IN THE FAIR WORK COMMISSION

Matter No: AM2016/3

Section 156 - Four Yearly Review of Modern Awards – *Miscellaneous Award 2010*

SUBMISSION IN REPLY OF UNITED VOICE

8 November 2019

1. This is a submission in reply made pursuant to the Directions of the Fair Work Commission ('the Commission') on 3 July 2019 for the review of the coverage clause of the *Miscellaneous Award 2010* ('the Award'). We file this submission in reply to the submissions of Australian Business Industrial and the NSW Business Chamber ('ABI'), dated 4 October 2019; and of the Australian Industry Group ('AIG'), dated 10 October 2019.

2. We also file with this reply submission an article by Dr Frances Flanagan published in 2018 titled '*Theorising the gig economy and home-based service work.*'[1] The article is relevant to the review of the Award as it details a case study of a group of workers that over a period of time went from being considered award free to being covered by awards and industrial regulation. Namely, the initial treatment of providing domestic care in the home as award free work performed by a domestic servant to the regulation of such work under the *Social, Community, Home Care and Disability Services Industry Award 2010*.

Submission of ABI dated 4 October 2019

3. In section 3.7 of their submission, ABI state that even if the Commission concludes that the Award is not drafted consistently with the provisions of the Ministerial Request, that this alone does not provide an automatic basis to vary the Award in accordance with the *Fair Work Act 2009* ('the Act'). We agree with this proposition. A variation to a modern award must be in accordance with the relevant provisions of the Act which is principally whether the Award together the National Employment Standards ('NES') provides a fair and relevant minimum safety net of terms and conditions taking into account the considerations within section 134 of the Act.

4. This review is being undertaken as part of the 4 yearly review of modern awards. We agree broadly with ABI where at paragraph 3.8 it is noted that the relevant considerations are: s134, s138 and s163 of the Act. The modern awards objective is paramount.

[1] Journal of Industrial Relations, vol. 61, 1: pp. 57-78. , First Published November 6, 2018.

5. We disagree with the ABI as to whether there are cogent reasons to depart from previous Full Bench decisions. In the *Preliminary Jurisdictional Issues Decision* [2014] FWCFB 1788 at [27] the Commission noted that: '*In conducting the Review it is appropriate that the Commission take into account previous decisions relevant to any contested issue. The particular context in which those decisions were made will also need to be considered. Previous Full Bench decisions should generally be followed, in the absence of cogent reasons for not doing so*.' We say there are cogent reasons to vary the coverage clause of the Award in this review.

6. In our submission dated 3 October 2019, we supported two variations to the Award:

   (A) clarification of clause 4.2 -we would support replacing the current clause with a term that reflects the construction of clause 4.2 in the Pet Resorts Decision at [37];[2] and

   (B) the deletion of clause 4.3.[3]

7. For clarity, a variation to clause 4.2 as described in (A) would consist of deleting the current clause and replacing the terms with:

   "*4.2 The award does not cover:*

   (1) the classes of employees who have not have been traditionally covered by awards; and

   (2) this must have been because of the nature or seniority of their role."

8. This proposed variation is consistent with the modern awards objective.

S134(1)(a) relative living standards and the needs of the low paid

9. As addressed in our earlier submission, the current coverage clause is ambiguous. It potentially excludes classes of employees who perform work that should be covered by the Award: child minders (in a fitness centre), family day care employees, directly engaged cleaners and security guards (referred here as '*potentially excluded groups'*).

10. In addition to the above issues, United Voice currently has an active dispute before the Commission regarding the coverage of operators of mobile speed cameras, in which the employer is advancing the position that such employees are award-free.[4]

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2 UV Submission dated 3 October 2019, paragraphs [19]-[20].

3 As above, paragraph [43].

4 Matter No. C2019/6512. This matter is at the conciliation stage.

11. It should be uncontroversial that the types of work performed by the potentially excluded groups are generally low paid, and at best, moderately paid.

12. The Award provides an entitlement to appropriate terms and conditions in comparison with that provided to an award-free employee. Notably, the Award provides for minimum award wages with a classification structure (clause 14.1), overtime rates (clause 22.1), penalty rates (clause 22.3), annual leave loading (clause 23.3), consultation obligations (clause 8 and 8A) and several allowances (clause 15). An employee covered by the Award will be better able to meet their financial commitments and needs than an award-free employee who is paid the minimum rate.

13. Clarification of the coverage clause to ensure that employees such as the potentially excluded groups are unambiguously captured under the coverage clause is consistent with s134 (1) (a).

S134(1)(da) the need to provide additional remuneration for:

(i) employees working overtime; or

(ii) employees working unsocial, irregular or unpredictable hours; or

(iii) employees working on weekends or public holidays; or

(iv) employees working shifts; and

14. Award-free employees do not have an entitlement to additional remuneration for working overtime, for working unsocial, irregular or unpredictable hours, for working weekends, and for working shifts. In contrast, the Award contains overtime provisions (clause 22.1) and penalty rates for evening/morning work, and weekend work (clause 22.3).

