of that size is unlikely to cause rents to rise much across the city. One US study – commissioned by Airbnb itself – estimates that Airbnb increased the monthly rent for an average one-bedroom apartment by $6 a month in New York City and by $19 in San Francisco, or under 1 per cent.[81]

But even big rent increases would not provide much of a case for cracking down on short-stay rentals. Market prices provide signals about the most valuable use of assets, so restricting short-stay rentals to keep local rents down reduces incomes in aggregate. Concerns about income distribution should be addressed through the national tax and transfer system.

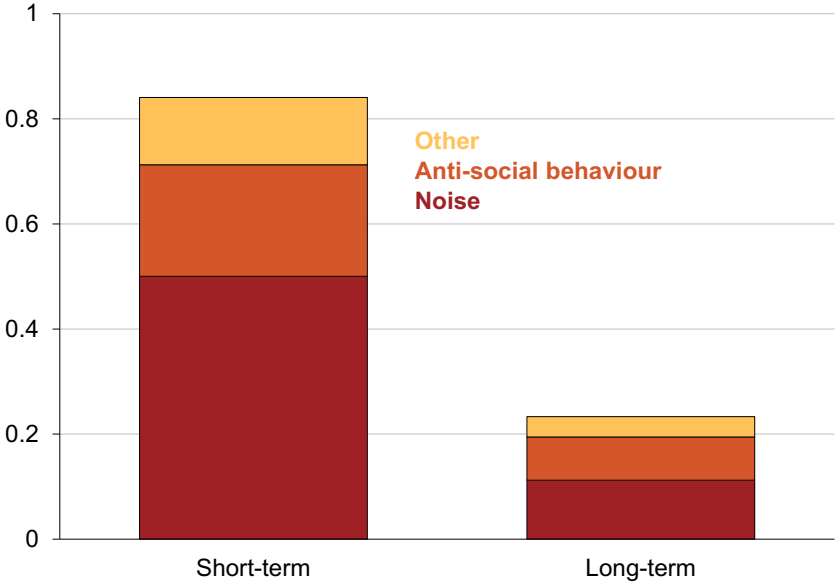
3.1.4 Short-stay guests can disrupt neighbours

Short-stay peer-to-peer rentals can, however, directly impose costs on neighbours. The imposts seem most acute in apartment complexes, where neighbours are in close proximity and share ownership and use of common areas and facilities such as lifts, gyms and pools. 70 per cent of whole-premise Airbnb listings in Melbourne and Sydney are apartments. In some apartment buildings in Melbourne, more than a quarter of apartments are rented out short-term.[82]

Residents of some complexes report that disruptions from short-stay tenants rented through peer-to-peer platforms are severe.[83] Long-term residents mostly complain about noise and 'anti-social behaviour', but some also note increased wear and tear on common areas, security issues, overcrowding and a 'hotel-like' atmosphere.[84] There have also been occasional more serious

[78] Thomson (2016); Kusisto (2015); Hill (2015).
[79] Prosper Australia (2015) notes that many apartments are empty year-round. Some landlords, attracted by short-stay rental's flexibility, may now be renting out properties they would otherwise have kept empty.
[80] Includes bedrooms available only part of the year. Assumes the Australia-wide rental housing share of 25 per cent applies in Sydney (RBA (2015)).
[81] Kusisto (2015)
[82] Independent Panel on Short-Stay Accommodation in CBD Apartment Buildings (2015), p.23.
[83] Many submissions to the NSW Parliamentary inquiry into the regulation of short-term holiday letting describe amenity disruptions due to short-stay rentals.
[84] Owners Corporation Network (2015), p.6; Watergate (2015).

Figure 3.5: Short-stay rentals attract more complaints from neighbours
Complaints about resident behaviour, per 365 nights



Notes: Data is from six owners' management companies for Melbourne CBD and inner-city apartments complexes, adjusted for estimated occupancy rates of long-term and short-term residents. Data may be subject to response bias. Short-term residents staying with an owner are not included.
Sources: Independent Panel on Short-Stay Accommodation in CBD Apartment Buildings (2015); Grattan analysis.

incidents.[85] Short-term use may violate building codes, with implications for the insurance coverage of owners' corporations.

It is unclear how widespread the problems are. In one small survey of large apartment complexes, short-stay renters attract complaints about three times as often as long-term renters do, but the absolute rate still seems quite low at just under one complaint per year per apartment (Figure 3.5).[86] Short-term rentals of detached dwellings through peer-to-peer platforms can also attract complaints about noise from party houses, car parking congestion, rubbish and anti-social behaviour, particularly in holiday areas at peak periods.[87]

Many short-stay operators and their guests pay nothing for the noise and disruption they foist on neighbours, so there is almost certainly much more of it than there should be.

3.1.5 States make it difficult for neighbours to manage repeat disruptions from short-stay tenants

All states have environmental laws and regulations aimed at managing neighbourhood disturbances such as from excessive noise. If the laws are breached, local council officers or the police have the power to issue fines.[88]

But in many states, the process for making an application is cumbersome, expensive and can take time to enforce. It may be difficult to prosecute short-stay guests, and the owner of the

[85] The Daily Telegraph (2015).

[86] Independent Panel on Short-Stay Accommodation in CBD Apartment Buildings (2015), Annexure 2.
[87] Bibby (2013); *Dobrohotoff v Bennic [2013]*; submissions to the NSW Parliamentary inquiry into the regulation of short-stay holiday letting.
[88] For example, the *Environment Protection (Residential Noise) Regulations 2008* (Vic) and *Protection of the Environment Operations Act 1997* (NSW).

property may not be accountable for disruptions caused by occupants.[89] For example, in NSW, if a person is disturbed by unreasonable noise by a neighbour, the police or the local council. can issue a warning or a noise abatement direction to the offending persons, which can remain in force for up to 28 days.[90] Neighbours can also seek ongoing noise control orders, but must go to court or to a tribunal to obtain one. Neither remedy may have much effect on the behaviour of subsequent short-stay occupants.[91]

As a result, noise and environmental regulation does not offer sufficient recourse against disruptions from peer-to-peer accommodation. And councils, with limited resources, may not be able to manage the volume of complaints they receive. In response, some councils impose onerous conditions on short-stay rentals; others take a more liberal approach (Box 4).

Queensland's 'party house' legislation, introduced in 2014, enables local governments to require some or all 'party house' owners to obtain permits, which can include conditions such as occupancy limits and noise controls.[92] Registration also allows local governments to quickly identify the property that is the subject of a complaint and to contact the operator, and to impose escalating penalties, up to bans, on landlords if they breach conditions repeatedly.

Box 4: Local governments' approaches to short-stay rentals

Some local governments restrict short-stay rentals or apply onerous conditions on hosts. Randwick City Council in Sydney has threatened peer-to-peer hosts with significant fines for running even occasional unauthorised short-stay accommodation. Waverley Council in Sydney (covering Bondi and surrounding suburbs) requires that hosts obtain planning approval and demonstrate compliance with building codes. The WA cities of Busselton, Margaret River and Fremantle require planning approval and/or registration, and restrict the number of guests.

Other local governments are more liberal. Kiama, Gosford and Shoalhaven in NSW generally allow short-stay letting without requiring planning permission. The City of Hobart states that 'one-off, occasional usage' by short-stay guests does not usually require council approval, but any changes to a dwelling to accommodate short-stay guests require planning approval.

Notes: The Shire of Augusta-Margaret River limits short-stay rentals to properties close to recognised 'major tourist attractions' and coastal settlements.
Sources: McKenny (2014); Sansom (2015); WA Government (2012); City of Fremantle (2016). The Shire of Augusta-Margaret River (2014); City of Hobart (2015).

[89] The law on this is somewhat unclear. In a 2011 NSW case, a noise abatement order was served on a landlord due to the noise created by tenants (*Jean Whittlam v Sara Hannah & John Hannah [2011]*). Nonetheless this is a cumbersome process.
[90] NSW Environmental Protection Authority (2015). A breach of this can lead to a fine of $200.
[91] Alternatively, neighbours may take legal action for a potential breach of the common law concept of 'nuisance'. If successful, a resident can receive a court order stopping the noise and/or receive compensation. This is also a time consuming and expensive process.
[92] Larkins and Kane (2014)

3.1.6 States make it difficult for owners' corporations to manage short-stay rentals

Owners' corporations are important in the management of disruptions from short-stay accommodation. They manage common property in a multi-dwelling complex, and define and enforce rules that affect the use of properties.[93] Some states oblige people to try to resolve disputes through their owners' corporation. For example, in NSW, members of owners' corporations must seek a solution through mediation or through the owners' corporation and the state administrative tribunal before contacting their local government for assistance.

Limitations imposed by state governments on owners' corporations' powers to make rules make it difficult for them to manage short-stay rentals. Cease orders that may be effective with long-term residents are not effective with short-stay tenants. Owners' corporations may not be able to hold apartment owners accountable for breaches of rules by their short-stay guests.[94]

Moreover, many state governments appear to prohibit owners' corporations from making rules to ban short-term leasing (Table 3.1). New South Wales and South Australia expressly prohibit owners' corporations from making rules restricting apartment owners from leasing their properties.[95] Tasmania and the ACT, by contrast, allow owners' corporations to require any lease of a property to be at least six months long.[96] The law is unclear in Victoria, Western Australia and Queensland.[97]

Table 3.1: Many states do not permit owners' corporations to prohibit short-term leasing

Ability of owners' corporations to make rules about leasing	State/territory
Rules restricting leasing expressly prohibited under state legislation	New South Wales South Australia
Uncertain if owners' corporations can make rules restricting short-term leasing	Victoria Queensland, Northern Territory Western Australia
Can set rules requiring any lease of a property to be a minimum of up to six months	Tasmania, ACT

Source: State legislation; Independent Panel on Short-Stay Accommodation in CBD Apartment Buildings (2015).

