

Unacceptable Risks:

The Dangers of Gig Models of Care and Support Work

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Summary

Care and support work through digital labour platforms is precarious work which represents a step backwards from progress towards ensuring this essential work is recognised as skilled, work is secure, and workers are paid fairly. Gig work in public care and support systems is undermining efforts to advance economic equality for women by distancing workers from employment standards, decent pay, training and progression opportunities and access to collective representation.

This report describes the unacceptable risks facing care and support workers engaged as independent contractors by gig platforms operating in Australia's publicly funded aged care and disability support systems. It also describes how the presence of gig care platforms threatens the viability of service providers that directly employ workers and undermines system quality and safety.

Gig care work platforms are facilitating the shift of large numbers of care and support workers away from secure employment to insecure work in individual contracting arrangements. As in the broader care workforce in Australia, most care and support workers using platforms are women. Many workers on platforms are younger workers and many are recent migrants. A high proportion are new to care and support work.

As independent contractors, platform workers have few rights and protections and are in jobs without access to training and development, supervision, peer support or any certainty of ongoing work or opportunities for career progression. Workers have no access to paid leave or minimum employment standards and they do not receive superannuation contributions. Platform workers do not have income security or severance rights and are not covered by workers' compensation in the event of injury. They are highly vulnerable to exploitation and unfair treatment. On platforms, care and support workers perform their work in isolation, in environments known to carry high health and safety risks, without peer or organisational support, and they are responsible for their own training and for the safety and quality of care services.

Platforms appeal to workers by suggesting they can earn more than employees. However, this is clearly not the case for many care and support workers on platforms. Workers' lack of access to benefits and protections such as superannuation can have significant negative impacts over the life-course.

Most digital platforms are not accountable for the quality of care and support provided through their platforms. Unlike registered service providers, they avoid accountability for quality and safety by devolving this to individual workers.

In Australia's markets for publicly-funded aged care and disability support services, digital care platforms compete directly with other service providers for individuals' custom. Platforms benefit by avoiding legal regulation and reducing labour costs, minimising capital investment, avoiding costs of supervising the work, avoiding worker collective action, and shifting the risks of fluctuations in demand to workers.

The Australian Government has committed to establishing protections and standards for gig workers, promising to extend the powers of the Fair Work Commission to include 'employee-like' forms of work. These reforms must be designed so that they restore *full* employment rights and benefits to all care and support workers. Without such reforms efforts to progress gender equality and properly value and reward care and support work will continue to be undermined.

Urgent reforms are also needed to tackle underlying problems of insecure and informalised work that have largely been produced by aspects of the design, management and regulation of Australia's care and support systems. Care and support pricing and regulatory arrangements urgently need reform. Mandatory registration of service providers is necessary to prevent providers, platforms, and other third parties from gaining unfair advantages and profiting from devolving costs and risks of employment, business and quality services to workers and to people requiring care and support.

The individualised direct consumer funding arrangements in the NDIS are designed to enable individual consumers and their families to directly employ or engage their care and support workers. These arrangements place workers outside the effective reach of employment regulation in an informalised 'grey' economy of household employment. As the international experience has shown, such care workforces become populated by vulnerable workers who are isolated and invisible in insecure work with low pay.

In Australia, there has been little discussion or debate about how to support the autonomy and independence of people with disability through choice and control, without creating individualised employment or contracting relationships. This issue should be addressed as an urgent matter of care policy and regulation.

As the design, management and funding of our long-term care systems are in the hands of government, aged care and disability systems policy and regulation can be used to ensure all care and support workers are employed in decent jobs.

Introduction

The rapid growth of digital platform or 'gig' work has generated enormous discussion about the implications for workers and the need for regulation to prevent workers on digital platforms being engaged without minimum pay and conditions standards and other labour protections and rights. In Australia, as elsewhere, the focus of attention has been mainly on the more visible platform workers, such as food delivery and transport or ride-share workers, who undertake location-based platform work in public settings, and on platform workers who perform on-line 'crowdwork'. Until recently, there has been little attention paid to women's experiences of platform work or to the growing phenomenon of platform-mediated care and support work undertaken in the private setting of other people's homes.

In Australia it is in publicly-funded and managed cash-for-care markets for disability support under the NDIS and home care for the aged that the intervention of digital care platforms is having the greatest impacts on care workers and care systems.

Like other digital labour platforms, care platforms provide the digital infrastructure for buyers and sellers of labour to connect with each other. Workers post their profiles and availability on the platform via an app and people requiring personal care and support choose the worker/s they prefer and request their services. Workers are constituted as independent contractors, ostensibly engaged by care and support clients. The platforms maintain they merely provide marketplaces and are not employers. Yet, they take ongoing fees from workers and exert control over them in a variety of ways.

The presence and problems of a gig economy in Australia's publicly-funded aged care and disability support systems have only recently gained the attention of policy makers. This has followed the election of a Federal Labor Government and submissions by unions and others to government inquiries into platform work (James 2020, Parliament of Australia 2021, Parliament of New South Wales 2022).

However, there remains a dearth of information about the nature of risks inherent in gig work for care and support workers and there has been little public discussion about the design of regulatory solutions to the problems for workers in the community services and care sectors. There is also considerable resistance from platforms and others, including some consumers, to regulating platform care and support work. When considerations of platform workers' lack of access to minimum employment standards and protections are under discussion, there has been a tendency to weigh

these problems up against perceived benefits for platform users rather than to seek solutions to these problems.

This report focuses on personal care and support work on digital platforms that operate in Australia's publicly-funded and managed aged care and disability support systems. It documents what is known about the risks for personal care and support workers of working through digital platforms and it examines options for regulating platform care and support work.

First, the report provides an overview of paid care and support work and developments in Australia's public long-term care and support systems in which digital labour platforms are now key players. It then explains how platforms intermediate work relationships, compete and aim to make money in Australia's individual consumer care markets. The report then turns to consider risks for care and support platform workers. The final sections of the report are concerned with options for regulating digital platform care and support work.

Alongside action to regulate digital platform care and support work, it will be important to ensure other forms of low-paid, insecure and informalised work do not continue to grow in the individualised quasi-markets for long-term care and support. An industrial relations regulatory model that ensures minimum standards for *all* care and support workers across the NDIS and aged care systems, regardless of their employment arrangements and relationships is needed. Reform of care and support policy and regulation is also required to build sustainable care systems that provide decent jobs for a skilled workforce of care and support workers who can provide good quality care and support.

Paid Care and Support Work in Australia

Personal care and support workers for the aged and people with disability are a large and rapidly growing workforce. In 2021 this personal care and support workforce comprised around 270,000 people. After nurses, this is the largest occupation in the Healthcare and Social Assistance industry (NSC 2021, 11).

Changing demographics, including an ageing population, are a driver of strong growth in the occupation. Over the past decade, the NDIS has been another important driver. Between 2015 and 2021 growth in the care and support workforce was triple that of the Australian workforce overall, and strong growth is expected to continue (NSC 2021, 2022, 89).

Four in every five workers (80%) providing personal care and support to the aged and people with disability are women (NSC 2021, 51-52). Many are low paid and in insecure jobs with part-time hours and poor working conditions.

Since the 1970s feminist economists and others have argued care jobs are undervalued on the basis of gender; that is, these jobs are low paid *because* of their association with the unpaid care work performed by women in families. In other words, the skills involved in care and support work are not fully recognised due to the association of care work with assumed 'natural' female inclinations, rather than skill. An associated idea that continues to underpin the undervaluation this work is that women work selflessly for love rather than money (Folbre and Nelson 2000).

Increased recognition of the complexity of the work and the skills it requires have been part of a very slow, and still very partial, progression towards professionalisation of care and support work in Australia. However, marketisation and individualisation of aged and disability care and support systems have created pressures that are pulling in the opposite direction, as explained below.

Social and community services workers and their unions fought over many years just to gain recognition as workers in Australia's industrial systems (Briggs, Meagher and Healy 2007). In 2012, in an historic equal pay case fought by multiple unions, large pay increases to address gendered undervaluation were awarded to most social and community services workers, including disability support workers (Cortis and Meagher

2013).¹ Since that time, however, community sector wage rates declined in real terms continued to fall further behind pay rates for comparable workers (Macdonald and Pegg 2018).

Aged care workers were not included in the equal pay case. However, in 2022 the Fair Work Commission (FWC) awarded a 15 per cent pay increase to direct care workers in the aged care sector in recognition that existing pay rates do not adequately compensate for the value of the work. Further increases may be granted by the FWC in this case brought by the Health Services Union and the Australian Midwives and Nursing Federation.²

Even if minimum award pay rates are further increased to better reflect the value of care and support work, fair pay and conditions for these workers will continue to be undermined by employment practices and the way work is organised. For example, currently there are very high rates of short part-time hours work in home-based aged care and in disability support work, reflected in high levels of multiple job-holding and underemployment in these workforces. Workers in these sectors often work in multiple short hours jobs over six or seven days a week to make up just 25 hours' work (Macdonald, Bentham and Malone 2018).

The Australian experience follows that of many other countries that have outsourced publicly-funded care and introduced individual consumer funding. The design, management and funding of outsourced public care and support systems underlie some significant pressures that lead to the work being organised by employers in ways that make it difficult for workers to obtain fair pay and decent working conditions. Factors include pressures from reliance on poorly-regulated competitive market-based systems and on private companies to deliver publicly-funded care and support and pressures from individualised direct consumer funding arrangements—also referred to as cash-for-care.

In Australia it is in cash-for-care markets for long-term care and support—in disability support under the NDIS in particular, and to a lesser extent home care for the aged—that the intervention of digital platforms appears to be having the greatest impact. Digital platforms for care and support—described in detail in the next section—are also active in private household and personal services markets for household assistance or domestic services.

¹ See Stanford (2020) for detail on the fiscal support from the Commonwealth government that remains essential to maintaining this pay equity initiative.

² Fair Work Commission. (2022). Summary of Decision 4 November 2022, 4 yearly review of modern awards – Aged Care Work Value Case (AM20201/99, AM2021/63 and AM2021/65). [2022] FWCFB 200.

Under the NDIS and aged care home care arrangements, platforms compete for individual consumers' custom with service providers that directly employ care and support workers. People using platforms to source labour can often purchase care and support by the hour at cheaper rates than they can through other service providers, and they have greater control over who provides their care and support and how it is provided. Some features of these cash-for-care arrangements are explained further below as they provide the context for, and insight into, the roles and impacts of digital labour platforms in the care and support systems.

FROM PUBLIC SERVICES TO 'CASH-FOR-CARE' MARKETS

The growth of digital platforms in individual consumer markets for long-term care services has been noted in the UK, the USA, Canada, across the EU, and in Australia (Bennett et al. 2018, Macdonald 2021a, MacLeavy 2021, Trojansky 2020).

Understanding individual long-term care systems and national employment context is important for evaluating the roles digital labour platforms play in these systems.

Platforms' impacts are not just on care and support workers. Platforms can impact and shape care and support markets and systems and affect the quality of publicly-funded care and support.