15. In respect of potentially excluded groups, clarifying the clause to ensure that they are captured would be consistent with the modern awards objective in s134(1)(da) as it would ensure that such groups are providing with additional remuneration for performing work outside of standard hours. This is significant, as some within the potentially excluded groups (such as cleaners and security guards) are likely to be working during times which would attract penalty rates under this Award.

S134 (f) the likely impact of any exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden; and

16. For employers who are currently classifying employees in the potentially excluded groups as '*award-free'*, there may be some increase in employment costs as a result of a variation to the coverage clause.

17. However, any increase in labour costs needs to be weighed against the consideration that the employee is receiving appropriate compensation for working unsocial hours or long durations of work. Simplistically saying that clarifying the coverage by the Award of notionally award free workers will be a cost to employers is problematic. There will also be greater incentive to use such workers appropriately and productively.

18. Further the ambiguity in the current coverage clause lends itself to several competing interpretations about the proper status of such employees, and a clear, unambiguous coverage clause would benefit both employees and employers who may be covered by this Award. As such, clarification of the coverage clause in this Award is consistent with the modern awards objective in s134 (1)(f).

S134(1)(g) the need to ensure a simple, easy to understand, stable and sustainable modern award system for Australia that avoids unnecessary overlap of modern awards

19. As noted in our earlier submission, the Full Bench in its review of the *Alpine Resorts Award 2010* observed at [77] that '*a modern award will not constitute a fair and relevant safety net of terms and conditions where there is doubt about the scope of its coverage'*.[5]

20. As highlighted in our earlier submission, the current coverage clause of the Award is unclear. Clarifying the coverage clause of the Award will ensure the Award is consistent with s134(1)(g).

21. Section 138 of the Act stipulates that a modern award may only include terms that it is permitted to include, and must include terms that it is required to include, only to the extent necessary to achieve the modern awards objective. It is uncontroversial that the variations supported by United Voice do not offend s 138.

22. Section 163 of the Act is relevant to the consideration of any variation to this Award. We refer to paragraphs [5] to [9] of our earlier submission.

23. There are cogent reasons to vary the coverage clause of the Award as made by the Decision of the Australian Industrial Relations Commission ('AIRC') on 4 December 2009.[6] The clause has not functioned in the intervening periods as intended. As outlined in our earlier submission, there are a range of considerations and context that provides support for a variation to clause 4.2 and the deletion of clause 4.3:

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5 *Alpine Resorts Award 2010* [2010] FWCFB 4984 .

6 [2009] AIRCFB 945.

a. ambiguity in the current coverage clause is apparent from advice provided by the FWO and the circumstances leading to the Pet Resorts Decision;[7]

b. advice from FWO that child minders (in a fitness centre) and family day care employees are excluded from coverage of the Award;[8] and

c. the potential for ambiguity in the coverage of cleaners, security guards and other such employees who are not covered by a contract award or an industry award.[9]

24. As a threshold '*jurisdictional fact'*, the Commission can be satisfied that varying the coverage of the Award is necessary to ensure that the Award meets the modern awards objective, and is consistent with other relevant provisions of the Act such as s 163.

25. ABI state in paragraph 4.6 of their submission that the Commission should not be concerned that a class of employees exists who have been excluded from the Award's coverage but are not automatically excluded from coverage by the Act. In our submission, we provided several examples of employees who are not excluded from award coverage by s 143(7) of the Act, but may be excluded from the coverage of the Award.[10] The exclusion of such employees is detrimental as the Award provides conditions such as penalty rates and overtime rates that award-free employees are not entitled to. The disconnect between s 143(7) which addresses the class of employees who should be award free and the Award's coverage should be of concern for the Commission.

26. In paragraph 6.10, ABI argue that this portion of the clause is designed to exclude from the Award's coverage those classes of employees that have been *expressly* left out of a modern award because this class of employees have been found not to be traditionally award covered. We say this is not the way that clause 4.3(b) operates in effect. We note the example of directly engaged security officers in paragraph [41] of our earlier submission.

27. We further say that there is no legislative requirement for clause 4.3 to operate in the manner suggested by ABI. Whether a class of employees were traditionally covered by awards is not intended to be of itself determinative. As noted in our earlier submission at paragraph [26] the concept of traditional award coverage is a conservative measure.

28. Even where a class of employees may not have been traditionally award covered, there is no reason to exclude those employees from coverage under this Award unless that class of

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7 UV submission, paragraph [11].
8 As above, paragraphs [29]-[32].
9 As above, paragraphs [33]-[42].
10 UV submission, paragraphs [28]-[42].

employees was not traditionally award covered *because* of the nature or seniority of their role. This reading is consistent with both the Ministerial Request and s 143(7)(a).

29. In addition, the terms of clause 4.3(b) cannot be justified on the basis of s143 (7) (b) as the clause excludes a wider class of employees than intended by the Act. Subsection 143(7) (b) requires consideration of the nature of the work performed by the class of employee and whether that type of work is of a *similar nature* to that which has traditionally been regulated by awards. Clause 4.3(b) excludes employees simply on the basis that another modern award excludes them from its operation.