[93] Strata Community Australia (2015); For example, the *Strata Schemes Management Act 1996* (NSW) and *Body Corporate and Community Management Act 1997* (Queensland). Rules are called 'by-laws' in some states.
[94] Independent Panel on Short-Stay Accommodation in CBD Apartment Buildings (2015), p.23; *Lee v Owners Corporation No. 501391P;* Benson (2015)

[95] Independent Panel on Short-Stay Accommodation in CBD Apartment Buildings (2015). For example, s 49(1) of the *Strata Schemes Management Act 1996* (NSW) states that 'No by-law is capable of operating to prohibit or restrict the devolution of a lot or a transfer, lease, mortgage, or other dealing relating to a lot'. See also section 180(4) of *Body Corporate and Community Management Act 1997* (Queensland) and *Community Titles Act 1996* (SA) s 37 1(a).
[96] *Strata Titles Act 1998* (Tas) s 91; *Unit Titles (Management) Act 2011* (ACT) s 109
[97] The Victorian Civil and Administrative Tribunal (VCAT) recently ruled that a body corporate did not have the power to prevent owners from renting their apartments for less than 30 days (the owners' corporation is appealing this

Box 5: Legal disputes about short-term stays in Victoria

A recent Victorian Civil and Administrative Tribunal (VCAT) decision ruled that an owners' corporation did not have power to prohibit an owner from letting out his properties for short stays. The owners' corporation had a rule that prevented the owner of an apartment from using it for any business. VCAT held that the owners' corporation could not use this rule to ban short-term rentals. The owners' corporation is considering an appeal.

In another case involving the same apartment complex, Melbourne City Council tried to stop short-stay letting on the basis that it did not comply with the Building Code of Australia. The building's classification allowed it to be used for 'dwellings'; Council argued that the term 'dwelling' excluded short-stay accommodation. The short-stay rental operator ultimately won a ruling in the Victorian Court of Appeal on the basis that the term 'dwelling' was not confined to long-term usage.

Sources: Johanson (2015); Watergate (2015); Independent Panel on Short-Stay Accommodation in CBD Apartment Buildings (2015)

Box 6: NSW strata reforms streamline dispute processes

Reforms to strata laws recently passed by the NSW Parliament increase maximum penalties for breaches of rules and will make it easier for owners' corporations to enforce rules, particularly for repeated breaches. The changes are expected to take effect from mid-2016.

Penalties for breaches of rules will double, with the new Act legislating a maximum penalty of $1100 for each offence. A repeat offence within a year will warrant up to $2200 in fines (and substantially higher for breaches of occupancy limits). For continued breaches, owners' corporations can apply directly to the Tribunal without issuing a fresh notice to comply.

The NSW strata reforms do not empower owners' corporations to pass rules limiting short-stay rentals. The NSW parliamentary inquiry into short-stay holiday rentals, due to report this year, may consider that option.

Notes: The Law Society of New South Wales (2015))recommended that the legislation expressly permit this.
Sources: NSW Fair Trading (2015); The Law Society of New South Wales (2015)

However, even a clear prohibition on short-term *leasing* would not prohibit short-stay rentals if courts do not consider the rental arrangement a lease.[98] Some owners' corporations have sought to stop short-stay rentals by relying on laws such as the prohibition on the running of a business from a dwelling, or its use for non-residential purposes.[99] They have not always succeeded, as Box 5 shows.

The process for handling breaches of owners' corporation rules can be slow and unreliable. Even if owners are legally liable for

decision); *Owners Corporation PS501391P v Balcombe (Owners Corporations)* [2015] VCAT 956 (29 June 2015)); Good and Prudden (2015).

[98] A recent Victorian VCAT decision found that long-term tenants had not subleased to their short-stay guests (Robb (2016)).

[99] Johanson (2014)

breaches by their short-stay guests under owners' corporation rules and liable for fines, practically it can be difficult for owners' corporations to penalise owners, as identifying guests and gathering evidence can be difficult and pursuing a case can be costly. Recent New South Wales strata reforms made it easier for owners' corporations to enforce rules, particularly for repeated breaches (Box 6), but did not change rules relating to short-stay use of property.

3.2 What policymakers should do

Appropriate regulation of short-stay accommodation will require changes to local government practices and to state government limits on owners' corporations powers.[100] Finding an acceptable balance among competing concerns can be difficult, but laws should help people limit unreasonable noise and loss of amenity, while not unduly restricting the use of property for short stays.[101]

3.2.1 Local councils should focus on controlling disruptions, not on limiting short-stay rentals

State and local government regulations governing short-stay rentals need to be changed. In some areas, rules are too restrictive. In others, neighbourhood amenity is not protected.

Local governments should allow short-stay rentals but control disruptions. They should:

- Freely permit continuous letting of spare rooms when the landlord (or long-term tenant) is also occupying the property, and freely permit all occasional short-stay whole-premise letting.
- Respond to disturbances in a timely way, applying a progressive sanction regime on owners whose short-stay tenants are disruptive. Sanctions might include fines and prohibition for a period. All parties should retain recourse to state tribunals and courts.
- Prohibit continuous whole-premise short-stay rentals only where less restrictive approaches have been trialled and shown to give insufficient protection to residents.

State governments should support local governments by streamlining their tribunal complaint and dispute resolution processes.

3.2.2 Governments should empower owners' corporations to hold short-stay rental operators accountable

State governments should give owners' corporations greater powers to hold owners liable for disruptive behaviour by their short-stay guests:

- Governments should permit owners' corporations to make property owners liable for fines if short-stay guests break rules

[100] The Victorian government established an independent panel in February 2015 to recommend ways to regulate short-term rentals in CBD apartment buildings; the government has yet to respond to recommendations. The NSW Government started an inquiry into the regulation of short-term holiday letting in in September 2015. The Harper Review identified planning and zoning as a priority area for review (recommendation 8) (Harper, *et al.* (2015)).
[101] Independent Panel on Short-Stay Accommodation in CBD Apartment Buildings (2015)

that cause disruption to other residents.[102]

- They could also empower owners' corporations to levy charges for short-stay use of dwellings, to cover the extra usage of common property by short-stay guests or even to reasonably cover less tangible costs of disruption to long-term residents. The owner should have recourse to dispute the charge to a state tribunal.[103]

Any such changes to owners' corporation rules would need to be supported by the standard majority of owners (often 75 per cent).

State governments should also make it easier for owners' corporations to enforce rules, particularly for repeated breaches (as has been done in NSW: see Box 6). When there are persistent breaches, state tribunals should be empowered to bar short-stay rentals in that property for a period of time.

Empowering owners' corporations in this way should improve amenity for residents of multi-dwelling complexes. Hosts would probably try hard to ensure their guests adhere to owners' corporation rules. They may be able to require a bond at the time of booking, and to recover owners' corporation fines from short-term tenants.

[102] Owners' corporations may already have this power in some states. Owners' corporations could also be empowered to issue fines directly without the need to apply to a state tribunal to levy a fine, as is permitted in South Australia (Community Titles Act 1996 (SA) s 34; Strata Titles Act 1988 (SA) s 19). The person can appeal a fine to the Magistrates Court.
[103] Owners' corporations can already require payment for damage to common property. Payments for less tangible costs may need to be capped by legislation. Alternatively, the tribunals could be so empowered.

3.2.3 State governments could permit owners' corporations to limit full-time short-term letting

The reforms proposed above might not, in practice, sufficiently reduce breaches by short-stay tenants. And they may not go far enough for some apartment complex residents whose amenity is affected by short-stay operations even if the guests are well-behaved. Some residents are disturbed by a hotel-like atmosphere in their complex, worried about having a succession of strangers in their shared public spaces, or are inconvenienced by cleaning crews. They would like their owners' corporation to have the power to ban short-stay rentals, at least full-time ones.[104]

Members of some owners' corporations seem to disagree strongly on whether to ban or otherwise limit short-stay rentals. Giving power to owners' corporations to vote on whether to ban short-stay rentals would benefit some people, while denying them that power would benefit others.

But if the reforms proposed above are judged by governments to be insufficient, governments should permit owners' corporations to vote on whether to prohibit full-time short-stay letting of properties not lived in by the owner.[105] State governments should ensure that owners' corporations cannot prevent owner-occupiers from occasionally renting out their properties short-term, or from renting out single rooms in their properties short-term while they are living in them.

[104] As noted in Table 3.1, Tasmania and the ACT already permit owners' corporations to require any lease of a property to be a minimum of up to six months, though it is not clear that short-stays would be considered a lease.
[105] As proposed for NSW by The Law Society of New South Wales (2015).

4 Putting platforms to work: the job market

Peer-to-peer platforms will, in the main, make workers better off. They make it easier to find the right person for a job or task, and help workers to find flexible work.

Platforms are likely to create work, but may create few jobs. At present, only nine per cent of Australian workers are independent contractors. That proportion is likely to grow, since many workers on platforms will be independent contractors, not employees. The consequences for workers' entitlements and their relationships with employers are significant and are examined in this chapter. Many workers will only make the switch if they actively prefer platform work. But platforms can, under some circumstances, circumvent labour regulations and undercut firms and workers that adhere to the rules.

Policymakers should not, however, reclassify platform workers as employees, or create a new 'platform contractor' category, as some have proposed.[106] They should instead take just a few safeguarding steps, while monitoring how platform work develops. Governments should encourage platforms to provide information about risks and responsibilities to workers. They should tighten 'sham contracting' provisions that prevent employers from misclassifying genuine employees as independent contractors in order to avoid paying them entitlements, and increase penalties for breaches of these provisions. They should require platforms in ride-sharing and a few other riskier occupations to pay workers' compensation insurance premiums. All these steps will help ensure that workers are well-informed when they elect to do peer-to-peer work and do not unwittingly take on risks.

Government should monitor how platform work develops before implementing other policies. It should not yet change the rules that oblige contractors to obtain Australian Competition and Consumer Commission authorisation to collectively bargain. It should not yet broaden unfair dismissal laws to include platform contractors, or require that platforms provide the means for workers to contribute to superannuation or buy insurance, or require them to allow workers to export their customer reviews. As more is learnt, some or all of these steps may be warranted.

4.1 It is too early to tell how widespread platform work might become

The amount of work transacted on peer-to-peer platforms is still small. It seems likely that fewer than half of one per cent of adult Australians (80,000 people) work on peer-to-peer platforms more than once a month. About 20,000 people drove with Uber at least once in the four weeks to December 2015.[107] About 70,000 tradespeople are registered on hipages, an Australian platform for home-improvement, but it is not publicly known how many work through the platform in a given month.[108] Airtasker, an Australian

[106] Hagiu (2015); Harris and Krueger (2015)

[107] Correspondence with Uber; Deloitte Access Economics (2015a), p.14 provides estimates that imply about 0.4 per cent of NSW adults worked on peer-to-peer platforms in 2015, including all tradespeople on hipages.