In markets for long-term care the impacts of digital platforms on workers depend on both the national employment context and care and support policies. In some countries, digital platforms have emerged in labour markets in which care and support work is already highly informalised, with most workers employed in 'grey' private household economies and effectively beyond the reach of much employment regulation (Fudge and Hobden 2018). This is not the case in other countries, including in the publicly-funded long-term care systems in Australia. Here, independent contractors with few rights and protections are being employed on platforms in place of employees who have full rights and protections under Australian labour laws. While the introduction of individualised NDIS funding arrangements is likely to have led to some growth in independent contracting by individuals seeking care and support services, this growth has been greatly facilitated by digital platforms.

Historically, most care and other social services in Australia have been provided by not-for-profit organisations and, to a lesser extent, by public sector providers. Services have been largely funded by governments as they fulfill a public purpose—care is a public good. From the late 1980s onwards, neoliberal policies of competitive tendering and contracting out have seen private for-profit companies increase their presence in publicly-funded and subsidised long-term care sectors, including for-profit service

providers and labour market intermediaries or third parties—such as labour hire agencies—that supply workers to service provider organisations (Meagher and Goodwin 2015).

Today, under ‘marketisation’ policies, for-profit companies compete with not-for-profits to provide early childhood education and care (ECEC), aged care, and most recently, disability services in ‘quasi’ public or ‘managed’ markets (Grudnoff 2022, Macdonald 2021a). Marketisation has involved the privatisation of many formerly public sector services under government competition rules, in the belief that private markets can provide better and cheaper solutions to meeting care and support needs.

Governments remain the creators, funders and managers of care and support markets and they establish and regulate care and support standards. However, under marketised arrangements, they are at a distance from most day-to-day service provision and from the organisation of work and oversight of care and support workers’ employment.

Under Australia’s recently-adopted cash-for-care arrangements, public funds are allocated directly to eligible individuals for them to purchase care and support from their preferred service provider. Service providers compete in the individual consumer market to provide services to people with care and support funding. With the introduction of cash-for-care in disability support and aged care, there is far less public accountability for service quality, both for people receiving services and for workers (especially in the NDIS market for personal support and care).

Australia’s individualised funding arrangements in long-term care are not novel. Cash-for-care arrangements have been on the rise in Europe and North America since the 1990s. Direct individual consumer funding is believed to give people more choice and control over their care and support. Choice and control are central to the concepts of self-determination and independence that are critical to upholding individual human rights (Power 2014). However, a narrower idea of choice is also strongly emphasised in neoliberal free market policies, with individuals conceptualised as consumers and choice understood to be a good in its own right (Glendinning 2008).

In the NDIS, the idea of consumer choice and control has been strongly linked to direct engagement of support workers by individual people with disability who purchase their supports with their NDIS funds. While some representatives of people with disability strongly advocate for these arrangements, others consider that providing this option when there is very limited public accountability for spending and outcomes is transferring unacceptable risks to individuals requiring care and support (Dickinson, Needham and Sullivan 2014). Services may be provided without any organisational oversight and workers may have little access to training. From an employment

perspective, these arrangements place workers on the margins of the formal workforce, where rights and minimum standards may be difficult for workers to access, as work arrangements become privatised, negotiated and managed by individuals and households.

Individualised funding has also been seen as a way for governments to contain care costs (Ungerson and Yeandle 2007). While savings are achieved partly through reducing institution-based care and support, individualised funding also reduces the transaction costs associated with service provision as a result of reduced bureaucracy and labour overheads. Related to this, cost minimisation may also be achieved by paying individuals who require care or support less than the full costs of its provision. Where workers in these schemes are disconnected from labour rights and protections and in low-paid jobs with no progression opportunities (i.e. where engaged as independent contractors or in informal grey economy jobs with households) savings are also obtained on labour costs.

In the implementation of Australia's NDIS there has been a strong focus on reducing supposed inefficiencies in service provision and achieving greater 'value for money' for consumers through reducing the cost of care and support (McKinsey and Company 2018, NDIA 2019). Whether or not there are actually inefficiencies is not something that has received much attention. Rather, the long-standing *underfunding* of services is widely acknowledged (Macdonald and Pegg 2018). Reducing the cost of care and support is most likely to be achieved by reducing spending on wages, workers' entitlements, training and development, supervision, safety and quality assurance, with negative consequences for care quality. It is worth noting there is no evidence that cash-for-care schemes actually reduce the overall costs of providing care and support.

In Australia the emergence of digital care platforms in individualised long-term care markets is facilitating the shift of large numbers of care and support workers away from organisation-based employment arrangements to precarious employment in individual contracting arrangements. Workers employed by service provider organisations were in jobs that could provide training and development, supervision, peer support and some certainty of ongoing work and career progression. Platform work is less secure, fragmented, and organised in ways that leave care and support workers outside the scope of many protections and rights that most workers have under Australian labour laws. They are also disconnected from day-to-day supports and backup, including training, development and career progression opportunities.

Digital Care and Support Platforms: Models, Money and Markets³

Digital platforms and the power they can wield in care and support labour markets have been overlooked in most discussions and debates about digital labour platforms and platform workers. Care and support platforms can operate somewhat differently from other digital labour platforms, providing workers with greater control over the terms of their employment. This could be one factor in the lack of strong interest in care and support platforms, as many concerns about gig work are concerns that gig workers are controlled by platforms but treated as independent contractors. Yet labour platforms *do* exercise significant control over care and support workers and they shape labour markets and the conditions of work in ways which are having significant negative impacts on working conditions, pay, and service quality (Macdonald 2022; McDonald, Williams and Mayes 2021).

Care and support work on platforms fits into the category of ‘location-based’ platform gig work as it involves work undertaken at a specified physical location (Piasna, Zwysen and Drahokoupil 2022). Other location-based gig work includes passenger transport (such as Uber) and food delivery (such as Foodora and Deliveroo). Location-based platforms are distinguished from ‘crowdwork’ platforms, in which the work can be performed anywhere, and is often performed online.

Care and support work is usually undertaken in the home of an individual client or may involve the worker accompanying a person in the community. Workers access jobs via a web-based app; they post their personal profiles on the platform site and can apply for job vacancies. People seeking care and support post job vacancies and can contact workers they would like to bid for their jobs. Platforms rank worker profiles using algorithms that draw on customer ratings of workers, information provided by workers in their personal profiles, and other factors that are not always known to either workers or consumers (for example, scores based on the past availability of workers or

³ Some information in this and subsequent sections is drawn from our own content analysis of publicly-available materials produced by platform companies and on the author’s interviews with workers using care platforms conducted between 2017 to 2020. Other sources are cited in the text.

the frequency of communication between workers and their clients as recorded by the platform).

Care and support jobs accessed via platforms include *direct* face-to-face personal care and support and *indirect* care and support, with work often involving both these overlapping activities. Indirect care and support work activities advertised on platforms include household tasks such as domestic cleaning and food preparation that often overlap with direct care and support (ILO 2018, 6). Allied health workers, nurses, nannies, child minders, personal support workers for the frail elderly (aged care workers) and support workers for people with disability may undertake mainly direct care and support tasks. However, indirect and direct care and support are not easily separated and many workers' roles involve both.

Internationally, digital platforms for care and support first appeared in the mid-2000s. Over the past decade they have grown in number in both high and low income countries (Hunt and Samman 2019). In Australia, these types of platforms have emerged since 2014, coinciding with the establishment of the NDIS individualised care and support market (Macdonald 2021a).

Digital care and support platform companies include some large companies with multi-national operations as well as many smaller ones operating nationally or in a region. Globally, one of the largest platforms is *Care.com* which was established in the USA in 2006 and now operates in 17 countries, including Australia (Care.com 2022). In Australia, the most visible and probably the largest platform operating in the NDIS and aged care markets is *Mable*, a private firm founded in 2014 in Australia, originally called *Better Caring* (Aged Care Guide 2015). Mable (2022c) claim to have 'around 11,000 approved and active workers' registered on their website.

MODELS: HOW DIGITAL PLATFORMS INTERMEDIATE CARE AND SUPPORT WORK

Like digital platforms for other types of labour, care and support platforms use computer algorithms to manage the distribution of work and to build customer ratings into their ranking systems. Like other digital labour platforms, most organise work through an 'on-demand' model and engage workers as independent contractors.

Unlike most other platforms for on-location gig work, not all care and support platforms use piece rate systems (i.e. a set rate of pay for the task regardless of the time it takes). In Australia, platforms intermediating *indirect* care work—including domestic cleaning—often organise work, and pay workers, using piece rates. However

direct personal care and support work on platforms is often paid on the basis of time rather than on the basis of task, with workers lodging timesheets via platforms' apps. Platforms targeting aged care and NDIS clients who have public funding packages pay workers on the basis of time.

There are a number of different operating models used by digital care and support platforms in Australia and elsewhere. Under all models platforms make their money by taking fees from care and support workers and also sometimes from consumers/clients. Where a worker's pay is based on labour time, the hourly rate of pay may be agreed between the client and the worker, rather than set by the platform. This feature of care and support platforms' operations is one basis of platform companies' claims that their role is limited to the creation of a marketplace and they are 'horizontal' platforms that exert no control over pay or services (Parliament of New South Wales 2022, 107; see also McDonald, Williams and Mayes 2019). Nevertheless, while not all platforms determine final agreed pay rates, they do place constraints on and/or strongly influence rates. All care and support platforms exert control over workers, work and pay, as explained below. Platforms use algorithms and consumer ratings to filter and rank worker profiles, controlling which workers have an opportunity to be considered for a job and constraining worker behaviour. Ratings systems operate as systems for disciplining workers. A poor rating from a consumer, regardless of whether it is a fair rating, can cause a worker to lose future work opportunities or compel them to put up with unfair or exploitative treatment (Flanagan 2019, Macdonald 2021a).

One operating model adopted by care and support platforms involves the platform taking membership subscriptions from both consumers and workers, with tiered memberships providing different levels of access to the platform's 'marketplace' (see for example, *Care.com*). People looking for workers may be able to post their job vacancies to the platform free of charge; however, to view workers' applications and contact workers they must purchase monthly or annual subscriptions. The platform uses algorithms based on customer ratings and other information to allocate job leads to workers. Workers can view and submit applications for available jobs, often without paying fees. However, they pay membership subscriptions to have their profiles appear higher in search results and to add personal messages to their profiles when applying for jobs — a practice that is strongly recommended by platforms as improving workers' chances of getting employed. Platforms using this model often charge workers annual fees for background checking services that give workers 'verification' ticks on their profiles. Under this model workers can pay fees to the platform but never actually get any work.

This model is closer to being an introduction service or marketplace than are other common care and support platform models. In Australia, platforms adopting this model include many that carry notices for one-off jobs funded by households, including ‘babysitting’, ‘housekeeping’ and pet care jobs. Such platforms may have little or no continuing involvement in the work relationships between workers and clients. *Care.com* is one such platform. Like other digital labour platforms the company insists that it does not have employment relationships with people performing work via the platform (Minter 2017). *Care.com*’s Australian ‘Terms of Use’ page includes: ‘Care Seekers are the potential employers of Carers and are responsible for compliance with all applicable employment and other laws in connection with any employment relationship they establish ...’ (Care.com 2022). The platform also maintains it is not an employment or recruitment agency.