30. As such, we say there is no force in ABI's argument that any deletion of clause 4.3(b) could have the effect of rendering the Award inconsistent with the Ministerial Request or s 143(7)(b) of the Act.[11]

31. In terms of the proposition put by ABI concerning the operation of clause 4.3 at [6.20] that industry awards should be varied to include employees that '*fell out of industry award coverage … as opposed to relying upon the coverage of the Award'*, we note the following. Such an approach is a cumbersome way to provide potentially excluded groups with a fair and relevant safety-net of terms and conditions and disregards the intended '*catch-all'* function of the Award.

32. Subsection 163 provides for special criteria relating to changing coverage of modern awards. As noted in our earlier submission, the explicit description of the Award at subsection 163(4) as '*the modern award that is expressed to cover employees who are not covered by any other modern award'* is telling.

33. The main restriction concerning changing award coverage is within subsection 163(1) which states:

> *(1) The FWC must not make a determination varying a modern award so that certain employers or employees stop being covered by the award unless the FWC is satisfied that they will instead become covered by another modern award* ***(other than the miscellaneous modern award)*** *that is appropriate for them.* (Our emphasis)

34. The coverage of a group can move relatively easily between modern awards except to the Award from another modern award or to award free status. Section 163 does appear to contemplate the Award providing interim or '*stepping stone'* coverage to potentially excluded groups. It is useful to bear in mind we are addressing the issue of *prima facie* award free

[11] See paragraph 6.17 of ABI's submission.

employees having clear coverage under a modern award. If a particular group subsequently becomes incorporated into the coverage of an industry award, that the Award covered this group in the interim appears to be the function that the Parliament intended the Award to perform. The possibility of coverage by an industry award is not an answer to problems with the coverage of the Award.

Submission of AiG dated 10 October 2019

35. The submission of AiG advocates for maintaining the current coverage clause, on the basis that the clause was carefully crafted at the time it was made.[12]

36. It has been almost ten years since the Award was made. In the intervening time, there has been an opportunity to observe how the coverage clause of the Award operates in practice. As outlined in this submission, there are legal and factual reasons to vary the current coverage clause of the Award and specifically to vary clause 4.2, and to delete clause 4.3, to remove ambiguity about the scope of the coverage of this Award. The coverage of this Award is not a simple matter; it purports to cover eclectic groups of persons many of whom in 2009 would not have been industrially foreseeable.

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[12] See paragraph 61 of AiG's submission.

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Theorising the gig economy and home-based service work

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Abstract

The history of domestic servants in Australia offers a provocative challenge to the prophets of the digital gig economy. Like home-based service workers today, 19th- and 20th-century domestic servants worked without the protection of minimum wages or hours, unions or independent arbitration and endured perpetually porous boundaries between their work and non-working time, low status and pay. This article argues that digital platforms are instruments of a fundamental shift in the governance of home-based service work, from a system of 'dyadic' to one of 'structural' domination. Intermediaries played virtually no role in the operation of the former system, but they play a fundamental role in the latter, as aggregators of data about workers' responsiveness and speed that enable market-based disciplinary mechanisms to operate without reference to public law and across a much larger spatial context than was previously possible. Short-termism and the fungibility of workers are pre-eminent features of the gig economy model, processes which are inherently corrosive to quality caring relationships that demand an atmosphere of trust and non-instrumentality. The historical analysis that is advanced gives rise to a number of implications for the regulation of digital platforms, union responses and industry planning in the future.

Keywords

Care work, domestic servants, economy, gender gig, informal labour

The executives of digital platform businesses speak a great deal about the future. The peer-to-peer marketplace, they claim, holds the promise of a world that is more responsive to human needs, where services are performed by self-employed entrepreneurs, energised by competition to invest in their own human capital and provide the highest quality services they can. Digital platforms promise to unlock a

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society where no matter what you need – from a ride to the airport to care services for your ageing parent – costs are low, users have more choice, workers can enjoy flexibility, and the providers and receivers of service alike live more spontaneously, liberated from the dead hand of bureaucracy, middle-men and red tape.

Legal and industrial relations scholars have been quick to dismantle these emancipatory claims. They have overwhelmingly rejected digital platform advocates' claims to being 'novel' and 'innovative' in their work arrangements, and instead have located the gig economy as an extreme example of a range of forms of insecure work that have come to prominence over the last 40 years, including casual employment, supply-chain employment, labour hire and (non-digitally mediated) independent contracting (De Stefano, 2016: 473, 477; Kaine et al., 2016; Weil, 2014). In all of these analyses, the standard employment relationship looms large as the conceptual foil for the gig economy.

This article places the gig economy in home-based service work in a longer historical context and highlights continuities and changes in relation to three aspects of the intermediaries' role. The first relates to the activity of 'matching' households to workers for profit, an endeavour that has long pre-dated the digital platform economy but that has changed in terms of the complexity of the networks of which intermediaries are a part and in the extent and depth of data that is collected. The second section describes the roles that intermediaries have historically played in promulgating and reinforcing particular ideologies about the nature of home-based service work. The final section contrasts processes of control over working time, worker discipline and surveillance, tracing continuities in the treatment of platform workers' 'non-working' time, the absence of career paths and the 'biddability' of service workers, while also pointing to differences in the way that modern platforms impose disciplinary processes based on potential reputational damage independent of the state's legal institutions. The article concludes with a number of observations about the implications of this historical analysis in terms of the regulation of platforms, union responses and industry planning.