[108] Tucker (2016). Hipages customers post 80,000 new jobs each month, worth well over $1.5 billion, or close to 2 per cent of all Australian trades jobs. Some

odd-jobs platform, says that 'many thousands' regularly work through the site, though the total value of jobs posted each month is currently just $3.5 million, enough to support fewer than fifteen hundred workers full-time at the minimum wage.[109] There is little public information about how many Australians are active on other sites such as Freelancer, Expert360, 99Designs and Etsy.

There is, by contrast, credible data on how many Americans work through platforms. Bank payment data suggest that about 0.4 per cent of US adults did paid work on a platform in September 2015.[110] Other credible studies come to similar findings.[111]

A further 0.6 per cent earned income that month by renting out an asset on a platform. About one per cent of adults had worked on a platform at some point in the three years ending in September 2015, and three percent had rented out assets.

Table 4.1 summarises these and other estimates of participation in platform work and earning more broadly. It also includes some estimates from other studies that are much larger because they include people who are not frequently active, or are based on self-reported participation from surveys (not bank payment data).

Table 4.1: Estimates of income earning participation on platforms

Measure of income earned on platform	US (per cent of adults)	Australia (per cent of adults)
Actively working late 2015 (labour only)	**0.4** in a single month	**<0.5** in 2015
Actively earning late 2015 (labour & rentals)	**1.0** in a single month.	**<0.7** in 2015
Ever earned income (labour & rentals)	**4 – 18** ever	**5** ever

Sources: Actively working: US - 0.4 per cent (JPMorgan Chase Institute (2016), 0.3 per cent (0.5 per cent of workers; Katz and Krueger (2016)), 0.8 per cent (McKinsey Global Institute (2015)), 0.2-0.8 per cent (Harris and Krueger (2015)), Australia - 0.4 per cent (0.6 per cent of working age; Deloitte Access Economics (2015a)). Actively earning income: US - 1.0 per cent (JPMorgan Chase Institute (2016)), Australia - 0.7 per cent (1 per cent of working age; Deloitte Access Economics (2015a)). Ever earned income: US - 18 per cent (Burson-Marsteller (2016)) , 7 per cent (PwC (2015)), 4.2 per cent (JPMorgan Chase Institute (2016)), Australia - ~5 per cent (8 per cent of employed people; Airtasker (2015b)).

Work on platforms, however, is growing fast. The number of active Australian Uber drivers more than tripled in 2015. Global site Freelancer reports that the number of jobs posted has grown 25 to 30 per cent a year.[112] And US banking data also suggest that the number of people finding work on platforms there has also grown fast: ten times as many people earned income on platforms in September 2015 as three years earlier.[113] However, rapid growth may not last: in the US the number of ride-sharing drivers, the largest single category of platform worker, is already

more narrow definitions of 'peer-to-peer' work might exclude hipages, as the workers are all skilled tradespeople.

[109] Correspondence with Airtasker and Airtasker website.

[110] JPMorgan Chase Institute (2016)

[111] Katz and Krueger (2016) find that 0.5 per cent of US workers (~0.3 per cent of adults) were employed through peer-to-peer labour platforms in late 2015.

[112] Freelancer (2016)

[113] JPMorgan Chase Institute (2016)

close to the number of taxi drivers.[114] A growth slowdown in ride-sharing employment is likely as the market matures, as has already occurred in some major markets such as New York.

4.2 Platforms create contractor roles, with entitlements that differ from those of employees

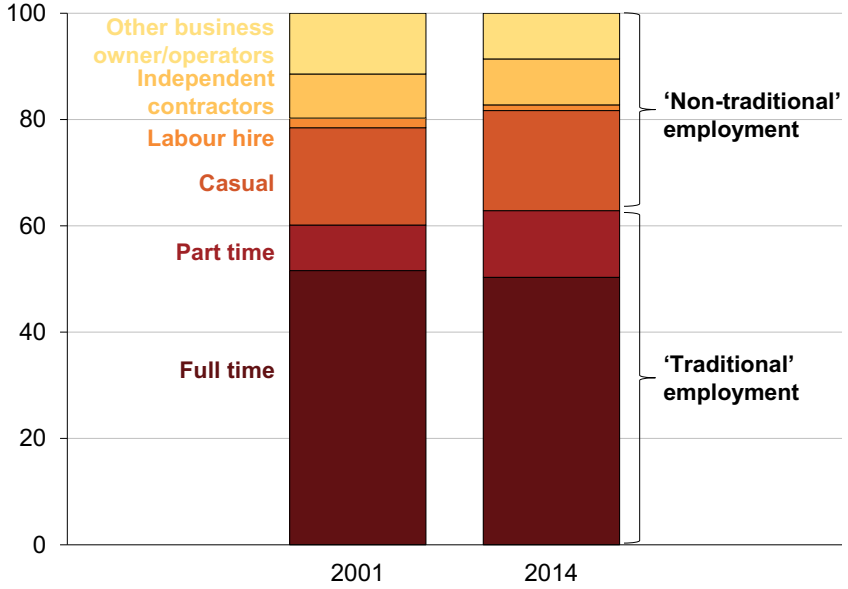
Under today's regulations, most platform workers are likely to be classified as independent contractors. They have more flexibility than employees do, but may lack many protections that employees enjoy.

4.2.1 Platforms shift the balance towards independent contracting

The nine per cent share of the workforce held by independent contractors has changed little for fifteen years (Figure 4.1). As platforms grow, many of them are likely to host independent contractors exclusively, increasing the share of independent contractors in the workforce. While platforms will grow in part as existing contractors are attracted to the search and transaction environments they offer, those advantages will also grow the pool of independent contractors.

Platforms appear to have taken root in sectors and occupations in which independent contractors are already common (though many employees also work in them). Almost two-thirds of independent contractors work in construction, administration and support services, arts and recreation, professional and technical services, and transport. Only a quarter of employees work

Figure 4.1: A third of workers are not in 'traditional' employment
Per cent of employed persons



Notes: 'Traditional' employment includes part-time and full-time workers with paid-leave entitlements. Casual workers are defined as employees without paid leave entitlements Labour hire workers are people paid by a labour-hire firm and are all considered casual workers. The number of independent contractors in 2001 is an estimate from Productivity Commission (2006), Table A.6. Other business owner/operators are owner/managers of unincorporated and incorporated enterprises, less the number of independent contractors. Sources: ABS (2013); ABS (2014a); ABS (2015); Productivity Commission (2006)

in those sectors.[115] Platforms have been successful in commercial driving (Uber and Lyft), household repair and construction

[114] Hall and Krueger (2015)

[115] ABS (2015). Independent contracting is more evenly spread across occupations than across industries. It is more common among technicians and tradespeople, machinery operators and drivers, labourers, and professionals and managers than among other occupations.

(hipages), household services and errands (Airtasker), writing, website design, IT services and data entry (Freelancer, Envato). That is because platforms suit tasks that the customer only needs infrequently and do not involve complex teamwork with colleagues or deep knowledge of a specific workplace.

Platforms appear to have gained less share where work is required on a continuous basis, involves complex teamwork, or requires deep knowledge of the workplace. There are few large platform workforces in manufacturing, retail and wholesale trade, health care, or financial services. Traditional employment relationships, whether continuing or casual, seem to prevail for now in these industries.

4.2.2 Workers are defined as independent contractors if they have autonomy and operate like a business

Courts apply a 'multi-factor test' in deciding whether a worker is an employee and therefore covered by national employment standards, minimum wages and other workplace entitlements (Table 4.2).[116]

Courts consider the 'totality of the relationship' between the parties. They typically find that a worker is an independent contractor if he or she has autonomy and operates like a business. Workers on a platform that merely serves as a matchmaker are unlikely to be found to be employees of that platform. Yet a platform that exercises tight control over a worker could be found to be an employer.

Table 4.2: A 'multi-factor' test determines whether workers are independent contractors or employees

Factor	Suggests employee	Suggests independent contractor
Does the worker have autonomy?	No	Yes
• Can the work be delegated?		
• Does the worker choose hours and decide the method of work?		
• Does the worker set standards?		
Does the worker operate like a business?	No	Yes
• In a position to make a profit/loss?		
• Own public liability/accident insurance?		
• Issues an invoice?		
• Meets own GST obligations?		
• Pays own expenses and supplies own equipment?		
• Responsibility for defective work?		
• Paid by result rather than hours?		
Is the worker able to work for other principals?	No	Yes

Notes: This is not an exhaustive list of all the factors that a court could consider
Sources: Fair Work Ombudsman (2015); Fair Work Building and Construction (2015); ATO (2015f).

Table 4.2 sets out some factors that courts have considered, and Box 7 considers some factors a court may consider if it is asked to determine whether Uber drivers are employees of Uber.

[116] The multi-factor test is also used to establish vicarious liability of the employer for actions of the employee and tax obligations of the employer.

Box 7: **Are UberX drivers independent contractors?**

Australian courts seem more likely to classify an Uber 'driver-partner' as a contractor than as an employee, but much will depend on how much control Uber exerts over how drivers work.

Some factors suggest that Uber drivers are contractors. They choose their work hours and can make a profit or loss. They are paid per trip, supply their vehicles and (usually) their phones. They must manage their own income tax payments and have their own insurance. They can recover GST on expenses.

The Australian Taxation Office considers Uber drivers to be contractors. Taxi drivers are generally not considered employees. Uber does not regard its 'driver-partners' as employees, though courts look beyond what is agreed by the parties.[117]

Other factors would support a finding that Uber drivers are employees. They cannot delegate the work or negotiate fares, and they are discouraged from rejecting fares. They must use the Uber app to transact and have their vehicle approved by Uber. They may at times be paid a minimum hourly rate, are covered by Uber's contingent third-party insurance policy and must follow certain procedures when transporting passengers.

Notes: The Fair Work Commission found that a taxi driver was not an employee of the vehicle owner for the purposes of unfair dismissal laws (Voros v Dick [2013]).
Sources: Foulsham & Geddes (2015); ATO (2015j); Battersby (2015b).