A second model is common among the platforms that operate in Australia’s publicly-funded care and support markets, targeting clients with NDIS support plans and aged care home care packages (including *CareSeekers*, *Find A Carer*, *Five Good Friends*, *Homage*, *Kynd*, *Like A Family*, *Mable*, and *Support Network*). Under this model platforms intermediate work relationships, including processing all payments between clients and workers who are independent contractors engaged by clients to provide care and support services. Platforms take ongoing commission payments for each hour of labour, taking most money from workers. Most platforms take a share of the service fee agreed between the worker and the client. For example, *Mable* deducts a 10 per cent fee from the hourly rate agreed between the worker and the client and also charges the client a five per cent platform fee. So, on this platform, if a worker and client agreed on a fee of \$50 an hour, the worker would be paid \$45 (after the platform deducts 10%) and the client would pay the platform \$52.50 (the agreed fee plus a 5% platform charge). Thus, the platform would receive \$7.50 (14% of the client’s total payment).

Platforms adopting this type of model insist workers are independent contractors and they require workers to have an ABN (Australian Business Number)—even though there may be no legal requirement for a worker to have one.⁴ Platforms undertake basic screening of workers, including checking mandatory care and support system clearances (such as police checks). They use algorithmic management—incorporating consumer ratings and other information about workers — to filter and rank workers to

⁴ Businesses with an annual turnover of \$75,000 or more are required by law to have an ABN. Businesses with turnover of less than \$75,000 are not required to have one. However there are incentives in the treatment of their tax obligations for them to do so (Australian Government 2021; see <https://www.abr.gov.au/business-super-funds-charities/applying-abn/abn-important-facts>).

determine the visibility of workers' personal profiles on the platform and to direct people seeking care and support to particular workers.

Care platforms differ from other digital labour platforms in that they encourage workers to provide a great deal of personal information on their online profiles and to potential clients to 'establish their trustworthiness' to clients (Mateescu and Ticona 2021). This information is also used to classify workers. This has implications for controlling platform workers' behaviour and it creates potential for discrimination and reproduction of inequalities based on gender, race and class.

Platforms exert control over workers through controlling workers' access to jobs by using the information provided by workers and care users' ratings of workers to determine workers' visibility on the platform for particular jobs. They also control workers in other ways, with some platforms requiring workers to use platform apps to communicate with clients, to log on and off from care visits, and to provide mandatory care reports (e.g. Five Good Friends 2022b; see also McDonald, Williams and Mayes 2019). In treating workers as independent contractors platforms shift the usual risks of business to care workers and to care clients. Increased risks for clients arise as platforms are not accountable for workers' attendance or for filling shifts if workers can't attend jobs. The most prominent platforms in the care markets are not accountable for workers' performance or for the quality or safety of the care and support organised via their platforms.

MONEY: HOW DIGITAL CARE AND SUPPORT PLATFORMS AIM TO GENERATE PROFIT

As with other digital labour platforms, technological innovation is often celebrated as the basis of the digital platform model for care and support. Yet it is the triangular relationship, rather than technological innovation, that is at the heart of the business model. This is a model that 'has been typical of many previous business models throughout the history of capitalism' (Stanford 2017, 4).

Rather than being driven by the availability of digital technologies, the emergence and growth of digital labour platforms can be understood as part of a trend dating back to work relationships that were prevalent in the 19th and early 20th centuries, in which work was much more precarious or insecure. The organisation of work by platforms can be seen as an extension or variation of arrangements such as labour hire, sub-contracting, outsourcing and engagement of workers as independent contractors, all of which are used to distance capital from responsibility for workers and reduce

business costs and risks, while maintaining control over workers (Haidar and Keune 2021, Johnstone et al. 2012).

There is now an extensive literature about how the triangular relationship between workers, consumers and platform intermediaries operates to enable platforms to evade the obligations and costs of being an employer. By adopting arrangements that obscure the actual nature of their relationship with workers, platforms exploit the gaps in legal frameworks for workers' rights and entitlements that are built around the employment relationship. While their relationship with workers is ambiguous, platforms exert significant control over workers (Drahokoupil 2021, Stanford 2017).

The platform model benefits business owners organising care and support labour in the same ways as outsourcing to home-based workers has benefitted business owners in the past. Business owners benefit by avoiding legal regulation and reducing labour costs, minimising capital investment, avoiding costs of supervising the work, avoiding worker collective action, and shifting the risks of fluctuations in demand to workers (Finkin 2016, Rubery and Wilkinson 1981).

The role the technology plays is in enabling businesses to connect people seeking care and support services with workers in a local area, while maintaining business operations across vast geographic locations and multiple local labour markets. It provides a remote portal through which workers and consumers do most of the work associated with advertising job vacancies and matching and recruiting workers. Platform users develop and maintain personal profiles, make contacts, book jobs, log or approve work hours, and rate workers through the portal. The technology enables automated processing of payments. Computer algorithms are applied to all the information collected to sort workers' profiles on the platform, rewarding some workers with more visible profiles that give them an advantage. This 'algorithmic management' also enables the platform to discipline workers (Rosenblat and Stark 2016), while taking little or no responsibility for how care and support is undertaken or received.

In Australia, in the cash-for-care market for disability support services there is at least one organisation (*HireUp*) that operates like a digital platform (and is usually referred to as a platform) but engages their workers as employees of the platform.⁵ The presence of this organisation in the individualised cash-for-care market demonstrates that technology-enabled platforms for people to find workers and for workers to find jobs do not require the adoption of an independent contractor model of employment.

⁵ See *HireUp* <https://hireup.com.au/>. See also, Per Capita (2022).

Care and support platforms, like other digital labour platforms, have attracted funding from venture capital investors including multinational investment firms. In 2016 *Care.com*'s largest shareholder was Google Capital (Nelson 2016). In 2020, *Care.com* was purchased for US\$500 million by IAC, a USA publicly-listed corporation holding multiple online businesses (IAC 2022). In Australia, *Mable* has attracted private equity investments at various stages in its eight years of operation, with the largest injection of funds a reported \$100 million in 2021 to 'accelerate growth' from General Atlantic, a large global growth equity firm which has previously invested in Airbnb and Uber (Thomsen 2021).

Across industries, digital platforms are seen to have potential for strong growth—and even market dominance—through network effects, whereby growth is self-reinforcing as each additional platform user increases the value of the platform to other users. Recently, questions have been raised about the strength of digital labour platform network effects (and, therefore, platforms' potential profitability). The experience of online delivery and passenger transport platforms has been that workers and consumers tend to move between different platforms, resulting in much weaker network effects than expected (The Economist 2021). However, it seems unlikely that care and support platforms would have these problems to the same extent, as people requiring care and support have strong incentives to stick with one platform. Care and support is relational work requiring investment in the relationship between the consumer or service user and the worker. So, longevity of care and support relationships can be very important for the quality of care and support. As most people in long-term care systems require care and support on an ongoing basis, it seems likely they would stick with one platform. For the individual service user, the costs of transferring to another platform and finding new workers are likely to be much greater than the costs of changing delivery or transport platform.

In addition to weaker than expected network effects, other factors have contributed to the inability of digital platforms in other industries to attain profitability and financial viability. These include technological, regulatory, marketing, and labour supply problems. In Australia, as elsewhere, platforms have acknowledged the 'inherent uncertainty' for the platform business model as regulators challenge the treatment of platform workers as independent contractors (Workplace Express 2022a). The Deliveroo food delivery platform in Australia went into administration in late 2022 following the withdrawal of support from the company's UK parent. Because Deliveroo's riders were classified as contractors, rather than employees, they were considered unsecured creditors and were left behind other creditors in the queue for money owed to them by the company (Workplace Express 2022a).

MARKETS: HOW PLATFORMS COMPETE AND ARE RESHAPING PUBLIC CARE AND SUPPORT MARKETS

In Australia's markets for publicly-funded care and support services, digital platforms compete directly with disability and home care service providers for the custom of individuals requiring care and support. There is limited data on the benefits of these platforms for service users. A recent Productivity Commission (2022) report provides some anecdotal accounts citing greater choice and control and more hours of care and support for a given budget.

In the disability services sector most digital platforms undercut other providers as they take a smaller percentage of the NDIS-funded price for care and support than do registered providers. However, they are only able to do this because they invest little or nothing in the care and support workforce, who they treat as independent contractors, and because—unlike registered service providers—they are not required to be accountable for the quality and safety of care and support and can devolve this responsibility to individual workers.

Platforms promote their services as offering individual care and support seekers greater choice and control over who provides their care and support, flexibility of services and better value for money. More recently, digital platforms have also pitched their services on grounds they are 'safe' and workers on their platforms are 'verified'.⁶ These new emphases follow a recent focus on concerns over quality and safeguarding in the NDIS and in aged care, including where workers are engaged through digital platforms (see James 2020, Parliament of Australia 2021, Royal Commission into Aged Care Quality and Safety 2021).

The phenomenon of sole-trader care and support workers is one that has only emerged in recent years in Australia — in the period since digital platforms entered the NDIS cash-for-care market. When the NDIS was first rolled out in 2013–2014, there was a proliferation of online guidance for people with disabilities on how to employ support workers and the obligations of being an employer, with reference to award pay rates and standards and the National Employment Standards (Macdonald 2021a). Online guidance of this type has gradually been replaced with advice such as 'How to make sure your support worker is a contractor and not an employee' and that engaging contractors 'gives you greater flexibility with their hours and the chance to negotiate their rates and hours' (Mycarespace.com 2022).

⁶ See, for example [Kynd.com.au](https://kynd.com.au), and <https://mable.com.au/support-workers/>.

Observing the NDIS market since 2014, it is apparent that the use of independent contractors by other organisations including service providers has followed the entry and growth of platforms (Macdonald 2021a). The extent of this shift is reflected in the way some traditional service providers appeal to potential employees, whereby they present what are *normal employer obligations* to their employees as a *service* for employees. For example, one service provider includes on their website:

We are an employer that is here for you. ... *You First* will handle your employee administration on a weekly basis. This includes your pay, tax, superannuation & insurance (You First 2022).

Care and support platforms that provide mainly private household-funded services, such as childminding and domestic assistance, compete for household custom with agencies, franchises, service organisations and individual workers who work independently (without any intermediaries). As explained above, these platforms tend to be the ones that operate most like introductory services or marketplaces, whereas the platforms that target NDIS and aged care markets maintain ongoing involvement in work relationships between care and support users and workers.

Price is certainly a key factor in consumer decisions to use platforms, especially where people have set care and support budgets that may not adequately cover their needs, leading them to prioritise getting maximum hours of labour from their funds (Macdonald 2019, Fisher et al. 2010). A key marketing hook used by platforms is to provide comparisons of their (lower) prices with other NDIS and aged care home care service providers. At the same time platforms insist they are *not* care and support service providers but merely marketplaces.

While digital platforms are involved in ongoing work relationships between care and support clients and workers, they do not take responsibility for the quality of care and support provided. Most digital platforms operating in the disability and aged care sectors are not registered NDIS or aged care home care service providers.

Platforms have been operating longest in the NDIS market for care and support services. In this market they are not subject to the same quality and safety regulation as other service providers. They do not claim to operate in compliance with the NDIS Code of Conduct (mandatory for all NDIS service providers) and they are not required to meet service quality standards applying to service providers. Nor do they have any responsibility for ensuring the independent contractors engaged through their platforms comply with the NDIS Code of Conduct.⁷ They do not supervise or train

⁷ See for example, evidence of Peter Scutt, Mable CEO, to the Royal Commission into Aged Care Quality and Safety, *Transcript of Proceedings*, 31 August 2020, 8880-8897, and the Senate Select Committee

workers. Nevertheless, they market their services to individuals as better value for money because they do not have the same ‘administrative’ fees as regular service providers.