Conceptualising the gig economy

Much of the existing literature about the gig economy is concerned with contrasting gig-based work and the standard employment relationship. As many scholars have observed, digital platform workers are subject to dramatically inferior conditions to those of employees (Valenduc and Vendramin, 2016: 1-52). As independent contractors, the former receive no minimum pay, no sick or annual leave, no superannuation, are required to supply their own tools, make their own tax and business arrangements, and are subject to on-call scheduling without remuneration for the 'time out of life' which that entails (McCann and Murray, 2010: 29–30). This focus on the contrast in conditions between gig economy and standard employment has given rise to a lively debate among legal scholars as to whether the rise of the gig economy demands the creation of a new, third, category of work

between employment and independent contracting (De Stefano, 2016; Harris and Krueger, 2015; Minifie, 2016; Stewart and Stanford, 2017).

Few studies have attempted to historicise digital platform-based work beyond the last 40 years, or systematically compare it with the 'free contract' paradigms that prevailed in 19th- and, in some occupations, 20th-century Australia. Nor has attention been paid to the historical continuities that exist between present-day platforms and the intermediaries that 'matched' workers to employers in the pre-digital period. Then, as now, such entities embedded certain kinds of mentalities and ideologies of work and obscured others (Rose, 1996), and should be subject to historic examination in the same way as other institutions that frame employment relationships, such as legislation, courts, unions, professional associations, and gender, class and race formations.

Service work relating to the care of human bodies and the maintenance of physical spaces, what can be broadly termed the work of 'social reproduction', has had only a marginal presence in analyses of the gig economy to date. Much of the existing literature has also been superficially occupation-agnostic, but substantively underpinned by the experiences of digital 'crowdworkers', passenger transport drivers and/or food delivery workers (e.g. De Stefano, 2016). While these are obviously prominent forms of contemporary platform-based work, the list is far from exhaustive, and arguably present paradigms are of limited value in grappling with the implications of gig work in the spheres of care, cleaning, security, and professions such as law, medicine and accountancy, given their relatively simple task composition (Stanford, 2017). Finkin (2016) and Stanford (2017) take a longer historical perspective on platform-based work, but also focus their attention on continuities between modern gig work and the 'putting out' system in textile, clothing and small consumer goods manufacturing, activities that involve relatively low levels of interpersonal engagement. To date, only one paper has been published in relation to platform-based aged care work, and it describes the operation of three platforms that operate in the US only, two of which are based on employment, rather than contracting (Doty, 2017).

There are a number of theoretical and policy reasons why a reconsideration of the gig economy through a squarely domestic service-based lens is timely. The first relates to the sheer quantity of home-based service work that takes place in Australia and is forecast to exist in the future. Personal service work is one of the fastest growing occupations in Australia, with the workforce in aged and disability care predicted to grow by almost 50% in the next 5 years (Australian Government, 2018). Digital platforms, even though they presently make up only a small portion of the workforce for services performed in the home, are already woven into the fabric of Australia's national infrastructure for home-based aged care and disability care through public subsidies to platforms[1] and the structure of the National Disability Insurance Scheme (NDIS), which is currently designed in a manner that enables only 'lean', platform-based businesses to operate profitably (McKinsey & Company, 2018: 5). To the extent that digital platform-based caring

work introduces low pay and conditions into the system, it is a matter of relevance to more general analyses of inequality and job security in Australia.

Second, the interpersonal nature of home-based service work highlights limitations in the applicability of gig platforms premised on high levels of worker fungibility that are not aroused by ride-sharing or digital crowdwork. The identity of a competent Uber driver or mechanical 'Turk' has relatively small bearing on the nature and quality of the work they perform pursuant to a platform, but the same claim cannot be made of personal care work, where, as Eva Kittay and Jane Martin have argued, the question of who does the caring is frequently as important as the caring itself. Quality care work is reliant on the three 'C's-care (tending to others in a state of vulnerability), concern (it sustains ties of intimacy and trust) and connection (sustained by affectional ties even when an economic exchange is involved) (Kittay, 1999: 111) – and thus presents a crucial and distinct challenge to the legitimacy of digital platform models that cannot be grasped through analogy with more impersonal forms of service work or manufacturing.

Finally, the history of domestic service in Australia presents an arresting and provocative spectre of what a large-scale workforce organised around the principals espoused by digital platforms might potentially resemble. Throughout the 19th and much of the 20th centuries, servants worked pursuant to contractual arrangements, without any statutory limits on their hours of work, wages or leisure time, or any institutional supports for collective worker organisation. These are all the key features of the digital platform model. The domestic service workforce was enormous, constituting the single largest female occupational group in the 19th century (Higman, 2002: 4). As their work was deemed 'non-industrial', domestic servants were excluded from the Award system when it was introduced in the early 20th century, and for nearly all of that century worked informally in parallel to workers who were subject to the protections of Awards, preferential unionism, arbitration and conciliation. Wages were very low (on average less than half the male minimum wage in 1907), hours were excessively long and elastic (typically 14–16 hours a day, 7 days a week, and often paid in kind through board and accommodation rather than in cash), and servant welfare in general depended on the generosity or otherwise of their employer (Higman, 2002: 173). The work involved virtually no career progression and was overwhelmingly perceived to be undesirable, with most women taking alternative jobs in teaching, nursing, hospitals or hotels in preference to private households whenever they could (Hamilton and Higman, 2003: 68; for an overview of the experiences of contemporary domestic workers, see Cox, 2006, 2013).