4.2.3 Independent contractors and employees have different entitlements

Platform contractors, like other independent contractors, are not entitled to many conditions that must be provided to employees, unless they negotiate to have them in their contracts.

Independent contractors are not entitled as of right to a minimum wage, maximum weekly hours, paid leave, notice periods after dismissal, redundancy payouts and unfair dismissal protections. They can form or join a union, but cannot collectively bargain unless the Australian Competition and Consumer Commission (ACCC) authorises such action as being in the public interest.[118]

Hirers of an independent contractor are not obliged to make superannuation contributions if the contractor is not hired wholly or principally for the labour of the person. Contractors may not be covered by government-run workers' compensation insurance. Employers may be obliged to withhold income tax and pay payroll tax on behalf of some independent contractors.

Independent contractors do enjoy some legal and policy protections. Work health and safety laws apply to them as they do to employees. They have the same protections against discrimination as employees do, under the Fair Work Act and anti-discrimination legislation. Their contracts can be set aside if the

[117] Battersby (2015b)

[118] Part IV of the *Competition and Consumer Act 2010* (Cth). For example, ACCC (2014a) and Stewart and Alderman (2013).

terms of the contract are considered 'harsh' or 'unfair', including if they are paid less than an employee performing similar work.[119]

Australia's social safety net applies equally to independent contractors and employees. Contractors are entitled to universal public health coverage, income support via unemployment benefits, family support, disability support, and the age pension. Table 4.3 summarises the entitlements of employees and independent contractors.

4.3 How workers win and lose on platforms

Platform contractors lack many of the protections of employees, and may have less predictable income. Some therefore argue that the rise of platforms could make many workers worse off. [120]

But platform work does offer benefits to many. Peer-to-peer workers seem to find that their roles suit them. Platforms can actually reduce income variability: some people work temporarily on platforms to fill gaps in their income from other sources. And others, for whom conventional employment is a poor fit, can find lasting work on platforms.

Still, platforms may undercut firms whose employees benefit today from regulation or collective bargaining. Still, there is little evidence to date that such direct undercutting is occurring at large scale.

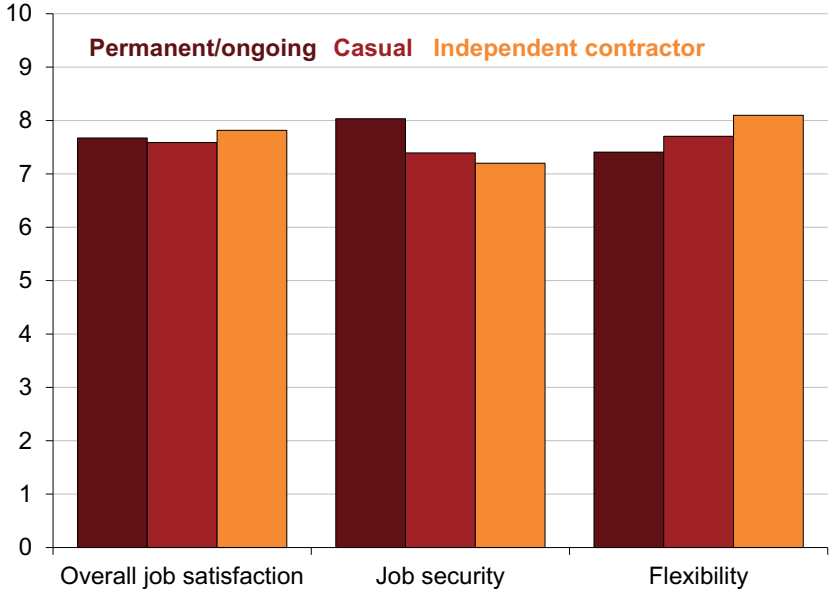
4.3.1 The flexibility of platform work suits some workers

On average, workers in ongoing, independent contracting and casual roles all report similar levels of job satisfaction (Figure 4.2). People in casual and independent contracting roles report lower satisfaction with job security, but higher satisfaction with job flexibility. Some people may accept higher risk for potentially higher rewards and greater flexibility. Still, for some people in insecure work, any positives fail to outweigh the negatives. For example, men in the middle of their working lives who work as casuals (including labour hire) report lower overall satisfaction and especially low satisfaction with their job security.[121]

There is evidence that people who work on platforms value the flexibility it provides. About 85 per cent of US Uber drivers say that a reason they work for Uber is 'to have more flexibility in my schedule and balance my work with my life and family', and many say they prefer it to full-time regular employment.[122] Respondents to a survey of US adults cited flexibility as the second most appealing reason for sharing economy providers to work on

[119] *Independent Contractors Act 2006* (Cth) s 15. Unfair terms in standard form contracts with independent contractors are void providing the contract does not exceed $300,000 for contracts shorter than 12 months, or $1 million for contracts longer than 12 months (Pereira and Cunynghame (2015)).
[120] Oliver (2015)
[121] Wooden and Warren (2004); Productivity Commission (2015b), p.100; Wilkins and Warren (2012). Low satisfaction remains after controlling for industry, hours, risk preference, tenure, age and education (Buddelmeyer*, et al.* (2015)
[122] Hall and Krueger (2015)

Figure 4.2: Independent contractors, ongoing employees and casuals report similar overall satisfaction
Average self-reported job satisfaction scores, by employment type, 2014



Source: HILDA (2015)

platforms.[123] An Australian study (sponsored by Airtasker) found that three-quarters of Australians surveyed believe that the flexibility offered by working for themselves makes up for the lack of job security.[124]

[123] PwC (2015), p.20

[124] Airtasker (2015a), p.9

4.3.2 Platforms help some workers manage risk

Some people use platform work to earn extra money when their income from other sources dips. They reduce the volatility of their income and shorten spells of 'frictional' unemployment.[125]

There is evidence this is already happening. A third of active Uber drivers in the US are also looking for a 'steady, full-time job'. Three-quarters of US Uber drivers say that a reason they drive with Uber is 'to help maintain a steady income because other sources of income are unstable/unpredictable'.[126] US banking data also suggests (though not conclusively) that many workers may use platform work to smooth out variations in income from other sources.[127] The banking data study showed that in months where peer-to-peer workers earned money on labour platforms, it comprised about 15 per cent of their income, and their total income was almost identical, on average, to their income in months when they did not work on platforms.

4.3.3 Platform work suits some workers

Some people on the fringes of the labour market are finding work on platforms. About 2.6 million Australians want to find work or work more hours (Figure 4.3). Of these, 1.6 million are un- and under-employed; of this group, about 800,000 say they are

[125] The term 'frictional unemployment' refers to people in-between jobs actively looking for work. Approximately 1½ per cent of the labour force (about 180,000 people) are unemployed for one month or less, or left their job voluntarily, Ballantyne, *et al.* (2014).

[126] Hall and Krueger (2015), p.11-12

[127] JPMorgan Chase Institute (2016), p.26

constrained by ‘unsuitable hours or location’, ‘skills/experience’, ‘considered too old’, ‘no vacancies in line of work’, ‘ill health or disability’, among other reasons. A further million people would like to work but are not actively looking because they have caring responsibilities or health issues, are studying, are discouraged, or face age discrimination. There is evidence platforms are already helping some people on the fringes of the workforce to get started, or get back into work:

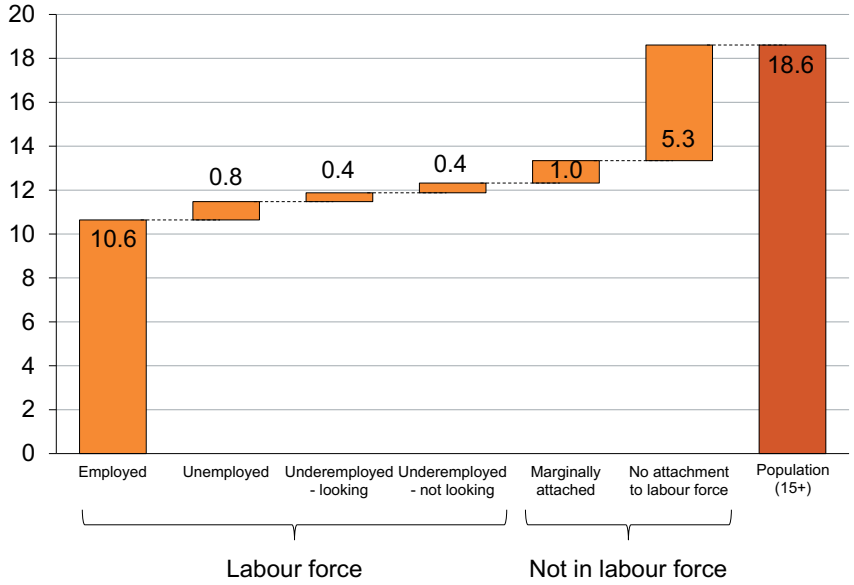
- Inexperienced workers can gain experience and demonstrate their value on platforms. In one study, customer reviews on a platform increased the likelihood of future employment for an inexperienced worker by 20 per cent, and boosted future wages. [128]

- Three per cent of US Uber drivers were ‘retired’ before starting work with Uber, two per cent were ‘stay-at-home parents’ and seven per cent were students (of which two percentage points were not working).[129]

- Eight per cent of current US Uber drivers were unemployed just prior to joining Uber.[130] Many Australian UberX drivers are from areas of high unemployment: in Brisbane and the Gold Coast, half of drivers come from the twenty postcodes with the highest rates of unemployment.[131]

[128] Pallais (2013)
[129] Hall and Krueger (2015), p.10
[130] Ibid., p.10; Zipkin (2015). 12 per cent of Australian UberX drivers are over 55 (Uber (2015a)).
[131] Uber (2015a)

Figure 4.3: Over two million Australians want work or more hours
Millions of people



Notes: Marginally attached workers includes people who want to work but are not actively looking and people who want to work but cannot start immediately.
Sources: ABS (2014b); Grattan Institute analysis

4.3.4 Platforms may put pressure on some workers

Yet platforms could push some people into contracting even if they would prefer to be employees. Today’s labour market regulations (including minimum wages, casual loadings, and penalty rates) and collective bargaining can benefit workers but can also increase costs to their employers. Platform contract work could displace employment even if all the contractors would prefer to be employees and even if the platform work arrangements are

not otherwise as productive as traditional employment. In other words, the platforms might circumvent labour regulations.