The former Coalition federal government actively supported the growth of digital platforms in the public disability support and aged care markets (Hardaker 2020). Care and support pricing and regulatory arrangements provide incentives for people to use unregistered providers. In the NDIS it has become clear that this leaves registered providers unable to compete in the market for much NDIS work; this problem has also been noted by home care service providers in aged care (Royal Commission into Aged Care Quality and Safety 2021).

The trend in the NDIS appears to be towards a two-tiered system in which unregistered providers and digital platforms can most easily generate profits by only providing services to select clients (especially those with less complex needs). This leaves registered providers supporting people who have more complex needs, people living in regional and remote areas and people in cohorts who are hard to reach or are difficult to support. The fact that digital platforms can provide cheaper services in the NDIS market has been used to argue that other providers are less efficient and that government funding for supports should be priced in accordance with the most “efficient” (ie. low-cost) services in the market (McKinsey 2018). However, the comparison between platforms and registered service providers is clearly a comparison between apples and oranges.

Efficiency has been put forward as key to building a ‘responsive and capable workforce’ in the NDIS (Australian Government 2021, 5). In other words, the argument appears to be that funding levels for care and support should be based on models that rely on keeping labour costs down by treating workers as independent contractors and keeping other costs down by minimising accountability for safe, high-quality care and support. To date, throughout NDIS policy—in the individualised pricing approach and in workforce planning and market stewardship—considerable emphasis has been given to keeping prices down by keeping labour costs down, while increasing the flexibility of care and support labour (See Macdonald 2021a, 74-90).

on Job Security, *Proof Committee Hansard*, 12 April 2021, 45. A 2020 guide for support workers states workers are ‘encouraged’ to ‘become familiar with their obligations under the Code and to complete the [mandatory NDIS induction] training’ (Mable 2020, 11).

Platform Care and Support Workers

HOW MANY PEOPLE WORK ON CARE PLATFORMS?

In many countries, including Australia, official labour market statistics do not provide good estimates of the number of people undertaking work via platforms because of the way work and employment are defined in these statistics (James 2020: 27-28; Piasna 2021). The focus of employment statistics is usually a person's 'main job', which is a problem where a worker holds a number of jobs. According to ABS estimates, there has not been any significant growth in people who are independent contractors in their *primary or main job* in recent years. One million people, or 7.8% of all employed people in August 2021, reported earning their primary income this way (ABS 2021). However, this tells us little about people who may work through platforms while also holding one or more other jobs.⁸ There are no reliable estimates of self-employed personal care and support workers in Australia's publicly-funded long-term care systems.⁹

Australian and overseas surveys designed to measure the extent of platform work suggest that, despite recent growth, it still constitutes a small component of the overall labour market. Overseas survey findings do, however, indicate that care and support work on platforms may be as common as some other, more visible forms of on-location gig work (such as transport and delivery work). This is not reflected in the findings of a major Australian survey on the prevalence of platform work in this country. In the 2018 national survey, 13.1 per cent of respondents indicated they had participated in platform work at some time, and 7.1 per cent were currently participating or had done so in the previous 12 months. Women were only half as likely to be working through a platform as men. Of current platform workers, seven per cent were working on care and support platforms (McDonald et al. 2019, 31, 39-40).

⁸ The ABS is currently working to expand its statistics on emerging forms of employment, including digital platform workers (ABS 2022).

⁹ A report that only one per cent of care 'attendants' in the NDIS are sole traders (McKinsey 2018) appears to refer to NDIS-registered providers only, so this would not include the vast majority of support workers on platforms. The National Skills Commission (2022, 79) reports that 37 per cent of active providers in the NDIS in 2019 were sole traders but provides no information about the occupations of these providers nor a source for this estimate.

Another indication of engagement in this work comes from a survey of disability support workers conducted in early 2020 that found five per cent of all respondents had used platforms to seek disability support work. This sample may have been skewed towards older support workers employed in more secure jobs, a group who might be less likely to be seeking work on platforms than younger workers (Cortis and van Toorn 2020).

In comparison, a 2021 survey in 14 European Union (EU) countries found only 4.3 per cent of the working age population had undertaken work through platforms in the previous year (during 2020 COVID lockdowns), and that 1.1 per cent could be classified as 'main platform workers' who worked 20 hours or more per week or earned more than half their income through platforms (Piasna, Zwysen and Drahokoupil 2022, 4). This survey distinguished between transport, delivery and other on-location platform work. The 'other' category comprised work undertaken 'at a client's home or another location away from (the worker's) home, for instance handyman work, cleaning, beauty treatment or childminding'. Platform work in this 'other' on-location category was 'dominated by young women performing care work' and was as common as transport and delivery platform work (Piasna, Zwysen and Drahokoupil 2022, 12, 18, 26-27). Overall, platform work was found to be more common among male workers who are 54 per cent of all platform workers. However, while 82 per cent of transport platform workers are men, the majority (64%) of workers engaged in *other* on-location activities are women. In all European countries surveyed, foreign-born workers were over-represented in on-location gig work.

One other source of information about workers using care and support platforms in Australia is the platforms themselves. In 2021, *Mable*, possibly the largest digital labour platform operating in the aged care and disability support markets, claimed to have 11,000 workers 'visible and active' on their platform and to have 'facilitated five million hours of support' (Parliament of New South Wales 2022, 8.11). The company reported that in 2021 the number of people signing up to provide support on their platform 'per month was consistently more than 1,000 a week [sic]' (Mable 2022c, 4). The accuracy of these claims is unknown. It is worth noting, however, that it is likely to be to the platforms' advantage to overstate the numbers of active workers on platforms.

WHO SEEKS WORK ON CARE AND SUPPORT PLATFORMS AND WHY?

As in the broader care and support workforce, most workers using care platforms in Australia are women. Scans of worker profiles on platforms suggest that many workers using platforms are young and that there are many recent migrants among them. Many workers are new to care and support work. However, there is no good source of data on the characteristics of workers on care and support platforms. The Productivity Commission (2022, 77) was provided with information from the *Mable* platform that suggested workers are ‘more likely to be younger, and from non-English speaking backgrounds’ than workers in the overall care workforce.¹⁰

As to why workers seek work through digital platforms, international studies investigating workers' motivations (none of which have studied care and support workers in particular) indicate that, in higher-income countries, most workers engaging in platform work do so to supplement income earned from other employment (cited by McDonald et al. 2019, 21). For women with unpaid care responsibilities, part-time work is much more likely to be a main source of income than it is for men. This means platform work is more likely to provide essential income for women.

In Australia, almost one in six (15.4%) platform workers across all industries indicated the income they earned from platforms was essential for meeting their basic needs, according to a 2018 survey of the prevalence of platform work. Earnings were important or essential for four of every ten workers (McDonald et al. 2019). Given that many care and support jobs offer only short hours part-time work, a second or third job is likely to be necessary for workers to generate adequate income. This is consistent with the high levels of multiple job-holding by these workers compared with workers in most other occupations. Care and support workers are nearly twice as likely as other workers to hold multiple jobs (NSC 2022, 14). So, supplementary income for low-paid care and support workers is likely to be essential income, not ‘extra’ money (McDonald et al. 2019, Macdonald 2021a, Williams et al. 2021).

Digital platforms often represent care and support workers as entrepreneurial spirits who have chosen to work via a platform because of a desire to be self-employed. However, this portrayal of platform workers' motivations probably misrepresents the reality for many workers. Not all who work in this way would choose an independent contractor role over waged employment. Some workers are referred to platforms by

¹⁰ Here, the overall care workforce is taken to be the ABS industry sector the ‘other social assistance industry’, which includes aged care home care and disability services, along with other welfare and counselling services.

their care and support clients who use platforms as a convenient means for administering payments; in these cases, the platforms do not play any ‘matching’ function. Some workers report coming to platform work via a broader online search for care and support work opportunities; it was not their intention to seek out self-employment in particular (Macdonald 2021a).

Platform companies work hard to pitch the benefits of their model to potential workers and they actively target workers who have no prior experience as solo business operators. On their websites, platforms advise potential workers they must be willing to get an ABN, and they explain what ABNs are and how to go about getting one (see, for example, Mable 2022a, Five Good Friends 2022a).

In a recent report on indirect employment (i.e. labour hire, independent contracting and platform work) in aged care the Productivity Commission (2022a, 70) asserts that workers make a choice between taking on a job as an employee or independent contractor, weighing the benefits and costs of each option. However, no evidence that is particularly relevant to care and support workers on platforms is cited in support of these claims.¹¹ Rather, it is possible that a significant share of care and support workers using platforms may not even be certain of their formal employment status or may understand themselves to be employees. A recent UK survey of digital platform workers reported that 60 per cent of workers identified their employment status as employees, with only 40 per cent identifying as ‘self-employed’ (Cominetti 2022, 52). In Australia, ‘a sizeable minority’ of platform workers responding to a national survey ‘indicated that they thought the platform treated them as an employee’ (McDonald et al. 2019, 82). Qualitative research with young care and support platform workers also found workers were unsure of their employment status (Macdonald 2021a).

Flexibility is often cited as a motivation for working on platforms and survey results suggest it is important for platform workers in Australia (McDonald et al. 2019). Still, it is not clear that care and support workers choosing platforms in preference to other employment options do so on the basis of perceived greater flexibility; indeed, flexibility is also cited as a motivation and/or source of job satisfaction by aged care and disability support workers who are hired as waged employees (Cortis et al. 2017; Isherwood et al 2018; Macdonald, Bentham and Malone 2018).

¹¹ The Productivity Commission (2022a) cites findings of an online survey (Manyika et al. 2016) of 8,000 ‘independent workers’ across a wide range of occupations and industries in six high-income countries. But is not clear that this survey actually supports the Commission’s claim that independent contractors weigh the benefits and costs of employment options. The survey findings include that, across all occupations, a quarter of independent workers engage in this form of work out of necessity, and this is more likely to be the case for lower-skilled/paid workers.

Risks of Digital Platform Work for Care and Support Workers

Care and support work through digital platforms that treat workers as independent contractors is highly precarious employment. Workers have no access to paid leave or minimum employment standards and they do not receive superannuation contributions. Platform workers have no income security or severance rights and are not covered by workers' compensation in the event of injury. Like on-location platform workers in other industries, care and support workers are subject to being disciplined by platforms' various mechanisms of control and they are highly vulnerable to exploitation and unfair treatment. They perform their work in isolation, in environments known to carry high health and safety risks, without peer or organisational support, they have few development opportunities, and they are responsible for their own training.

Many of the problems of platform work for care and support workers are also experienced by platform workers in other industries. However, care and support work differs significantly from the task-based work of other on-location platform workers in ways that create additional problems and risks. Care and support is relational work, typically performed in the context of ongoing relationships with service users. This can make it enormously rewarding work for workers. However, it can also create risks for personal care and support workers who work in isolation and with little or no organisational oversight.

ENTREPRENEURIAL CARE AND SUPPORT WORK? RISK, RESPONSIBILITY AND CONTROL

The nature and circumstances of individualised care and support work relationships need to be considered when thinking about the implications of platform work. In individualised care and support systems, work is often undertaken in private family spaces and in ongoing relationships that are conducted in private and characterised by informality.