The approach taken in this article is historical. It is based on comparing the commercial platforms that brokered domestic service work in the 19th and 20th centuries, namely newspaper classifieds and labour registries, with the 21st-century household service platforms operating in Australia today. These include UberCare and Better Caring, which specialise in personal aged care; Mynder and Find-A-Babysitter, which focus on babysitting and nannying; and Care.com, a US-based global platform operating in over 20 countries which brokers a range of domestic and care services

including childcare, aged care, pet care, cleaning, gardening and housekeeping services.[2] All of these deploy digital technology to 'match' workers to households, either through the targeted presentation of profiles and/or the use of geolocation technology; all are founded on the assertion that the workers on the platforms are independent contractors rather than employees, and thus not entitled to Award wages or conditions. All publish some form of consumer ratings of workers and provide no mechanism for independent dispute resolution. Users are not able to negotiate the terms of such agreements, but can only take or leave them (Aloisi, 2016: 671). Workers who perform work pursuant to these platforms receive workplace health and safety protections, but are prohibited from organising collectively or putting collective demands by virtue of the restrictive trade practice provisions of the Competition and Consumer Act 2010 (Stewart and Stanford, 2017: 428).

The work of 'matching': From local to global networks

Matching service workers to households was a non-trivial activity in colonial Australia. Sites of employment were highly dispersed in urban and isolated rural environments and, from the first years of the colony, households and workers were prepared to pay third parties to enable them to find a suitable match. The work of matching was shared between government and the private sector, with the former running schemes for assisted immigration and training schemes for servants from Britain to Australia before the Second World War, subsequently widened to include southern and central European women in the 1950s. In the private sector, two kinds of organisations acted as 'platforms' connecting workers with employers: newspapers, and servant labour registries run by private, for-profit businesses (O'Donnell and Mitchell, 2001: 7).

Newspapers were the most common method for finding domestic employment. In 1891, when there were 39,000 domestic servants working in Victoria, *The Age* newspaper carried almost 100,000 advertisements. Newspapers in 1911 cost just one penny to buy (or were free to borrow or steal), while classified ads cost upward of one shilling, with the consequence that it was employers, rather than employees, who placed ads and bore the higher relative cost of 'matching'. Scrutiny of potential candidates occurred in person, usually at the employer's address, where the prospective worker would physically present themselves for inspection and selection (Higman, 2002: 109–115). Newspapers played no active role in screening candidates or shaping the terms of the engagement.

More interventionist than newspapers were labour registries, which not merely amassed data on potential employers and employees, but offered to screen and recommend workers on the basis of 'good character' and, in the later 20th century, perform police and reference checks. Both servants and employees paid to have their names registered, and both regularly complained of the high fees extracted by registry-keepers. These could take the form of either one-off payments per placement (approximately 1 week's wages), or subscription fees, which would entitle employers to priority of choice (Higman, 2002: 105). The legitimacy of labour

registries as profit-making enterprises was not uncontested in the 20th century.In the interwar period, the International Labour Organisation (ILO) proscribed fee-charging labour registries in the 1933 Fee-Charging Employment Agencies Convention (34) on the basis that they conflicted with the principle that labour was not a commodity. Under the Convention, all 'fee-charging employment agencies conducted with a view to profit' had to be 'subject to the supervision of the competent authority' and were only permitted to charge fees 'on a scale approved by the said authority' (International Labour Organisation (ILO), 1933). Australia did not ratify the Convention.

Then, as now, labour registries thrived on 'network effects', and did all they could to make their lists of names as long as possible so that they could claim to offer superior reach in matching suitable parties. This was a source of complaint to workers such as 'E.W.', who wrote in 1865 that agencies disingenuously tried to acquire as many names as possible without having jobs in proportion (Higman, 2002: 106). Others complained that registry offices 'victimised' job seekers (O'Donnell and Mitchell, 2001: 7). In the case of some government-owned labour registries, the networks concerned were transnational and facilitated the training and migration of servants from Britain as part of an ideological project to improve the 'efficiency and productivity of the empire', an endeavour with overtly racial dimensions (Hamilton and Higman, 2003: 68–69). When labour registries were unprofitable, they went out of business or were closed by governments, a fate that befell the Female Servants Registry in 1906 (Higman, 2002: 107).