But it is not clear how many jobs might be at risk. As Section 4.2.1 notes, many successful platforms host tasks that were already largely done by independent contractors (such as home repairs, driving, odd jobs, and graphic design). Many workers who benefit from minimum wages, casual loadings, or penalty rates work in industries such as retailing, hospitality, or manufacturing, where work appears to be less conducive to peer-to-peer platforms.

Moreover, if labour regulations contribute to unemployment or to a reduction in hours worked, then platforms that circumvent regulations could benefit current labour market outsiders even as they make some incumbent workers worse off.

Existing rules do prohibit sham contracting (the misclassification of genuine employees as independent contractors). Employers who misclassify employees as independent contractors are liable for unpaid tax obligations, superannuation, leave entitlements, unfair dismissal claims and breaches of award conditions, and could also be liable for a fine for sham contracting.[132] Strengthening and enforcing the sham contracting prohibition may help deter employers from directly replacing employees with platform contractors. But it would not stop a platform with genuine contractors winning market share from a traditional employer.

[132] *Fair Work Act 2009* (Cth) ss 357-359. The Fair Work Ombudsman and Fair Work Building and Construction can investigate and prosecute instances of sham contracting.

4.4 What governments should do

Governments should adjust labour regulations to help realise the efficiency gains and employment growth potential of platforms.

They should proceed with caution, though. It is early days. There is quite strong evidence that many people have benefited from platform-based work, and little evidence of harm.

There are limits to what government can and should do. For example, it is difficult to regulate hours of work or payments per hour when many services are not defined by the hour.[133] Platform work and workers are diverse, with few common characteristics that would support a common set of entitlements across platforms.

For now, policymakers should focus on mitigating the risks of platform work. They should take steps to ensure that workers are well-informed and are not inadvertently exposed to work-related risks. This section sets them out. In time, other steps may prove warranted.

4.4.1 Provide workplace information to new workers

Governments should encourage – and if needed, require – platforms to supply new workers and their hirers with information about their legal, tax and insurance obligations. The information pack would help workers understand the responsibilities and manage any risks associated with working through the platform. It

[133] Exceptions include work that is continuously controlled through a phone app, such as ride-sharing.

could be modelled on the Fair Work Information Statement and other information employers are obliged to provide new employees.

Governments should begin by encouraging work platforms to provide such information, but could make it mandatory if there is evidence that people are not well-informed.

4.4.2 Expand workers' compensation schemes to include some platform workers

State governments should bring some platform workers into workers' compensation schemes. Platforms whose workers are otherwise likely to be underinsured would be candidates. Jobs could include meal delivery, ride-sharing, and household odd-jobs, where the workers do not come from a background as established independent contractors. Qualifying platforms would be obliged to pay premiums on behalf of workers (or equivalently, to deduct premiums from payments to workers).

Governments should consider this because workers' compensation can be administratively less costly than individually purchased insurance. It can pool risks efficiently. And it provides coverage, where some workers would otherwise be underinsured.

State governments already deem some contractors to be employees for this purpose. In general, workers' compensation schemes cover contractors who contribute little other than their labour and are not 'in business' in the usual sense of that term.[134] Most states deem labour hire workers to be employees of the labour hire firm for the purpose of workers' compensation insurance coverage.

New South Wales considers that outworkers and firefighters are employees for workers' compensation purposes.[135] The ACT taxi reforms of late 2015 mandates that a driver of a Transport Booking Service who is not allowed to work for a competitor is to be covered by workers' compensation insurance.

Design of such schemes will require careful work. Platform workers work widely variable hours, face widely variable risks, and may work through multiple platforms, so risks and income replacement rates may be difficult to estimate.

4.4.3 Tighten the sham contracting test

The Government should tighten the sham contracting provisions in the *Fair Work Act*, to deter misclassification of legitimate employees as independent contractors. It could follow the recommendation of the Productivity Commission to change the 'recklessness' defence within the sham contracting provision of the *Fair Work Act* to a test of 'reasonableness'.[136] That would discourage firms from improperly reclassifying an employment relationship. Government could also increase penalties for sham contracting.[137]

[134] Stewart (2013)

[135] *Workplace Injury Management and Workers Compensation Act 1998* (NSW)
[136] *Fair Work Act* s 357; Productivity Commission (2015b), p.813-815
[137] The maximum penalty for each contravention of the sham contracting provisions in the *Fair Work Act* is $54,000 (Fair Work Ombudsman (2015)). Organisations in breach of this provision may also be subject to other undertakings.

The Commonwealth should enforce other safeguards aimed at preventing the exploitation of independent contractors, including unconscionable conduct provisions and unfair contract terms in the *Australian Consumer Law* and the 'harsh' or unfair' protections in the *Independent Contractors Act*. The ACCC and Fair Work should provide guidance to platforms and contractors about these provisions.

4.4.4 The employment test and platform workers

Some have proposed changes to the 'multi-factor test' that is used to determine whether workers are employees or independent contractors. They have proposed redefining some current contractors as employees, or creating a new form of contractor that would sit between an employee and an independent contractor.[138] Such 'intermediate', 'platform' or 'independent' workers would receive some of the benefits or protections received by employees.

There is no need to change the multi-factor test. It can be hard to apply, and there is uncertainty about the true classification of a worker until a case is heard before a court.[139] But the test is flexible enough to allow courts to consider new factors relevant to a platform/worker relationship, such as the extent of control over the work that platforms exercise. For example, people who work on a platform that sets prices, defines important work practices, and limits the autonomy of the worker to merely choosing when and where to participate could be found to be employees, as discussed in Box 7.

It is too early to define a new 'platform worker' category. Any such worker might operate more like a business than an employee, but have less autonomy than a contractor.[140] Another dimension considered could be whether the worker does or can work for other employers.[141] But defining such a third category of worker would not be straightforward, and should only be attempted if it becomes clear that a meaningful group of workers would be covered by it.

Another reason to wait is that any new worker category would also have to define a bundle of rights and responsibilities that apply to a sufficiently large and uniform class of workers. At this stage, is hard to specify such a bundle of benefits; platform roles are diverse and the sector is developing fast. Any such change will have to wait until the shape of platform work becomes more evident.

[138] Proposals in the US context include those of Hagiu (2015) and Harris and Krueger (2015).
[139] Productivity Commission (2015b), p.813; Stewart and Alderman (2013)

[140] Italy has an intermediate worker category that is determined by the extent that the principal can coordinate the activities of the worker (Casale (2011)).
[141] Canada, Germany and Spain have 'dependent contractor' categories that focus on 'exclusivity' (Hagiu (2015); Schein (2014); Lee (2012); Weiss and Schmidt (2008), p.47-48).

4.4.5 Possible further work reforms

In time, peer-to-peer platform work may become more established. It will become clearer whether some platform workers need extra protections or benefits that current laws do not provide. Reform options that may prove appropriate include the following:

- The Commonwealth could amend competition and labour laws to allow some platform contractors to collectively bargain without ACCC authorisation.
- Peer-to-peer platforms could be required to have an appeals process for a worker who believes he or she was unfairly removed from a platform. The government could implement this requirement if there is good reason to believe that platforms may have unfairly dismissed workers.
- Governments could require platforms to provide peer-to-peer workers access to their 'rating' when they leave a platform. This may become necessary if the importance of ratings for future employability increases and if platforms do not make it easy for workers to export their ratings data.
- Provide an opt-out or opt-in system for part of a worker's platform earnings to be allocated to a package that deducts tax and superannuation.

Ultimately some of these options might fit some platforms. If many platform workforces have similar characteristics, the options could be packaged into a 'platform worker' category in labour law.

Table 4.3: How employment status is decided for different conditions and benefits

Condition	Example	Test	Employee entitlements	Independent contractor entitlements
Work benefits, security and conditions	Minimum wage, leave, maximum weekly hours, notice period, redundancy, unfair dismissal, collective bargaining	Multi-factor test	All non-casual employment contracts must meet conditions specified by the National Employment Standards and the national minimum wage (casuals are entitled to a more limited range of benefits[1]), including: • Minimum wage and maximum weekly hours • Leave: parental, annual, carers, compassionate, long service; public holidays; notice and redundancy pay • Fair Work Information Statement.	Independent contractors are not subject to prescribed employment conditions. However, a contract for services can be set aside if 'harsh' or 'unfair'.
	Superannuation	Commonwealth legislation	Employers must contribute superannuation for all employees and contractors paid 'wholly or principally for their labour' aged over 18 who earn over $450 / month.	Principals are not obliged to make superannuation contributions for contractors if not paid 'wholly or principally for their labour'.
Risk and injury	Workers' compensation	State and Commonwealth legislation	'Workers' are covered by government-run workers' compensation schemes. Some legislation deems some contractors under the multi-factor test to be 'workers'.	If not covered by the definition of a 'worker', contractors are not covered by government-run workers' compensation schemes.
	Vicarious liability	Multi-factor test	An employer is vicariously liable for any wrongful acts of an employee acting in the course of their employment.	Employers are not vicariously liable for the actions of an independent contractor.
	Work health and safety	State and Commonwealth legislation	Organisations have a primary duty of care to ensure the health and safety of 'workers', a definition which includes contractors and employees, while they are engaged at work. Workers also have statutory obligations under work health and safety legislation, such as taking reasonable care for their own health and safety.	
Taxation	Income tax	Multi-factor test and Commonwealth legislation	Employers required to withhold income tax on behalf of employees (multi-factor test). Employees must pay the personal income tax rate and cannot claim business-related tax deductions.	Contractors liable to pay their own income tax. Contractors that pass the personal services business test (Commonwealth legislation) can claim business tax deductions and pay the company tax rate (if incorporated).
	Payroll tax	State legislation	Employers liable to pay payroll tax for all employees.	Principals are liable to pay payroll tax for most contractors that supply services.
	GST	Multi-factor test	Employees do not have GST obligations.	Contractors must meet GST obligations.
Social safety net	Unemployment insurance, health care	Australia's social safety net does not distinguish between employees and independent contractors		

Notes: [1]Casuals have a right to request unpaid parental leave after being employed for 12 months on a regular and systematic basis. Casuals are entitled to two days' unpaid carers leave and unpaid days off on a public holiday. Casuals are protected from unfair dismissal if they have an ongoing employment contract that the employer has terminated.
Sources: Grattan Institute analysis; ATO (2005); ATO (2014); ATO (2015e); ATO (2015i); Fair Work Ombudsman (2015); Stewart and Alderman (2013); Productivity Commission (2015b)

5 Competition and consumer regulation

The peer-to-peer economy is subject to competition laws, which are intended to help Australians enjoy the benefits of competition: low prices, high quality, and wide choice.[142]

Peer-to-peer platforms may attract the attention of competition regulators in two main ways.[143] First, incumbent firms, worried about maintaining their profits, may try to limit competition from platforms. Regulators will need to consider the range of tactics incumbents might use and be ready to react to rapidly changing market boundaries.