For both care and support consumers and workers, individual self-management of support and care creates both benefits and increased risks. While the aim of individualised systems is to transfer responsibility and control to the individual who

requires support and care, a great deal of responsibility is also devolved to care and support workers. This has particular implications for workers whose work is organised through digital platforms.

Unlike employees, most platform workers carry this responsibility and negotiate and manage the complexities of ongoing care and support work and relationships without organisational guidance or accountability or peer support. Unlike truly independent self-employed workers, most platform workers are monitored and disciplined by a third party in their work. However, the platform is not accountable to the worker for ensuring fairness or accuracy in those processes and distances itself from any liability for the quality of service provision (McDonald, Williams and Mayes 2021).

Workers on some of the newer platforms operating in the NDIS and aged care markets that *do* operate as registered care or support providers are subject to even greater control and monitoring. These platforms are accountable for care and support quality but take no responsibility for workers (who are treated as independent contractors engaged by individual clients). They nevertheless require workers to provide care and support in accordance with their policies and even to take direction from them. For example, the *Five Good Friends* 'Helper Brokerage Agreement' requires workers to log care and support visits and report on their clients using the platform's 'care monitoring technology', to abide by various policies relating to the conduct of care and support (e.g. administration of medication and completion of training [unpaid] in accordance with the platform's policies), to liaise regularly with the platform's staff and take direction in relation to client care and support plans, and to agree to any arrangement the platform puts in place preventing the worker from having unsupervised access to the client. The agreement is silent on any processes for dispute resolution (Five Good Friends 2022b).

Care and support workers on platforms can be at far greater risk of losing future work if a relationship with a client turns sour, if a client is even somewhat dissatisfied, or if a client submits a false or unfair evaluation. Client ratings are shown on platforms and are used in automated ranking systems that determine where a worker's profile appears on the site. There is a lack of transparency in these algorithmic management practices and there is also potential for misuse of workers' data.¹² Poor visibility and poor ratings are barriers to getting future work (Flanagan 2019). Workers report fear of getting a poor rating—or a desire to get a good rating—as leading them to do extra

¹² These issues are confronted by workers and unions in many platform business models; see Nahum and Stanford (2020) and Henderson, Swann, and Stanford (2018) for more discussion.

unpaid work for clients, to accept clients' requests to renegotiate lower rates, and to tolerate poor or unacceptable behaviour and work demands (McDonald, Williams and Mayes 2021). In the context of the individualised NDIS consumer care and support system in which workers understand their roles as supporting their clients to maximise choice and control, young and inexperienced workers are especially vulnerable to putting up with poor treatment in ongoing support work relationships (Macdonald 2021a, 2021b).

Despite the relational nature of care and support work, many platforms do not offer workers the opportunity to rate clients. Recently some platforms have introduced incident reporting and dispute resolution processes but there is little transparency associated with these mechanisms. Anecdotal reports indicate that workers do not benefit from raising concerns or complaints with their platforms (Macdonald 2021a).

EMPLOYMENT STATUS

In law, independent contractors are assumed to be autonomous and independent self-employed workers, with a high degree of control over their work, their prices, and their working arrangements. These assumptions underpin their exclusion from most employment regulation.

Independent contractors are excluded from most employment regulation on the assumption they are not in need of protections as they are not controlled by an employer on whom they are dependent. In Australia, the statutory minimum standards set out in the National Employment Standards (NES) and the protections that apply to employees under the Fair Work Act do not apply to independent contractors, meaning minimum wages standards, maximum working hours, leave provisions, unfair dismissal protections and other protective conditions, do not apply to their work. Other entitlements and protections, including superannuation, workers' compensation, and some anti-discrimination laws, also often do not apply or have limited application to workers engaged as independent contractors.

Some platforms provide workers with insurance coverage, but this is only for engagements workers make through the platform. It is hard to see how this would be of much benefit to care and support workers who often work in multiple jobs and obtain work through direct engagements with individual clients as well as through one or more platforms. To ensure adequate protection most workers would need to take out their own insurance anyway.

The *Independent Contractors Act 2006* (Cth) provides an avenue for independent contractors to challenge unfair or harsh terms in contracts but this has been little used, producing very few positive outcomes. Australian consumer law also contains provisions to protect small businesses from unfair terms in standard form contracts. However, these provisions are not very accessible nor particularly helpful for workers and their unions, including because challenging contract terms means taking the matter to court, with the outcome of this being only to prevent the platform from continuing to use a contract term. It would not result in any compensation for the worker (James 2020, 167-169).

There are enormous practical challenges to care and support workers on platforms coming together to share knowledge and concerns about their work and working conditions. Recent changes to competition regulation provide some limited scope for independent contractors to bargain collectively but not to take protected industrial action. Independent contractors are subject to the *Competition and Consumer Act 2010* (Cth) (CC Act), which prohibits collective bargaining by self-employed workers as a form of anti-competitive conduct. In 2021 a ‘class exemption’ was put in place, intended to allow collective bargaining by small businesses without prior permission from the Australian Competition and Consumer Commission. However, there remains a high degree of uncertainty as to how useful this change will be for platform workers and other independent contractors. Hardy and McCrystal (2022) make the point that this exemption does *not* constitute a genuine collective bargaining regime and lacks crucial structural and other supports for collective bargaining.

PAY SETTING AND PAY RATES

While platforms maintain that care and support workers are independent contractors, most either directly set workers’ hourly pay rates or strongly influence, constrain or indirectly set those rates. Platforms appeal to disability support and aged care workers by suggesting that workers can earn more via platforms than as employees. However, while there is potential for some platform workers to be paid higher hourly rates than award-dependent employees, this is clearly not the case for many platform workers.

Pay setting

Some platforms offer set-price services to their subscription-paying ‘member’ care and support clients. These platforms may directly set workers’ pay rates (e.g. Like Family 2022). Other platforms maintain that workers can set their own hourly rates but effectively cap pay rates to the platform’s recommended rates by offering fixed price services to clients and taking a set percentage of this as platform fees. Thus, while

these platforms theoretically allow workers to set their own fees for services, it is not possible for a worker on the platform to earn more than the platform's recommended rate (e.g. Five Good Friends 2022c, 2022d). Some platforms set maximum hourly rates for publicly-funded support and care, even where there is no mandated maximum price set for the services by the relevant authority (e.g. Five Good Friends 2022d).

There are various other ways in which platforms actively seek to influence or indirectly set workers' pay rates. For example, platforms may publish advice to workers on typical or average hourly rates, while at the same time providing scenarios and examples on their websites suggesting much lower hourly rates are acceptable or preferable.

All platforms advise clients that they may be able to negotiate better (i.e. lower) rates with workers than are listed on the workers' profiles. Some workers report working for low hourly rates so as to be competitive, and they report it is not uncommon for consumers to negotiate lower hourly rates than those workers list on their profiles. Workers also report that, where a care or support arrangement continues over time, consumers often seek to re-negotiate rates downwards, and they can feel considerable pressure to reduce their rates (Macdonald, 2021a; Williams et al 2021).

Young workers with limited experience and other vulnerable workers, including migrants with temporary work status, often cite a 'going rate', 'market' rate or what people are 'prepared to pay' as the basis for their pay setting (Macdonald 2021a, 152; 2021b, 19). The idea that they need to set their rates low to be competitive is observed among younger workers especially. People seeking care and support and family carers also report that appropriate rate or fair pay for workers to be whatever rate is commonly advertised (McDonald et al. 2019, Macdonald 2019, 2021a). Research has also found that workers frequently fail to account for many of the costs encountered in their work, including: superannuation; the costs of acquiring mandatory police and other checks; substantial amounts of time spent looking for work, attending interviews and other communications with clients to negotiate and organise work; managing their platform profiles; completing timesheets and invoices; chasing up payments for their work; and paying for personal protective equipment, transport, and other expenses (Macdonald 2021a, 2021b; Williams et al. 2021). When these additional commitments and expenses are taken into account platform workers often are surprised at the low effective net income received for their efforts and time.

Pay rates

Platforms insist care and support workers are paid more than they would be paid as employees doing the same work and use this as part of their marketing to recruit workers. This claim seems to be backed up by a recent Productivity Commission (2022)

report that concludes most independent contractors on care and support platforms are paid more than an employee would be on the award minimum. However, there are several problems with the comparisons made by the platforms and the Productivity Commission.

First, comparisons of hourly pay rates do not take account of the loss of employee entitlements and benefits nor do they account for the business costs incurred by independent contractors. Permanent employees have access to paid leave and to training and promotion opportunities. Permanent and casual employees generally have access to long service leave. In some states and territories workers providing home care and disability support services have access to portable long service leave schemes that allow workers to build up entitlements based on time spent in the industry (e.g. Victorian Government 2022a). Casual and part-time employees have a range of other protections and entitlements, including to be paid for a minimum of two hours and to be paid extra allowances for broken shifts.¹³

Independent contractors also incur business costs which are not accounted for in typical comparisons of pay. These costs include workers' compensation, insurance (provided by some platforms, although sometimes for a fee), the costs of searching for work, administration, training and marketing (i.e. updating profiles). Independent contractors working through platforms also bear the costs of chasing up underpayments and non-payments, as platforms do not pay workers until they are paid by clients.

Comparisons of independent contractor and employee award rates often fail to include provision for superannuation (currently 10.5% of the wage, rising to 12% by 2025), which is an entitlement for employees. The same approach is adopted by the Productivity Commission (2022, 75, Figure 4.2), in comparing platform independent contractor pay rates with care and support worker award pay rates. Its cited justification for this approach is that superannuation 'is an entitlement that workers receive in the future', and they also speculate that, for some independent contractors, the 'intrinsic value of superannuation might be low' (Productivity Commission 2022, 73). Neither of these arguments is convincing.

A second problem with most comparisons of contractor and employee pay rates is that the employee award classification pay rates typically cited are for lower classifications than should apply to many care and support roles. Again, this leads to more favourable assessments of independent contractor rates in comparison to employee award pay rates. The discrepancies between award rates cited by platforms in these comparisons,

¹³ See SCHCADS Modern Award Part s. 10.5, s. 25.

and the award rates that should apply to workers performing those specific roles, are most stark for disability support workers.

Entry-level disability support worker roles have generally been classified at a minimum level 2.2 of the Social and Community Services (SACS) scale of the SCHCADS Award (Cortis et al. 2017, NDS 2017).¹⁴ NDIS prices (i.e. the maximum amount of government funding) for personal supports are based on a cost model that provides for disability support workers to be employed at SACS levels 2.3 or above (NDIS 2022a). The NDIS quality and safeguarding requirements and NDIS expectations of disability support workers also align with support worker requirements that are at a minimum classification of SACS 2.3 (NDIS Commission 2019, 2021).¹⁵ However, in their comparisons of independent contractor platform workers' pay rates with employee award pay rates, platforms usually refer only to low level Home Care rates of the SCHCADS Award. Platforms use Level 1 or 2 Home Care pay rates. These rates are significantly lower than SACS 2.3 rates and they are also lower than SACS levels 2.1 or 2.2. The Level 1 SCHCADS Home Care rate is also an inappropriate comparator for most home care employees as this rate applies only to workers with no or little experience and who do not hold a Certificate III level qualification.