Labour registries did not simply bring the parties together, they also played a subtle role in shaping the terms of the engagement. They provided guidance to the parties on the form and content of their contractual relationships in a manner that was, in the context of the legislative context, mildly beneficial to workers, through the supply of pre-printed contracts that required the parties to fill in the details of names, dates, tasks, wages and conditions. The Masters and Servants Acts did not require contracts to be in writing, and the presence of a written agreement afforded servants a valuable evidentiary basis for the parameters of tasks that it was agreed could be used in disputes taken up before a magistrate. Recourse to the legal system was rarely used in the early years of the 19th century, due to the paucity of rights available to servants to call on masters for lost wages and ill-treatment, but it came to be increasingly used as servants' rights expanded over the course of the century, with servant-initiated actions eclipsing those initiated by employers after 1845 (Higman, 2002: 176; Quinlan, 2004: 244).

Contemporary digital platforms, such as labour registries, also generate revenue by extracting fees from both workers and households, either on a per engagement basis or by subscription, or both. UberCare and Better Caring apply fees per gig (25% and 15%, respectively); Mynder and Find-A-Babysitter are subscription based ($30 and $40 a month, respectively), while Care.com offers a complex model that allows basic searches and job posts for free, but requires subscription fees ($77 for 3 months, $147 for a year) to make contact, as well as levying charges for private communication between the parties in both directions.

Digital platforms also take a role in shaping the terms of engagement, although in a manner that is more substantive and intrusive than their analogue predecessors. Rather than pre-printed forms, platform interfaces are often designed to give the appearance of offering the parties choice, but in fact 'nudge', or sometimes direct, the range of arrangements likely to be agreed on. Prompts and cues such as pre-filled boxes, and options for lowering or raising rates that go up or down by prescribed amounts readily guide users to payment of rates that in some instances are radically below Award levels (Care.com pre-fills a suggested charge of $9 per hour, and purports to provide an estimated 'average hourly rate in your area' based on postcode – the suburb of Redfern in inner-Sydney, for instance, was claimed to be $10.89 an hour). Other intermediaries suggest or prescribe rates superficially close to the Award, but in fact fall substantively below them once differential time loadings and the absence of skill-level progression are taken into account.

Modern platforms, like their predecessors, seek to create the widest 'network effects' they can and boast of the large numbers of users of their platform. In the contemporary context, such claims come with the implicit, and sometimes explicit, promise that only their business will be able to provide users with a unique and unsubstitutable 'match' for their needs, which is presented as an egalitarian bond of kinship founded on shared interests rather than a transactional purchase made by one person with more power than another. The resemblance to the promise of romantic fulfilment advanced by dating apps is more than superficial; at least one US care work platform, CareLinx.com, has made open reference to its borrowing of statistical matching technology from the dating platforms (Doty, 2017: 117). In service to this ideal of the 'perfect match', job posters are strongly encouraged to provide expansive information about their passions, idiomatic interests and biographies in the form of videos, messages and photographs. Such expansive information enables platforms to extract, retain and analyse data from parties at a level of detail that is markedly different from 19th- and 20th-century platforms, a feat made possible by the vast acceleration of technologies in mass data collection, storage and processing (Valenduc and Vendramin, 2016: 124).

The data collected from these detailed postings play a role too, in another historically novel function played by digital platforms: the business of 'matching' workers and households – not to each other, but to vendors of products and services that have nothing whatsoever to do with the ostensible business of the platform. Care.com, for example, operates in a data ecosystem that is entwined with third-party search engines, email service providers, 'vendors who provide geo-location information' and vendors who run classified advertising businesses' including Google. It supplies personal information about job posters and impersonal data it receives from users with records of browsing histories via cookies and web beacons, to enable Google to sell highly targeted advertising space within and beyond the Care.com platform. The platform acknowledges that the entities to which it exports data reside in locations outside Australia and are not subject to Australian privacy laws (Care.com, 2016). While some labour registries in the earlier period operated

on a transnational scale within the British Empire, the extent, complexity and global span of data-sharing arrangements that are central to digital platform business models are clearly of an unprecedented order.

Platforms' roles as aggregators and disseminators of users' data must also be grasped in the context of their corporate structures, which can enable them to engage in 'growth before profit' strategies whereby they exist as entities that gather data for long periods of time, despite being unprofitable, thanks to wider corporate structures that enable their activities to be cross-subsidised by more immediately lucrative arms of the business. A total of 17% of the market value of Care.com, for instance, is owned by Capital G, Google's private equity arm that also invests in other data-rich services platforms including AirBnB, Lyft and Survey Monkey. Venture capital enables the platform to offer heavily discounted services with a view to achieving monopoly effects, a strategy that is common to many 'lean platform' businesses (Srnicek, 2017: 34). In Care.com's nine-year history, 2016 was the first year that the company was profitable; it had experienced net losses of $US 80.3 million and $US 28.4 million in the fiscal years 2014 and 2013 respectively (Care.com, 2015: 3).

The analysis so far suggests that a high degree of scepticism should be exercised in relation to care platforms' claims to be offering a service that is 'innovative' in its objective of matching households and service workers. Newspapers and labour registries have been undertaking this activity on a profit-making basis for two centuries, similarly drawing in parties to attempt to make their database of parties as large as possible, extracting fees from both sides of the exchange, shaping the terms of the agreements that are struck, and in some cases sharing data across national borders. The historical departure taken by digital intermediaries is in the far more interventionist role they play in guiding the parties to reach agreement on terms that are dramatically more favourable to householders, and in the depth and level of complexity of the data they accumulate and pass on to corporate entities engaging in business activities that have nothing to do with the provision of service work. Historically unprecedented, too, is the potential for digital intermediaries to exist as 'shop-fronts' for data acquisition in a manner that is unresponsive to economic signals, by virtue of their financial enmeshment in large corporate entities capable of cross-subsidising their activities for long periods of time.