Second, peer-to-peer platforms themselves may acquire market power. Today's competition and consumer laws appear adequate to prevent abuses, but in applying the laws regulators need to be aware of how platforms operate and compete.

5.1.1 Existing competition laws will apply to anti-competitive conduct by incumbents and platforms

Section 46 of the *Competition and Consumer Act* (CCA) prohibits firms from misusing market power (Box 8).[144]

Box 8: **Prohibition on the misuse of market power**

Section 46 of the current *Competition and Consumer Act* seeks to stop firms from misusing market power for an anti-competitive purpose. In its current version, section 46 prohibits an organisation with substantial market power taking advantage of it for the purpose of eliminating or substantially damaging a competitor; preventing entry of a competitor; or deterring or preventing competitive conduct.

The 2015 Competition Policy Review (Harper Review) recommended changes to section 46 to put a greater focus on the effect of conduct on competition. It proposed a revised section that would prohibit any firm with substantial market power from conduct that has the purpose, effect or likely effect of substantially lessening competition. Under the proposal, courts would have to consider both the pro- and anti-competitive effects of a firm's conduct. Courts may be able to consider consumer benefits of a firm's behaviour even if it strengthens the market position of the firm. The Australian Government recently announced it plans to change section 46, as the Review recommended.

Notes: The Harper Review also recommended that the ACCC be empowered to authorise conduct that could otherwise be found to be in breach of section 46. Authorisation would likely be on the basis of a net public benefit test, which would also permit consumer benefits to be considered where they may offset a reduction in competition.
Sources: Harper et al. (2015); Australian Government (2016).

[142] The purpose of competition law is to 'improve the economic welfare of Australians by stopping conduct that would otherwise substantially lessen competition' Sims (2015). Platforms must comply with industry-specific regulation as well (as in the case of ride-sharing and taxi regulation – see Chapter 2).
[143] The competition implications of collective bargaining by independent contractors are considered in Chapter 4.
[144] *Competition and Consumer Act 2010* (Cth) Part IV

Firms are specifically prohibited from 'predatory pricing' (pricing below cost to deter or damage competitors).[145] Section 47 prohibits firms from 'exclusive dealing' (refusing to supply, or attempting to prevent someone else from supplying a customer).[146] All of these might be attempted by a platform or its competitors in seeking to gain advantage.

Competition law also prohibits anti-competitive mergers, arrangements and cartel conduct.[147] Under section 50 of the Act, the ACCC is able to stop mergers if they are likely to have the effect of substantially lessening competition in any market.[148] The Australian Competition Tribunal can authorise a merger on the grounds that it provides a net public benefit.[149] The ACCC can also authorise proposed joint-venture agreements if the public benefit outweighs any public detriment.

[145] Predatory pricing is prohibited by the general misuse of market power provision and by sections 46(1AAA) and (1AA) of the CCA. The Harper review recommended the predatory pricing subsections be repealed if the new effects test is used.
[146] Exclusive dealing may include a platform or firm using its market power to induce suppliers or customers to use or buy integrated services, limiting competition, Deloitte Access Economics (2015b). The Harper Review recommended repealing section 47; the Government has yet to make a decision on this recommendation, Treasury (2015a).
[147] Platforms are not allowed to make or give effect to arrangements that contain cartel or exclusionary provisions (CCA s 4D and cartel prohibitions) and are also prohibited from making or giving effect to arrangements that have the purpose, effect, or likely effect of substantially lessening competition (CCA s 45).
[148] Similarly, firms are not allowed to collude or make 'anti-competitive agreements' with other firms if this has the purpose, or has or is likely to have the effect of substantially lessening competition (section 45).
[149] CCA ss 95AT and 95AZH. The Australian Competition Tribunal hears merger authorisation cases and reviews of determinations of the ACCC.

5.2 Network effects are critical in applying competition law to platforms and their competitors

In applying competition laws to the peer-to-peer economy, regulators and courts must understand how 'network effects' influence the behaviour of platforms and their competitors, and how the interests of consumers may be promoted or harmed. A platform exhibits network effects if the cost per user falls, or value per user rises, as the number of users grows.

The ACCC and the courts will need to consider the pro- and anti-consumer aspects of network effects in applying competition law. ACCC and courts already have plenty of experience dealing with network effects in different industries, including cases in credit cards, energy and telecommunications networks.[150]

Misuse of market power: in applying the misuse of market power test, regulators should observe that platforms compete aggressively to build and then profit from network effects. For example, a platform may price aggressively to build scale, benefiting consumers in the short run but possibly reducing competition and harming consumers in the longer run. If a platform does attract a large user base, it may seek to prevent users from operating on competing platforms. The current prohibition on the misuse of market power (Box 8) deals with these opposing forces by considering the purpose of any behaviour and its effect on competitors. It remains to be seen how this situation would be assessed under the proposed new version of this prohibition.

[150] ACCC (2013c)

Exclusive dealing: platforms would be prohibited from preventing suppliers using a competing platform if to do would be likely to substantially lessen competition.[151] Exclusive dealing provisions may also prohibit platforms or other firms from requiring their suppliers to use additional services (such as a payment system). The ACCC has considered closely related issues in cases involving supermarkets, mining, petrol stations and telecommunications.[152] For example, Visa was fined for preventing merchants using its payment platform from offering their customers competing payment platforms.[153]

Mergers: the ACCC and the courts are also familiar with evaluating network effects when assessing the effects on competition from proposed mergers, joint ventures and other agreements.[154] For example, the ACCC rejected a proposed acquisition of Trading Post by Carsales on the basis that it was likely to result in a substantial lessening of competition in automotive classified advertising.[155] Similarly, the recent ACCC authorisation of a joint venture between incumbent taxi operators shows that it considers network effects when analysing how platforms compete (Box 9).

More generally, access by competitors to peer-to-peer platforms may become an important issue in competition policy. Access to infrastructure has long been an important part of the *Competition and Consumer Act* (Part IIIA, and the industry-specific regimes for telecommunications and energy). In deciding to authorise the joint venture to create and operate taxi booking app ihail, the ACCC appears to have considered access: the joint venture parties agreed to allow taxis from competing taxi networks to operate on their platform. In time, it is conceivable that regulators may need to develop an approach to mandating access by competitors to major peer-to-peer platforms.

Box 9: **ACCC authorises the 'ihail' taxi booking app**

The ACCC recently granted conditional authorisation for a joint venture agreement between multiple taxi companies and Cabcharge to create 'ihail', a taxi booking and payments platform.

The draft ACCC determination had rejected the proponents' initial ihail proposal. The proponents than made a number of changes. They allowed passengers to select their preferred taxi network on the app and to pay cash rather than through the app if they wished. They allowed drivers to 'opt-in' to the booking app rather than opting-out, and allowed taxi networks that are not members of the joint venture to sign up to the app.

A factor in the ACCC decision may have been that the legalisation of ride-sharing in NSW and elsewhere provided additional competition for ihail. In its draft determination, the ACCC had noted that competitive pressure from ride sharing was not assured.

Sources: ACCC (2016); ACCC (2015b); ACCC (2015a)

[151] Exclusive dealing may also fall under the general provision prohibiting misuse of market power, CCA s 46.
[152] *ACCC v Metcash; Fortescue Metals Group; Australian Gas Light Company (AGL) v ACCC;* ACCC (2013a); ACCC (2003).
[153] ACCC (2015d)
[154] ACCC (2012)
[155] Ibid.

5.3 Consumer protection and peer-to-peer platforms

The emergence of the peer-to-peer economy has led to concerns about consumer safety. Some consumers are concerned that service quality may be low, that safety may be compromised or that it will be difficult to know who is responsible if something goes wrong. The Australian Consumer Law (ACL) applies to both platforms and suppliers who are in business. Industry-specific regulation also applies in some cases.[156]

5.3.1 Platform reviews encourage good service

If there is a single innovation that is most responsible for the success of the peer-to-peer platform model, it is the peer review system. Suppliers know that they will be reviewed and that the review will be visible to potential customers. That provides a strong incentive for suppliers to be trustworthy and reliable. Platforms, in turn, have strong incentives to design review systems that work well to control peer misbehaviour such as misleading advertising, failure to deliver, or fraud.[157] The rating and review systems offered by most platforms help screen out bad actors, reward good service, and provide detailed feedback on what consumers value. Review systems help to radically expand the range of possible trading partners: eBay and Amazon ratings systems enable buyers to trust sellers across the world, despite limited knowledge of their operations, by providing a summary of previous buyers' assessments of the seller.[158]

Ratings systems are, however, imperfect. Users can post false or misleading reviews, or unconscious bias can influence reviews.[159] Reviews on platforms can seem overly positive.[160] Some customers review positively in the hope of a reciprocal positive review.[161] Customers who had positive experiences are more likely to leave a review. But despite these imperfections, the rapid growth of transactions on platforms suggests that ratings systems work tolerably well.[162] Whether they succeed or fail, consumer law applies.

5.3.2 Services supplied on platforms are protected by consumer law

The ACL covers consumer protection and fair trading for all consumers and businesses operating in Australia.[163] The ACL applies in principle to both 'peers' and to platforms. Most sections in the ACL relevant to the peer-to-peer economy require a person or business to be in 'trade or commerce'.[164] Some small, part-time peer-to-peer suppliers may therefore not fall under the ACL if they do not meet this threshold.