Table 1 provides a comparison of the independent contractor pay rates on two platforms and the reported average rates on a third platform with the employee award rate for NDIS-funded support for 'Assistance to access community, social and recreational activities.' This NDIS support item is priced and funded by the National Disability Insurance Agency (the NDIA), based on employment of a disability support worker at SCHCADS SACS level 2.3. As this comparison shows, the platform rates are less than the award rate when provision for superannuation is included. This is without accounting for loss of other employee entitlements nor for the costs of business that are incurred by independent contractors. If these other factors were included, then the comparison to award rates would be even more unfavourable.

The Productivity Commission concluded that *Mable's* average hourly weekday rates for social support, domestic assistance and personal care type services are well in excess of minimum award rates. However, the minimum award rates cited by the Commission

¹⁴ On the SACS schedule of the SCHCADS Award 'entry points only set the minimum pay rates where a certificate qualification is relevant to the job. It does not mean that a certificate is necessarily required at Level 2 or that an employee who does not have higher qualifications than a certificate cannot be employed at a higher classification level based on the duties required' (NDS 2017, 8).

¹⁵ For further detail of the NDIS disability support worker cost model and funding and NDIS safeguarding requirements for personal supports and their alignment with job and skills requirements in the SCHCADS Award see Macdonald and Douglas (2022).

are the lowest level of the SCHCADS Award home care schedule (Classification level 1). These minimums are well below disability support worker rates on the SCHCADS Award, and also below those that apply to aged care home care workers who provide personal care (rather than domestic assistance). Workers at level 1 of the home care schedule are inexperienced workers who provide domestic assistance and who have commenced on-the-job training.¹⁶ The minimum award rate for aged care home care workers who provide personal care is \$30.33, and with the addition of 10.5 per cent superannuation is \$33.51. Fair pay for an independent contractor should be well above the award rate.

Table 1: NDIS Support Worker Pay on Three Platforms Compared with SCHCADS Award Pay Rates*

| | |
|---|----------------|
| NDIS Support item: Assistance to access community, social and recreational activities, weekday hourly | |
| Maximum price that can be claimed from the NDIA | \$62.17 |
| <i>Five Good Friends</i> set fee for this NDIS service | \$62.15 |
| <i>Five Good Friends</i> platform fee (35%) | \$21.76 |
| <i>Five Good Friends</i> worker's pay (net of platform fee) | \$40.40 |
| <i>Like Family</i> set fee for this NDIS service | \$50.00 |
| <i>Like Family</i> platform fee (23%) | \$11.70 |
| <i>Like Family</i> worker's pay (net of platform fees) | \$38.30 |
| <i>Mable</i> fee for this NDIS service | Variable |
| <i>Mable</i> platform fee (15%) | Variable |
| <i>Mable</i> workers' average pay (net of platform fees) | \$43.80 |
| SCHCADS Award rate (SACS level 2.3, casual employee) | \$40.46 |
| SCHCADS Award rate plus 10.5% superannuation | \$44.71 |
| Sources; Five Good Friends 2022a, 2022b, 2022c; FWO 2022; Like Family 2022 NDIS 2022a, 2022b, Productivity Commission 2022. | |

* *Five Good Friends*' hourly pay rate is a recommended rate. *Like Family*'s hourly pay rate is for 'social carers', a term the platform uses to refer to both disability support and aged care workers. *Mable* average rate is for 'personal care workers' in aged care and disability support 'who have at least a Certificate III or two years demonstrable work experience' (Productivity Commission 2022, p. 75, Figure 4.2 notes).

A third problem with the comparisons offered by platforms and the Productivity Commission concerns the reliability of the information provided. There is no

¹⁶ See SCHCADS Industry Award 2010, Schedule E, 96.

independent source of information on workers' actual pay rates through working via these platforms. Rates must be gleaned from platforms' statements on their websites or from other information the platforms voluntarily choose to provide. The accuracy of that data cannot be independently assessed.

Reported average pay rates on platforms may bear little relation to average or median pay rates received by platform workers. No information is available regarding the distribution of pay rates. Often it is not made clear to which care and support roles reported platform average rates apply. Personal support workers on platforms include workers with very different levels of skill and experience, including some workers whose listed fees are double those of less experienced workers (Macdonald 2021a). Full worker profiles on platforms are not generally visible other than to people who have signed up to the platform so there is little transparency of platform worker rates. However, as shown in Table One, it is clearly not the case that all workers earn as much as they would in accordance with the award.

TRAINING AND PROFESSIONAL DEVELOPMENT

Independent contractors are responsible for their own training and professional development. All care and support workers in Australia's publicly-funded systems have obligations to maintain their capabilities and skills and ensure certifications are current. Care and support work can be very complex and require continual learning, maintaining certifications and ensuring compliance with codes of conduct. There are significant costs associated with these responsibilities, including both unpaid time and fees.

Generally, platforms do not provide on-the-job training, supervision or peer support. Platforms maintain they offer these opportunities for workers, but those offerings appear to be mainly links to self-guided online training that workers must undertake in their own time. Some platforms host online peer support forums in which workers can voluntarily participate—again, in their own (unpaid) time. However, workers are often not connected with peers who are working with the same clients and can be denied opportunities to support each other and truly work collaboratively—including to provide back-up for each other when ill or otherwise unable to attend work.

While platforms maintain that their workers are skilled and appropriately qualified, they do not require specific qualifications for many care and support jobs. Nor do they provide organisational oversight of care and support or opportunities for peer support for workers. Some advocates for people with disability do not wish their care and support workers to be trained (ARTD Consultants 2015; Macdonald 2021a). However,

this approach is completely inconsistent with safeguarding and quality requirements of workers that are articulated within the NDIS quality and safeguarding documents (including the NDIS Worker Code of Conduct, which are also being adapted for use in aged care) (see Macdonald and Douglas 2022).

WORKING TIME

Digital labour platforms, including care and support platforms, organise and control the labour process in ways that blur the boundaries between working hours and free/non-work time (Haidar and Keune 2021). On care and support platforms this happens in a number of different ways. First, workers spend a lot of unpaid time engaged in various tasks involving looking for jobs, applying for jobs, attending job interviews with prospective clients (including interviews for one-off jobs of only a few hours' duration), and updating their profiles to improve visibility on the platform. Workers also spend free (i.e. unpaid) time on administrative work such as logging working hours. As platforms have started to pay more attention to care and support safeguarding, workers must also devote unpaid time to writing reports required by platforms, and in some cases, completing online training modules that platforms request or require them to complete. An aspect of individualised care and support work that is reported by many workers—including both platform workers and employees in service provider organisations—is devoting time to being available to communicate with clients. When it comes to these demands on unpaid time, employee care and support workers have greater capacity to place limits or buffers around their work time and availability, and better protect their non-work time. They have backup and support from supervisors and peers. Platform workers are less able than other workers to protect their non-work time: they understand flexibility and availability to be central to expectations of performance held by both platforms and clients, and there are no supervisory or support resources to draw on when needed (Macdonald 2021a).

Working time 'flexibility' is promoted as a benefit of platform work: supposedly workers can determine their working hours and have greater control over their working time. However, it is not clear that platform work does actually give care and support workers much more control over their working time. Much care and support work is not especially flexible for workers, as its timing is tied to people's health and care and support needs. Platform workers face pressure to be available whenever their clients want or need them, in order to maintain good relationships and good ratings. Platform workers often directly negotiate their hours with clients; however, many report that, if agreed times can be varied, clients often vary those hours unpredictably and with little notice. Being amenable to client flexibility is understood by workers in

all types of employment arrangements as important for supporting client choice and control. However, independent contractors and platform workers have to manage this alone, without back up, and they bear the loss of income it often entails. For platform workers there is the additional risk of damaging their consumer ratings if they do not satisfy clients' requests for flexibility, or if they charge for short notice cancellations or for agreed shifts being cut short.

HEALTH AND SAFETY AT WORK

Care and support workers working in other peoples' homes are recognised as vulnerable to a range of health and safety risks, in part because there is very poor visibility of the work (Bohle, Finn, Quinlan and Rawlings-Way 2009; Evesson and Oxenbridge 2017; Charlesworth, Macdonald and Clarke 2020). Platform involvement in work relationships does not appear to assist workers or mitigate any of the common health and safety problems experienced by care and support workers; rather, working through a platform can heighten health and safety risks.

Platform control mechanisms that support overwork and poor information about the work environment and its risks contribute to this problem. Reliance on building and maintaining consumer ratings to access jobs deters workers from raising problems with clients and platforms. In individualised relationships, problems experienced by workers include clients requesting or directing workers to follow unsafe practices and safety hazards being present in home work environments (Macdonald 2021a, b). These problems are not confined to home-based care and support on platforms (see, for example, Baines et al. 2019) and hence some observers have denied they are relevant to platform business models (Productivity Commission 2022a). However, platforms claim care and support provided through their platforms is safe. Yet it cannot be safe for clients or workers if workers feel they are unable to follow safe practices (for example, when lifting a person).

In regard to work health and safety regulation, platform workers in Australia are covered by occupational health and safety regulations, which apply to workers in any 'person conducting a business or undertaking' (PCBU), regardless of employment status. However, despite this broad applicability, it is not clear what duty of care is owed to the worker by the platform or the client. In most jurisdictions care and support clients may be considered the PCBUs (Horton et al 2018), and hence the duty of care would rest with them. However, there is considerable uncertainty if this applies under all conditions, and the nature of a platform's duty of care to a worker is unclear. Independent contractors generally are not eligible for access to workers'

compensation schemes that support workers when they are injured or become ill as a result of their work (Horton et al. 2018).

DISCRIMINATION AND INEQUALITY

Most care and support platforms require workers' online profiles to include photos, personal details (age, gender ethnicity), biographies, statements about personal, leisure and lifestyle interests, and whether they have access to private transport. As well as this information, workers are required to provide references, certifications of qualifications and police checks. Profiles also include workers' availability, rates for different times and days and any additional charges. On an ongoing basis, workers perform considerable work refining and updating their profiles to attract potential clients, competing with each other to construct images and personal narratives. Consumers are encouraged by platforms to seek out care and support workers with similar values and interests. Several issues arise for workers from these requirements. Australian and international evidence indicates selection of workers through online profiles relies on and reinforces gendered, cultural and racialised stereotypes and facilitates discrimination (James 2020, Mateescu & Ticona 2021, Williams et al. 2021).

Moreover, there is a fundamental imbalance of information, as workers have far less access to information about consumers than consumers have about them. While care and support workers must provide detailed personal information, people seeking a worker are rarely required to provide the same detail. Prospective workers may therefore have very limited information about the work environment and its safety (e.g. whether there are other people living in a client's residence, if the client is a smoker).

It has been suggested that digital platforms might assist professionally-trained migrant care and support workers who face labour market barriers to enter their chosen fields, albeit not in the professional roles for which they have trained (Hunt and Samman 2019). However, many migrant workers are engaged in low-paid care and support work, trapped in jobs in which their skills and experience are not recognised. Globally, there is high turnover of workers—associated with poor pay and conditions—and chronic labour shortages in many long-term care workforces (ILO 2018).

Platform work is less protected and far more precarious than other low-paid care and support employment and workers are isolated from peers and opportunities for collective organisation. The available evidence indicates it is more likely that platforms entrench existing inequalities, reproducing cultural prejudices and stereotypes and reinforcing the precariousness of the work (Drahokoupil and Vandaele 2021).