Ideologies of home-based service work: The private sphere, semi-professionalisation and entrepreneurialism

Platforms for matching domestic workers with households have never been neutral in the way that they conceptualise the nature of home-based service work and its status in comparison to other forms of work. In the 19th and much of the 20th centuries, the prevailing ideology governing domestic service was that of the 'private sphere', a conceptualisation of the home as a haven of moral and social protection (Russell, 2009: 328) that was emphatically non-industrial and in which women were expected to perform the work of care for spiritual, emotional and

moral, rather than pecuniary, reward. A sense of ordained hierarchy, overseen and authorised by a Christian God, was crucial to this world view. The servant guidance manual *Simple Rules for the Guidance of Persons in Humble Life; More Particularly for Young Girls Going Out to Service*, written by Eliza Darling, wife of the New South Wales (NSW) Governor in 1837, evoked religious authority as the explicit rationale for her advice to young servants to undertake their role with a mentality of deference and compliance:

> obey the orders which your masters or mistresses give you; obey them at once and cheerfully: always remembering that it is their place to command and your duty to obey, and that It is the Great God himself who appoints to all persons their stations and their duties. (Darling, 1837: 33)

Labour registries and newspapers implicitly reinforced the idea of domestic service as a world apart from the 'public' sphere, by describing service positions as 'situations' rather 'jobs'. Servants and householders were encouraged to emphasise their 'character' over references, experience or qualifications, although those matters assumed more salience in the later part of the 20th century (Higman, 2002: 159). Agencies recommended workers on the basis of moral qualities, their capacity for prudence, discretion and humility. Selection processes had a racial dimension, with programs to encourage White domestic workers to migrate from the British World pursuant to the White Australia policy (Hamilton and Higman, 2003) and separate mechanisms to secure the indentured labour of Aboriginal girls and young women under the ethos of 'protectionism' (Haskins, 2009; for analysis of the racial dimension of domestic service recruitment in a 20th-century global context, see Anderson, 2000). Intermediaries did not play an active role in encouraging servants and households to stay together through times of conflict (their business model, after all, relied on turnover); however it is important to observe that the 'private sphere' ideology that underpinned domestic service prized continuity of service as a badge of 'good character'. Darling (1837) recommended that servants be careful

> not to indulge themselves in a rambling, fickle disposition; nor suffer themselves to be tempted away, for the sake of higher wages, or a little more liberty and pleasure. Long and faithful service is very creditable; it is truly called 'a good inheritance.' Servants who frequently change their places, get but a poor character and few true friends, and they seldom prosper in the world. (p. 40)

Domestic service intermediaries of the 19th century did not have to assert the non-industrial character of domestic service work with any degree of strenuousness, because its status as such was often enshrined in legislation. The NSW Industrial Arbitration Act 1901, for instance, applied to any 'business, trade, manufacture, undertaking, calling, or employment in which persons of either sex are employed, for hire or reward' with just one exception: domestic service (Higman, 2002: 178). In the early 20th century, the boundaries of the category of 'industrial disputes'

were understood by the High Court to be self-evident. Justice Higgins in *Federated Municipal and Shire Council Employees Union of Australia v Melbourne Corporation* in 1919, for instance, thought that there was no need to define 'industrial disputes' exhaustively, since the matter was unlikely to arise any more often 'than it is necessary for us to define what is a dog when we determine that a certain animal is a dog' (pp. 574).

The exclusion of domestic service work from the realm of labour regulation was not, it should be noted, wholly uncontested in the early 20th century. In 1923, the feminist and socialist activist Jessie Street established a labour hire firm, the House Service Company, with the explicit aim of raising the status of domestic workers and ensuring that servants would receive minimum wage entitlements, as well training, insurance and travel costs. At its height in 1929, the firm consisted of 100 trainees and 300 daily workers (Street, 2004). There were also calls for the extension of labour laws to domestic servants from the Domestic Employees Union in the 1930s and the ILO in the 1940s and 1960s, all of which were rebuffed on the basis that domestic work was said to be inherently non-industrial in character (Higman, 2002: 180). A broader judicial interpretation of the term 'industrial dispute' was articulated by the High Court in 1983 in a constitutional context in *R v Coldham; ex parte Australian Social Welfare Union*. Remarkably, despite major shifts in the ideological conceptualisation of domestic work that will be described below, domestic service workers are still explicitly excluded from the definition of employees in Western Australia today: the Industrial Relations Act 1979 (WA) denies protections and minimum conditions of employment to domestic service workers under the Minimum Conditions of Employment Act 1993 (WA).