[156] Deloitte Access Economics (2015b)
[157] For example, Airbnb changed its review system in 2014 so that users publish reviews only after the 'host' and the guest have both written their review (or after 14 days, when the review period ends). Before this change, reviews were published immediately. Airbnb made this change to counteract retaliatory rating, which may have inflated reviews (Airbnb (2014a)).
[158] Thierer, *et al.* (2015)
[159] Aral (2013)
[160] Zervas, *et al.* (2015)
[161] Fradkin, *et al.* (2015)
[162] Ibid.
[163] Schedule 2 of the *Competition and Consumer Act 2010* (Cth).
[164] The term, defined in section 2 of the ACL as, 'trade or commerce… includes any business or professional activity (whether or not carried on for profit)' has been given a wide definition by the courts (Nguyen and Oliver (2013)).

Platforms that are more involved in controlling how a service is advertised and delivered will typically be found to have greater responsibility for it. For example, if a platform implies that their background checks and feedback make using their service safe, they are likely to be found responsible for ensuring that those checks are effective.

Elements of the ACL that are relevant to the peer-to-peer economy include misleading and deceptive conduct, unfair terms in contracts, service quality, unconscionable conduct and compliance with safety standards (Table 5.1). If suppliers breach conditions set out under the ACL, they may be subject to fines and liable to refund the customer or pay damages.

First, 'conduct that is misleading or deceptive' is prohibited by section 18 of the ACL. For example, a peer-to-peer accommodation host who states in an advertisement that the beach is a five-minute walk, when it is actually thirty minutes, would be in breach of section 18, and can be liable for fines or damages for engaging in misleading or deceptive conduct.[165]

Platforms may be found responsible for claims made by both suppliers, and by customers in posting reviews. [166] For example, the ACCC's 2013 guidelines for online review websites seek to ensure that consumers are not misled by reviews.[167] The guidelines state that websites are required to remove fake reviews, disclose commercial relationships, and not edit or omit reviews if to do so would be misleading. Review sites are not obliged, however, to substantiate or verify legitimate reviews by actual consumers. Because peer-to-peer platforms also host reviews, they are likely to be subject to the same obligations as online review sites. Further judicial decisions may be needed before a clear set of responsibilities can be set out.[168]

Depending on the circumstances, a platform may not be liable for misleading information posted by users. The ACL provides for a 'publisher's defence' to a claim of misleading and deceptive conduct. It protects information providers from being accountable for representations if they were not aware that the representation was misleading.[169] In *Google v ACCC*, the High Court held that Google did not engage in misleading or deceptive conduct when it displayed 'sponsored links' that were considered misleading or deceptive, as it did not author the links or endorse the misleading representations.[170]

[165] Dynamic pricing, a feature of some platforms, may be subject to claims of misleading or deceptive conduct if the reason given for a rise in price is not justified or if it is implemented in a way that misleads customers.
[166] Deloitte Access Economics (2015b)
[167] ACCC (2013d)

[168] A platform might even be sued by a supplier for defamation if an untrue review is posted and the platform does not remove it when made aware of it.
[169] CCA s 19
[170] *Google v ACCC* (2013) 87 ALJR 235; King (2013). This contrasts with the decision of the Court of Justice of the European Union in the 'Right to be Forgotten' case (*Google Spain v González*), where the court held that Google must remove links to personal information even when it is not the publisher of the content.

Table 5.1: Provisions in the ACL that apply to the peer-to-peer economy suppliers and some platforms

Provision	Description	Applicable to platforms?
Misleading and deceptive conduct s18	Platforms and suppliers must not mislead or deceive customers.	Yes; publishers' defence may apply
Unconscionable conduct ss20-22	Platforms and suppliers must not engage in 'unconscionable conduct'.	Yes
Unfair contract terms ss23-28	A supplier cannot include 'unfair contract terms' in standard form contracts; if a term is found to be unfair it will be considered void by a court.	Yes
Failure to supply s36	A supplier is liable for a pecuniary penalty if they fail to supply a good or service that a consumer has paid for.	A platform may be liable if it is involved in the supply of the good or service.
Due care and skill s60	Someone supplying a service must use 'due care and skill'.	
Product safety standards ss106-107	Suppliers of goods and 'product-related services' must comply with relevant product safety standards.	

Sources: Competition and Consumer Act 2010 (Cth); *ACCC (2015c); Beaton-Wells (2015); ACCC (2013b)*

Other ACL sections are also relevant to the peer-to-peer economy, as set out in Table 5.1:

- Suppliers must not engage in 'unconscionable conduct' when dealing with customers; and platforms must not do so with suppliers.[171] Unconscionable conduct is not precisely defined, but relevant factors include the relative bargaining strength of the parties, whether the behaviour was harsh or oppressive and whether the parties acted in good faith.[172]
- A supplier may be fined if they fail to supply a good or service that a consumer has paid for. A platform may also be liable if it is involved in the supply of the good or service, although the extent of this liability is unclear.
- Sections 23-28 of the ACL prohibits unfair contract terms, and applies even to 'standard form contracts' that might be used by global peer-to-peer platforms.
- Section 60 of the ACL requires that someone supplying a service use 'due care and skill'. Suppliers, and platforms that are construed as supplying a service, must meet this standard.

[171] ACL ss 20-22. For example, Coles was ordered to pay $10 million in penalties and costs plus provide refunds for engaging in unconscionable conduct with its suppliers (ACCC (2014b)).
[172] ACCC (2015c); Beaton-Wells (2015)

- Suppliers of goods and 'product-related services' must comply with relevant product safety standards.[173] Some peer-to-peer platform suppliers may supply a good or service that must comply with mandatory safety standards set by the ACCC. Platforms should assist their workers to comply with these laws. A platform may be liable under safety provisions if a platform worker did not meet safety standards if the platform was involved in the supply of the service.

The platform or the 'peer' provider or both could be found to be a 'supplier', depending on what aspects of the supply they control.

5.4 What policymakers should do

Competition and consumer policy for the peer-to-peer economy can improve consumer satisfaction and productivity. Governments should take the following steps.

5.4.1 A peer-to-peer platform code of conduct

Creation of a voluntary industry code of conduct for peer-to-peer platforms could help platforms and suppliers to comply with competition and consumer laws, and reduce their compliance costs. The ACCC can guide industries in developing voluntary codes of conduct.

The code of conduct should include: guidelines for dealing with disputes, including disputed reviews; privacy and handling data; protecting the interests of users who wish to use multiple platforms; informing platform users of their legal rights and responsibilities; and clearly stating how use of the site may affect the validity of other contracts (such as insurance policies).

5.4.2 Competition policy

The ACCC should seek to apply competition laws in light of the network effects that operate on peer-to-peer platforms. It could also provide guidelines on how competition laws apply to peer-to-peer platforms.

The Commonwealth should encourage the states to undertake reforms such as in taxi regulation (as discussed in Chapter 2). It should also ensure resourcing of the ACCC is adequate to enable it to investigate and prosecute anti-competitive behaviour.

5.4.3 Consumer policy

The ACCC should develop guidelines for platforms – similar to the guidelines for online review websites – about their responsibilities in publishing and maintaining ratings systems; including guidance in how the publisher's defence may apply to platforms. It should also encourage platforms to inform suppliers (including small 'household' peer providers) about their obligations under the ACL.

The Treasury has been charged with a review into consumer law and policy. The review should consider the scope of the publishers' defence for platforms; the appropriateness of the current trade or commerce test for peer-to-peer providers; and should develop principles on how consumer law responsibility should be allocated between peers or platforms.

[173] Product-related services include the installation, maintenance, repair, cleaning, assembly or deliver of consumer goods (ACL s 106-107).

6 Tax and the peer-to-peer economy

Australian tax laws cover peer-to-peer economy participants as they cover other individuals and companies operating in Australia. Peer-to-peer suppliers' income is subject to income tax, and personal tax avoidance is difficult. Additional economic activity on peer-to-peer platforms may boost tax revenues.

Yet under current laws, the rise of peer-to-peer economy might cut the GST and company tax the government collects as a share of total income. That is because, first, platforms will help some small suppliers, many of whom are likely to fall below the GST registration threshold of $75,000, to displace larger firms. In the case of accommodation, short-stay suppliers using platforms are exempt from charging GST, while the hotels (and some serviced apartments) with whom they compete are not. As the peer-to-peer economy grows, these revenue losses could become significant.

Secondly, the government faces a tax challenge as global electronic services become more important to the economy. While overseas-based peer-to-peer platforms are just one of many such operators, governments have work to do to ensure they pay an appropriate amount of Australian company tax. Global agreements and unilateral action have begun to address the problem of base erosion and profit-shifting (BEPS) but they have a long way to go.

6.1 Peer-to-peer is subject to tax, but the tax share of income may fall

Australia's tax laws were not designed with the peer-to-peer economy in mind, but they apply to it. Personal income tax and capital gains tax laws are set appropriately for this new economy, but GST and company tax laws may need to be adjusted.

6.1.1 Suppliers are liable for income and capital gains tax on their peer-to-peer activities

Most income of suppliers in the peer-to-peer economy is taxable income, and avoidance will be difficult as most transactions are electronic.

Income earned by platform providers is assessable income for tax purposes if the Australian Tax Office (ATO) considers the activity to be a business and not a hobby.[174] The ATO looks at whether there is a registered business name, an intent to make a profit and whether the activity is planned, organised and carried out in a business-like manner.[175] If an activity is neither a hobby nor a business, the person undertaking it is defined as an employee, and is subject to taxation rules on employment income (the employer withholds PAYG and applicable deductions, for example).

The ATO is likely to consider most peer-to-peer economy providers as carrying on a business. It has stated that all income earned from renting out all or part of a home (through a platform

[174] ATO (2015n)
[175] ATO (2015a). A hobby is something done for pleasure or recreation. Business income may be subject to rules relating to 'personal services income' ATO (2015i).

or not) is assessable income, as is income earned driving for a ride-sharing platform.[176]

The peer-to-peer economy raises no specific capital gains tax issues. Short-stay rentals, like long-term rentals, can reduce the capital gains tax exemption for the main residence.[177] If a person rents out their entire primary residence, they lose the capital gains tax exemption for that period, unless they meet certain tests.[178] If a person living in their primary residence rents out a room, the portion of a residence that is rented and the time it is rented for is subject to capital gains tax.