Gender equality

Some groups advocating for digital labour platforms argue that platforms create jobs and increase workforce participation (Parliament of New South Wales 2022, 20). There is no evidence of this in the care and support sectors. In publicly-funded long-term care and support systems as independent contracting work on platforms is substituting for work that would otherwise be undertaken by employees.

Claims about the benefits of platform work for gender equality rest on the idea that platforms can offer more flexible work, hence providing options for women to combine paid work with unpaid care. The argument is that women will enter the labour force or increase their employment participation if they can determine their working hours and have greater control over working time. However, as noted above, it is not at all clear that digital platform work provides that much worker-friendly flexibility. Rather, flexibility is dominated by the need to meet demands of consumers for care and support that fit their specific circumstances and preferences.

Platform work does offer flexibility in the sense that a worker wanting only a few hours' work a week may find work at their preferred times more readily than if they were an employee of a service provider. However, this flexibility does not require workers to be engaged as independent contractors, as demonstrated by platforms such as *HireUp*, that treat support and care workers as employees. In any case, flexibility should not be seen as a benefit if workers are correspondingly denied protections, rights and secure pay that accompany employee status. Lack of access to benefits and protections such as superannuation will have significant negative impacts over the life-course of platform workers.

Gender inequality is likely to increase if platform work and independent contracting grows in the care and support sectors. The international evidence is clear. In individualised care markets where care workers' employment is not well-regulated, many care and support workers are employed in jobs with few protections in privatised arrangements in which workers are isolated and underpaid. This is the case for domestic workers globally.

Where there is light regulation of employment women's earnings on platforms follow the patterns found elsewhere in the labour force—where individualised pay determination leaves women at a disadvantage in comparison to men. The algorithmic management of platforms (including decisions regarding the ranking or prominence of individual profiles) may leave workers with unpaid care responsibilities at a disadvantage by 'punishing' them if they can't meet consumer expectations to be available on-demand (Kaine, Flanagan and Ravenswood 2020).

Globally, many care and support workers are engaged in highly informal work, employed by households through privatised arrangements outside or beyond the effective reach of labour regulation. In these circumstances, especially in developing economies, it is possible that platform work could offer workers better income, opportunities for formalising work, and possibly even opportunities for collective bargaining (Fudge and Hobden 2018, Hunt and Samman 2019). This has not been the case in Australia's publicly-funded care and support systems. Platform cooperatives have been developed in some settings in an effort to capture some of these potential benefits (Macdonald 2021a). However, there is little evidence to suggest that *for-profit* platforms have improved employment, despite their assertions about professionalising care work (Drahokoupil and Vandaele 2021). Further, Australia's publicly-funded care and support systems have not been until has not publicly-funded care and support systems.

Regulating for Decent Work for Care and Support Workers

Policy makers all over the world have grappled with the problems of digital platform gig work in recent years, often prompted by trade union action. One of the main regulatory responses has been to challenge workers' status as independent contractors. In Australia, challenges to platforms classifying workers as contractors have mainly been unsuccessful (Forsyth 2020). Two High Court decisions in February 2022 further reduced the chances of any successful challenges in the future. These decisions were widely seen as 'rewriting the rules on determining employment status', making it much easier for organisations, including platforms, to present workers as independent contractors, regardless of the reality of their working arrangements (See Stewart, Stanford and Hardy 2022, 54-55).¹⁷

The previous Coalition federal government took no action to address the problems of gig work and generally rejected the idea that platform work should be regulated—based on a view that regulation would stifle or undermine innovation and flexibility (see Parliament of Australia 2017). Similar claims have also recently been advanced by the Productivity Commission (2022b), in a poorly-evidenced assessment of the purported benefits of platforms for labour market productivity.

The Labor federal government has committed to establishing protections and standards for gig workers, promising to 'extend the powers of the Fair Work Commission to include "employee-like" forms of work, allowing it to make orders for minimum standards for new forms of work, such as gig work' (Australian Government 2022, 6). It is anticipated that proposed changes will specifically address gig work in the aged care and disability support sectors, as the problems in these sectors have been noted by the Minister for Employment and Workplace Relations (Burke 2022).

There are lessons from the many attempts made by governments outside Australia to regulate to improve labour standards and working conditions for platform workers, even though to date most of these regulations have targeted on-location passenger transport and delivery work platforms. Of note is the active resistance of platform companies to regulation, with success in some cases.

¹⁷ In the light of the High Court decisions, in August 2022, the Fair Work Commission overturned a ruling that a Deliveroo worker was an employee (Workplace Express 2022b).

The sections that follow provide an overview of the types of regulatory responses that are being taken elsewhere,¹⁸ their success to date and their applicability to digital platform care and support work. Australian examples of regulatory responses that provide some lessons for addressing gig work on platforms are also considered.

MAKING WORKERS EMPLOYEES OF PLATFORMS

Attempts to ensure platform workers are classified as employees of platforms have been at the heart of some recent reforms to address gig work problems. For example, this approach is currently being considered in the EU where, among other measures, the European Commission (2021) has proposed that there be a legal presumption of an employment relationship between a gig worker and a platform if two or more of five criteria are fulfilled. These criteria are taken as indicators the platform is controlling the performance of work. They include: effectively determining remuneration; requiring the worker to abide by rules with respect to appearance, conduct or performance of work; supervising the performance of work or verifying quality of work; restricting the freedom to organise work; and/or restricting the possibility to build a client base or perform work for others.

Another approach has been taken in some states in the USA, with the use of ‘ABC’ tests, under which a worker is considered to be an employee rather than an independent contractor, *unless* some specific conditions are proven by the hiring entity (including a platform). For example, under Assembly Bill (AB)5 in California, it was presumed that (1) ‘a person providing labor or services for remuneration shall be considered an employee’, with the exemption to this being (2) ‘unless the hiring entity demonstrates that all of the following conditions are satisfied’: (A) The person is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact. (B) The person performs work that is outside the usual course of the hiring entity’s business. (C) The person is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.¹⁹ The effect of this legislation was undermined by a successful campaign led by large ride-share and food delivery platforms to exclude them from its coverage, although the legislation remains in place for platforms in other industries (De Stefano and Wouters 2021).

¹⁸ See also Stewart and Stanford (2022) for a survey of these initiatives.

¹⁹ Section 2750.3 Labor Code of California, cited by De Stefano and Wouters (2021, 133).

In any case, reforms like these that rely on indicators of control or dependence to determine whether workers are enough like employees to have their work brought within the boundaries of existing labour laws may not result in full protections and rights for *all* workers on platforms, including many care and support workers who could still be classified as independent contractors. For example, it is not clear that workers who provide care and support to multiple ‘clients’ through direct contracting relationships with individuals as well as through one or more third parties (including platforms) would be included under these types of reforms. Rather, they may be considered to be self-employed *because* they work for multiple clients, if that situation can be taken to indicate that workers are running their own businesses.

SETTING STANDARDS AND ENSURING RIGHTS FOR PLATFORM WORKERS

An intermediate worker category with some employment rights

Another approach has been to extend some labour rights and protections to workers through creating an ‘intermediate’ category of worker that is between an employee and a self-employed worker. In countries where this has been done it typically involves the extension of some, but not all, employment rights and protections to workers who are in the intermediary category, without classifying them as employees. In Australia, some platforms have supported this approach (Stewart, Stanford and Hardy 2022). However, international experience points to some limitations of these types of policies, including for care and support workers.

Several countries in Europe including Austria, Germany, Italy, Spain and the UK have established an intermediate category of worker that is a sub-category of self-employment, in which workers have some protections and rights that otherwise apply only to employees. The rights and protections extended to workers in the intermediate category vary widely across countries, although they often include working time, annual leave and minimum pay standards and collective bargaining rights.

In most cases the main criterion adopted for workers’ inclusion in the intermediate category is the extent to which work is co-ordinated by, or services are provided through, a single organisation (Countouris 2019). As with the approach outlined above, this could prevent many care and support workers from being included in the intermediary worker classification. Care and support workers holding multiple jobs and/or working through multiple intermediaries to access enough hours of work to make a living could be excluded.

Another concern about the intermediate worker category as a solution is that it can create an incentive for some employers to move workers who would otherwise have been employees into this intermediate category, leading to a downgrading of protections for workers. Problems of this kind have been experienced in both Italy and the United Kingdom (Stewart and McCrystal 2019). In public care and support there would be a strong incentive for providers to shift waged employees to a new intermediate category in response to competitive pressures in individual consumer markets in which price is very important for people purchasing care and support.

Making personal work relations the basis for labour rights

The possibility of establishing a statutory definition of a worker for the purpose of employment rights and protections that includes all care and support platform workers would mean stepping away somewhat from the idea of a traditional binary divide in labour regulation. Currently there is strong divide between dependent employees who need protections *because* they are under the control of an employer and independent contractors who are assumed to be free-market small business operators not in need of protections. Stepping away from this divide would mean recognising that platform workers, including care and support workers, can offer their labour services to multiple users, including through multiple platforms, ‘without being genuinely independent in any meaningful way’ (ETUC 2019, 66). Adopting this type of approach would mean workers would not have to prove they are entirely dependent on, or under the control of, a platform to have protections and rights at work.

The idea of the ‘personal work relation’ (Freedland and Kountouris 2011) as the basis for protections for workers has attracted some interest internationally. A worker in a personal work relation is someone ‘engaged by another to provide labour, unless that person is genuinely operating a business on her or his own account’ (ETUC 2019, 7). Under this type of approach, worker protections would be based on the idea that labour law and the right to collective bargaining should redress the weak bargaining position of workers in the labour market. So, it should be the fact that platform workers earn a living mainly off their personal labour—as opposed to living mainly off other people’s labour and through the organisation of capital assets—that is taken as an indicator of their relative strength in the labour market and need for protections and standards, rather than whether or not they work under the direction or control of a specific employer (or platform).

The Australian and international experience

There are examples in Australia and internationally of regulation designed to provide access to labour standards and rights for workers that do not rely on workers having to be classified as employees or being like employees. For example, under the French

labour code lower-paid workers who provide personal work and services, including care workers, can be treated as employees, even though they may provide services to multiple clients. French law also provides self-employed persons the right to form and join trade unions, and this applies to platform workers (Countouris and De Stefano 2019).

In Australia, up until the mid-2000s, there was a trend to increasing protection for independent contractors under various states' laws that included provisions deeming some categories of workers to be employees for the purpose of employment protections (Briggs and Buchanan 2005, 183). However, this trend was reversed with the enactment by a Coalition government of the *Independent Contractors Act 2006*, that excludes states and territories from enacting laws to treat independent contractors as employees or to extend employee entitlements to them (Stewart 2008).

Nevertheless, there have been, and continue to be, special provisions for some ostensibly self-employed workers. For example, the FW Act contains special provisions for textile, clothing and footwear (TCF) outworkers. TCF outworkers are considered to be employees for the purpose of many provisions of the FW Act, where the Act otherwise applies only to employees. The protections extended to TCF outworkers via the *Fair Work Amendment (Textile, Clothing and Footwear Industry) Act 2012* (Cth) include access to the collective bargaining system. However, logistical and other practical barriers to bargaining persist (Macdonald, Charlesworth and Brigden 2018, 218-19).

In the road transport sector, the short-lived national Road Safety Remuneration Tribunal (RSRT) operated alongside the FW Act to extend rights and protections to self-employed road transport drivers. These workers operate at the bottom of a supply-chain and face conditions that often undercut Award minimums, undermine safe working practices, and leave some drivers unable to recover the costs of operating their vehicles. The RSRT was established in 2012 following a 'Safe Rates' campaign led by the Transport Workers Union (TWU). The body had the power to make remuneration orders (covering all participants in the supply chain), approve collective agreements and deal with disputes. Highly relevant to the care and support sector is that the initiative linked work conditions and (road) safety, and its objectives were to promote both safety and fairness (Macdonald and Charlesworth 2021; Macdonald, Charlesworth and Brigden 2018, 220-21).²⁰

²⁰ The RSRT was abolished in 2016 by the Coalition government that had opposed it from the outset (for more detail see Macdonald, Charlesworth and Brigden 2018, 221). In 2022, among the outcomes of the national Jobs and Skills Summit, one area noted for further work is 'consideration of allowing the [Fair Work Commission] to set minimum standards to ensure the Road Transport Industry is safe,

These sorts of approaches that do not rely on having to prove workers are ‘employee-like’ may be better suited to protecting care and support workers and ensuring their access to employment protections and bargaining rights.

Regulating platforms

The previous Coalition government generally rejected the idea that platform work should be regulated (see Parliament of Australia 2017; 2021, 177-82). In this context, several Australian state governments considered using their powers to regulate platforms. In late 2022, the Victorian Government released its *Voluntary Fair Conduct and Accountability Standards* for on-demand platforms and also announced it will establish a new ‘Gig Worker Support Service’ (GWSS).²¹ The GWSS will provide education and advice to gig workers and administer the standards by communicating with platforms and advising on their application. Following assessment of any developments at national level and a review of take-up of the standards, the government intends to enact legislation ensure compliance (Victorian Government 2022c).

The Victorian standards for platforms will apply to digital care and support platforms.²² They include standards on: consultation on work status and arrangements; consideration of parties’ relative bargaining power; fair conditions and pay; fair and transparent independent dispute resolution; worker representation, including the ability to seek better work arrangements; and safety. They also include principles ‘for addressing discrimination and improving conditions for women workers and workers with culturally diverse backgrounds in the gig economy’ (Government of Victoria 2022b, 6-7).

In the consultation process many concerns were raised that the standards were weak and that this would prevent them from challenging any platform that wishes to provide merely the appearance of consultation and fair processes. More generally,

sustainable and viable’ (Australian Government 2022, 6). The Transport Workers Union is among advocates calling for the revival of the RSRT.

²¹ These initiatives are responses to some of the recommendations of a 2019 Victorian Government *Inquiry into the Victorian On-Demand Workforce* (James 2020).

²² The definition of an on-demand platform adopted in the Victorian standards is ‘a digital platform (website or app) which connects workers with clients, usually in response to an end user or client requesting services through the platform’. It is also stated that ‘(t)he Standards apply to all platforms, including both “horizontal” and “vertical” platforms. A horizontal platform is one on which end-users (consumers or businesses) select workers based on worker profiles uploaded to the platform and sometimes based on offers or bids made by workers. End users and workers may then negotiate specific terms such as rates of pay, although frequently platforms have guidelines or standard terms’ (Victorian Government 2022d).

while welcoming the Victorian Government’s action to tackle the problems of platform work, many of those making submissions to the consultation made the point that national regulation was needed.²³

The European Commission (2021) proposals for regulating platforms go much further than the accountability standards being established in Victoria. They include setting minimum rights for all platform workers regarding the transparency of algorithmic management. Proposals for mandatory reporting requirements for platform companies include reporting on the number of people working through the platforms and the terms and conditions of their contracts.

IR REFORMS FOR BETTER CARE AND SUPPORT WORK

The Australian Government has committed to ‘extend the powers of the Fair Work Commission to include “employee-like” forms of work, allowing it to make orders for minimum standards for new forms of work, such as gig work’ (2022, 6). The government’s proposals for reforms to address gig work problems are expected to be introduced into Parliament in 2023.

There is a risk that not all platform care and support workers would be covered under these new powers if they are not considered to be ‘employee-like’. If the approach taken to determining coverage under any new powers is through ABC-like tests some workers on digital care and support platforms may not be included. First, it is possible some workers could be regarded as running their own businesses. In addition, tests designed to cover the delivery platforms may be harder to apply to care and support platforms. As noted, care and support platforms insist they are very different from other digital labour platforms, and that they operate as ‘marketplaces’ and ‘horizontal’ matching platforms rather than ‘vertical’ platforms that have greater control over workers.

A more effective approach to ensuring protections for care and support workers could be to adopt a model that applies a framework of standards, rights and protections to the workers regardless of their employment status. This could entail deeming workers on platforms and other independent contractor care and support workers to be

²³ Submissions by unions, academics and community legal centres and others to the consultation on the Victorian standards called for standards to be mandatory and much stronger than those that are to be put in place in 2023. For example, see ANMF, ASU, Anthony Forsyth, HACSU, VTHC, WestJustice (Victorian Government 2022b).

employees for the application of specific aspects of the FW Act (as is the case with the Fair Work Amendment that extends protections to TCF outworkers). Mandatory codes of conduct would also need to apply to platforms.

However, other reforms are needed to tackle some underlying problems of precarious work for care and support workers that have their bases in the design, management and regulation of Australia's care and support systems. The individualised direct consumer funding arrangements in the NDIS are designed to enable the direct employment or engagement of care and support workers by individual consumers. This is the context in which platforms have facilitated the widespread use of independent contracting arrangements.

Addressing the problems of platform workers *only* would not address the broader problem that both independent contracting arrangements and the direct employment of care and support workers by individual NDIS and aged care clients and their families place workers outside the effective reach of employment regulation in an informalised 'grey' economy of household employment. This is the situation in many poorly-regulated cash-for-care markets overseas. Such workforces are populated by highly vulnerable workers, including many undocumented migrant workers (ILO 2018). In Australia, these features of labour in cash-for-care markets have received very little attention to date, even though there is an increasing reliance on migrant care workers. In the NDIS, employment/engagement of workers by individual consumers has been linked to the goals of consumer choice and control. There has been very little discussion or debate about how to support autonomy and independence of people with disability through choice and control without creating individualised and informalised employment or contracting relationships. These issues need to be addressed through care policy and regulation as well as through industrial reforms.

Either a regulatory model akin to the RSRT or a group employment model akin to a group training organisation (GTO) is likely to be required for workers in publicly-funded care and support systems (Macdonald and Charlesworth 2021). An RSRT-like body could set fair minimum standards for care and support workers and work with the NDIS Commission and the Aged Care Quality and Safety Commission to ensure the safety, sustainability and viability of care and support systems. Potentially the new Fair Work Commission expert panel for the care and community sector could play some role in this.²⁴ A group training model would entail an organisation acting as intermediary and as the formal employer of workers who are located with one or more

²⁴ Provision for a Fair Work Commission Expert Panel on the Care and Community Sector was legislated in December 2022.

care and support clients who are their 'host' employers. Operating like a labour hire agency the organisation would bear the risks of employment that would otherwise be borne by workers and care and support clients. The group organisation would guarantee compliance with employment regulation and provide the benefits and protections of permanent employee status.

Care and support system reforms must accompany industrial relations reforms to address the risks and problems for platform and other care and support workers. The sustainability of publicly-funded and managed care and support systems relies on skilled workforces with decent jobs that provide fair pay and access to collective representation. The current systems provide incentives for cost-minimisation that threaten quality of services as well as preventing decent work for care and support workers and undermine progress towards gender equality in employment.

TACKLING PLATFORM WORK THROUGH SOCIAL CARE POLICY AND REGULATION

Large segments of the managed or quasi-market for personal care and support in the publicly-funded NDIS, and to a lesser extent, aged care home care in Australia are poorly regulated. In both systems, funding and regulation encourage and reward businesses that avoid the costs and responsibilities of directly employing personal care and support workers. In these individual consumer managed markets, competition often occurs on price grounds, and providers can increase market share and maximise profit by offering cheaper care and support to individual consumers. Thus, there are strong pressures on employers to take 'low-road' employment approaches and casualise their workforces. In the NDIS there are strong incentives for organisations not to register as care and support system providers (including that they do not have to comply with service practice standards). Mandatory registration for service providers is necessary to prevent providers, platforms, and other third parties from gaining unfair advantages and profiting from devolving costs and risks of employment, business and quality services to workers and to people requiring care and support.

In the NDIS, the costing model that determines government funding and NDIS price controls for disability support services is based on workers being employed in accordance with the SCHCADS Award. Currently some NDIS pricing arrangements (e.g. for more complex support) require that workers have skills at particular SCHCADS classification levels. There do not appear to be any impediments to the NDIA mandating that *all* support workers providing NDIS supports are employed at the appropriate SCHCADS Award classification level and in line with the NDIS funding and

pricing assumptions. This would prevent providers and platforms from engaging workers at classification levels and pay rates that are below the skill requirements of the work.²⁵ There are various other mechanisms within both systems for lifting the qualifications, conditions, and pay of platform-based care and support work. Mandatory registration of care and support workers is needed as an important foundation for building skilled workforces.

There is a strong case for all personal care and support workers in the aged care and disability support systems to be employed directly by registered service providers. While less attention has been given to the situation in the NDIS, the problems of indirect employment (outsourcing, labour hire and digital platforms) in aged care were raised in the course of the Royal Commission into Aged Care Quality and Safety. The final report of the Royal Commission included a recommendation that aged care service providers be required to preference direct employment in their services.

In the NDIS, employment of workers by individual consumers and their families has been argued to be important for consumer choice and control. However, in the highly unregulated NDIS market arrangements there has been little system-wide attention paid to developing alternatives and fostering organisational models for choice and control that do not entail informalised and individualised employment arrangements.

The Federal Government has committed to establishing a 'Secure Australian Jobs Code' to prioritise secure work in government contracts and ensure that government purchasing power is being used to support businesses that engage in fair, equivalent, ethical and sustainable practices' (Australian Government 2022, 7-8). This code should be applied in the publicly-funded and managed disability and aged care service systems. However, as outlined above, there are multiple other mechanisms and more direct means *within* aged care and disability support systems for the Government to ensure care and support workers are employed and paid fairly and are supported in their work and careers.

²⁵ See Macdonald and Douglas (2022) for a detailed explanation and discussion of these issues.

Conclusion

Care and support work conducted through digital platforms is a new form of precarious work which undermines the progress that has been made towards ensuring this essential work is recognised as skilled, jobs are secure, and workers are paid fairly. This report has shown that many unacceptable risks face care and support workers engaged through digital platforms. The presence of digital platform work in care and support systems threatens current efforts to advance economic equality for women.

The report has examined options for regulating digital platform work and concludes that regulation should ensure minimum standards and rights for care and support workers regardless of their employment status. The Fair Work Amendment that extends protections to TCF outworkers provides one example of the kind of regulation that could be applied to care and support work, including provisions for mandatory codes of conduct for platforms.

Alongside reforms to regulate digital platform care and support work, action is also needed to ensure other forms of low-paid, insecure and informalised care and support work do not grow in the individualised markets for long-term care. An RSRT-like model that ensures standards for care and support workers are applied across all publicly-funded systems is one approach. As the design, management and funding of our long-term care systems are in the hands of government, aged care and disability systems policy and regulation can be used to ensure all care and support workers are employed in decent jobs.

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