6.1.2 As a share of income, GST revenue may fall when peer-to-peer output grows

Peer-to-peer platforms fragment traditional business models, resulting in many small suppliers. Businesses with an annual revenue greater than $75,000 must register for GST.[179] Many peer-to-peer suppliers will fall under the threshold, so less GST will be collected than if the same activities were done by large firms. GST revenue in 2014/15 was about $55 billion,[180] so a 1 per cent shift in GST applicable activity would reduce GST revenue by ~$0.5 billion.

Second, providers of short-stay accommodation through peer-to-peer platforms do not have to charge GST. The ATO has advised that people renting out a room or their house through an accommodation platform are charging residential rents and so are not required to charge GST (Table 6.1).[181] Hotels and some serviced apartments, by contrast, must charge GST. If short-stay accommodation providers take market share from them,[182] GST revenue will be lower than it would have been otherwise.[183]

Point-to-point transport, however, is an exception. Suppliers of taxi, limousine or ride-sharing services must register for GST even if their turnover is lower than $75,000.[184]

[176] ATO (2015m)
[177] Ibid.
[178] If someone has a legitimate reason to move from their main residence (such as for work), they can continue to receive the main residence CGT exemption even if they rent their main residence out, as long as they live in it for at least six months every six years (the temporary absence rule). Subdivision 118-B of *Income Tax Assessment Act 1997* (Cth); ATO (2015b).
[179] Exceptions include if the firm only sells 'input-taxed' goods and services (such as financial services or residential rents) or if the business provides taxi, limousine or ride-sharing services ATO (2015k)). 18 per cent of businesses are under the $75,000 threshold (Productivity Commission (2015a), p.188).
[180] Australian Government (2015)
[181] ATO (2015m). The ATO may also seek to collect GST on service charges by platforms domiciled out of Australia. Payments for most imports of services (see Box 6.1) do not incur GST. If the local platform seller does not charge GST on the entire consumer charge, the service fee of the platform would therefore not include GST if it is treated as a 'service import' (Heinemann and Shume (2015)).
[182] There is some evidence that hotels are losing market share to Airbnb. Zervas, *et al.* (2014).
[183] Hotel revenue was $6 billion in (IBISWorld (2016)). Assuming hotel gross value added is half of revenue, net GST raised from the sector would be about $300 million.
[184] Division 144 of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth). Taxi travel is defined as 'travel that involves transporting passengers, by taxi or limousine, for fares'. The government implemented the exception to the $75,000 minimum turnover rule to avoid confusion that would have resulted if some taxi drivers had to charge GST and others did not; to enable business users to claim an input tax credit on all taxi trips; and to enable consistency across meters. Another policy motivation may have been to reduce tax evasion through cash fares (Rothengatter (2008), ATO (2015l)).

Table 6.1: Who pays GST in the peer-to-peer economy?

Service	Liable for GST?	Threshold?
Passenger transport	Yes for taxis and ride-sharing No for car pooling	$0
Accommodation	Yes for hotels and some serviced apartments No for residential rentals including short-stay rentals	$75,000
Local tasks	Yes	$75,000
Imported tasks (e.g. online designs)	No	N/A
Imported platform services	No	N/A

Source: ATO (2015e)

Therefore, GST revenue will not change much if ride-sharing operators take market share from taxis and hire-cars. Uber is challenging in the Federal Court the ATO's ruling that all UberX drivers must register for GST, but in the interim it has advised its drivers to remit GST to the ATO.[185]

Box 10: The 'Netflix tax', a model for requiring peer-to-peer platforms to collect and remit GST?

Government should consider requiring some peer-to-peer platforms to charge and remit GST. A possible model is the 'Netflix Tax', introduced in the 2015/16 Budget. The 'Netflix tax' is an amendment to the *A New Tax System (Goods and Services Tax) Act 1999* (Cth). It expands the GST base to include purchases of digital goods and services from suppliers outside Australia by Australian consumers. The operator of an 'electronic distribution service' must collect and remit GST when it controls key elements of the supply such as delivery or payments.

The 'Netflix Tax' model could be extended to peer-to-peer platforms operating in Australia. Government could require them to collect and remit GST for the transactions they facilitate, maintaining GST coverage as the share of small providers grows.

Requiring platforms to collect and remit GST would remove the need for individual suppliers to do so (as Uber drivers must do at present). Yet suppliers would still need to record expenses to claim GST input tax credits. An alternative way to maintain GST revenues would be to lower the turnover threshold for GST registration. Yet this may impose higher administration costs on suppliers than the Netflix model would, as suppliers would have to remit GST individually.

Source: Treasury (2015b)

[185] Battersby (2015a); ATO (2015d). If the Federal Court overturns the ATO's determination on the definition of taxi travel, government could consider passing legislation defining taxi travel to include ride-sharing.

6.1.3 Base erosion and profit shifting by multinational platforms offsets the benefits of peer-to-peer platforms

Ensuring that overseas-based companies, including peer-to-peer platforms that operate in Australia, pay an appropriate amount of company tax is a major challenge. It requires global cooperation and Australian government action. The government is implementing some recommendations made by the BEPS Project of the OECD and the G20, and is making some domestic changes to tax laws. Yet further action is required to ensure tax revenue losses do not offset the benefits from the peer-to-peer economy.

Multinational companies may use a variety of legal tax planning strategies to minimise company tax, resulting in what has come to be called 'base erosion and profit shifting' (BEPS). The OECD defines BEPS as 'tax planning strategies that exploit … gaps and mismatches in tax rules to artificially shift profits to low or no-tax locations where there is little or no economic activity, resulting in little or no overall corporate tax being paid'.[186]

BEPS covers a wide range of strategies to reduce tax.[187] One is to send customers' payments directly to an overseas parent located in a low-tax jurisdiction.[188] The parent company then pays the local subsidiary a service fee (for activities such as marketing) that just exceeds its costs, leaving the subsidiary with negligible taxable income. Overseas parents of Airbnb and Uber located in a low-tax jurisdiction charge Australian customers. They then pay their Australian operations such a service fee.[189]

If multinational-owned platforms pursue aggressive tax minimisation strategies while they displace Australian-based companies, the loss in tax revenue could partly or even wholly outweigh the local productivity and consumer gains created by their services. For example, the operators of taxi networks pay company tax. If ride-sharing providers capture market share at the expense of taxis, and use BEPS strategies to pay minimal company tax, then domestic tax revenue could fall.

Only multi-national action can fully address the BEPS problem. The OECD and G20 final report, released in October 2015, outlines many strategies to combat BEPS. They include country-by-country reporting of multinational enterprises, improved information exchanges among jurisdictions and new policies relating to the treatment of intellectual property.[190]

The Commonwealth Government has implemented the country-by-country reporting requirements proposed in the OECD/G20 plan.[191] It has also made some unilateral changes in an attempt to limit BEPS.[192] In December 2015, it passed legislation strengthening the general anti-avoidance rules to cover

[186] OECD (2016)
[187] OECD (2015a)
[188] Khadem (2015)
[189] Ting (2015)
[190] OECD (2015b)
[191] The government signed a multinational agreement to share country-by-country reports with 30 other countries (ATO (2016a)).
[192] Unilateral action may risk undermining global efforts to combat BEPS or result in double taxation (Palmer (2015)). The OECD (2016) states that BEPS is 'a global problem which requires global solutions'.

multinationals that artificially avoid having a taxable presence in Australia.[193] The ATO is also scrutinising overseas marketing and procurement hubs.[194]

6.2 What government should do

The Commonwealth Government should continue to pursue a comprehensive global agreement on BEPS to ensure that firms operating in Australia pay a similar proportion of company tax to all other companies. The government should consider further unilateral policy action where appropriate.

The ATO should also require information from platforms where it would reduce the administrative burden for participants, and minimise tax avoidance. The ATO should also continue to provide guidance for peer-to-peer service providers to improve compliance.

If GST revenues are being eroded by growth of small peer-to-peer suppliers at the expense of large firms the ATO could require peer-to-peer platforms to collect and remit GST on behalf of suppliers (see Box 10). The government will learn lessons from the implementation of the Netflix tax.

[193] Informally known as a 'diverted profits tax' or 'Google tax'. Drysdale (2015); ATO (2015c); KMPG (2015); ATO (2016b).
[194] ATO (2015g); ATO (2015h)

7 Conclusion

Peer-to-peer platforms are building better markets. By cutting the costs of searching and transacting with strangers, they help make a more trusting and productive economy.

This report recommends a first round of reforms that will help position Australia to get the most from the peer-to-peer economy.

First, governments should legalise ride-sharing. The NSW and ACT reforms provide good models for other governments to follow. Consumers will benefit from lower prices and waiting times and better service as ride-sharing services and taxis compete for customers. Drivers will benefit from access to flexible work. Partial compensation to taxi licence holders, if offered, should be limited to people who bought taxi licences recently, and/or suffer severe financial hardship because of these changes.

Second, peer-to-peer accommodation offers benefits to both hosts and guests. But it can cause disruptions to neighbours, and so complaints need to be able to be managed quickly. Governments should make it easy for owners' corporations and local councils to hold owners accountable when their short-stay tenants disrupt neighbours. Local governments should focus on protecting amenity, not banning all short-stay rentals when many do not cause problems.

Third, peer-to-peer platforms will mostly improve an already diverse and flexible – but imperfect – labour market. Platforms already provide work and income for many thousands of people. Creating a 'platform contractor' category of worker is not required yet, but some other reforms are needed. Platforms should be encouraged to inform new workers about their responsibilities as independent contractors. Selected platforms should be brought into workers' compensation schemes. Sham contracting provisions should be tightened to deter improper classification of workers.

Fourth, while the government did not develop competition laws with the peer-to-peer economy in mind, existing laws are flexible enough to capture anti-competitive conduct by platforms or incumbents. The main challenge for the ACCC is that platforms are likely to exhibit network effects that can benefit users but can result in strong market power for successful platforms.

Similarly, consumer laws do not need major changes to function well in the peer-to-peer economy. Rating and review systems, in the context of the broader protections offered by consumer law, will encourage high-quality service and good behaviour by peers. The main challenge for consumer law is to define the responsibility of platforms when their role is partly that of a producer and partly an intermediary.

Finally, most income earned by suppliers will be assessable income for income tax purposes. But the tax take on economic activity will tend to fall as the peer-to-peer economy grows, because small providers and multinational firms tend to pay less tax. The government should continue to address base erosion and profit shifting.

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