In contrast to the 19th and first half of the 20th centuries, the ideological context for home-based service work today is deeply contested. Although no longer founded on gendered distinctions between the public and private sphere, arguably a sense of sanctity and 'calling' still ambiently attaches to the latter. Rather, domestic work – and personal caring work in particular – takes place in the context of two competing and largely antithetical paradigms. The first is of care work as a semi-professionalised social service undertaken as part of a triadic relationship between carers, the state, and people cared for, in service to the secular notion that society owes a collective obligation to provide for the needs of its vulnerable citizens. The second is of caring work as an entrepreneurial activity that should be properly organised through markets and competition, with the state only occupying a minimalist role as a funding provider. These competing conceptualisations of care significantly pre-date the entry of digital platforms into the landscape of care provision, but they are crucial to understand in order the grasp the significance of intermediaries' present and potentially future influence to the way home-based service work is organised.

The rise of the notion of care as a semi-professional enterprise occurred in the wake of a series of social changes in the 1970s and 1980s that led to a sense that the need for care was more than merely 'personal trouble', but was rather a 'public issue' and thus the proper subject of public support and regulation. These changes included the increased numbers of women entering the paid workforce, the implementation of

de-institutionalisation policies for the elderly and people with disabilities, and a range of changes in cultural norms that may be broadly conceptualised as the decline in the 'Fordist sexual-contract' (Gibson, 1998: 15). In the 1990s, a range of forms of home-based service work associated with personal care for the elderly, disabled and young children were brought into a framework of industrial award coverage (Briggs et al., 2007), which was in turn consolidated in 2010 into the federal Social, Community, Home Care and Disability Services (SCHCADS) Award 2010. To a large extent, these Awards extended the standard employment relationship to the activities in question, providing for tiered rates of remuneration based on the levels of skill, casual loadings and additional pay for work on weekends, public holidays and during the night. These arrangements attracted a skilled workforce. While there are presently no mandated minimum qualifications to work in aged care and disability support, in practice the overwhelming majority of employees (86% of personal care assistants in 2016) hold at least a Certificate III in a relevant discipline, and over 81.1% undertake training (Mavromaras et al., 2017: 81). The introduction of Awards also coincided with the introduction of a range of institutions and instruments for the regulation of aged and disability care in residential settings, including the Aged Care Act (Cth) 1997, the Australian Aged Care Quality Agency (AACQA), the Aged Care Complaints Commissioner, the National Standards for Disability Services and, from 2018, the NDIS Quality and Safeguards Commission. Collectively, these instruments establish a regime with the power to provide sanctions of deregistration, fines and civil penalties for entities that fail to meet quality standards (Grove, 2016).

The consumer model of service delivery is starkly at odds with the semi-professional paradigm of care work outlined above. Marketised care contemplates the provision of budgets or cash vouchers to individuals to purchase services from sellers, and prizes the values of efficiency, consumer choice and worker fungibility. In reifying consumer choice, it entails an acceptance and even celebration of worker replaceability, a value that is dramatically at odds with Kittay's insistence on the specificity of carer identities quality care is as much to do with the person doing the care as the care itself (Kittay, 1999: 111). Marketised arrangements place the worker in the position of being 'subject to the employer's private will', rather than as part of a public service relationship that includes the state (Yeatman, 2009: 85). In reifying notions of choice and responsibility, marketised arrangements for care work potentially demean states of vulnerability (Tronto, 2012) and cast care into a mould of transactionality and short-termism which deprives carers of the opportunity to exercise the awareness as to context that is inherent in meaningful emotional labour. The transactional and constrained temporal spans inherent in marketised care also sit at stark odds with the long-term character of quality caring relationships. In Anna Yeatman's words, caring relationships are 'not like products in a supermarket, where it is possible to pick a product off the shelf and walk away', but rather involve 'inter-subjective relationships that can last over a considerable time depending on the nature of the need that is the basis of service provision' (2009: 74).

These two conceptualisations of care work presently co-exist in the Australian landscape, in a state of tension that is largely inchoate. There has yet to be any equivalent of the campaign for professional accreditation and standards by early childhood educators that resulted in the National Quality Framework in 2010 on the part of carers.Recent policy shifts toward consumer-directed care schemes in aged care and the marketised model of social care introduced by the NDIS suggest that the entrepreneurial conception of care is likely to gather more, rather than less, momentum in coming decades (Macdonald et al., 2018: 1–2). In embracing market-based models, Australia is far from alone among Organisation for Economic Co-operation and Development (OECD) countries (Charlesworth and Malone, 2017: 2). Australia's marketised framework for disability care imposes major limits on paid travel time between clients and does not provide for a minimum engagement period, meaning that some workers are already being faced with having to pay for their own travel to work shifts as short as 20 minutes. Despite Australia's relatively high minimum employment standards, non-compliance with Australian wage laws is already occurring at disproportionately high levels under conditions of marketisation, with one recent study finding underpayment of direct service workers in 9 out of 10 cases (Macdonald et al., 2018: 15).

Digital platforms embody and enshrine work arrangements that may be understood as the logical extension of all of the vulnerabilities imposed on workers by marketisation that are outlined above. Short and fragmented shifts, pay at rates less than the Award, the absence of paid breaks, lack of paid travel and waiting time, lack of paid time to conduct administration, monitoring and reporting on clients, and lack of support to deal with complex client needs are all hazards for the traditional care workforce working under conditions of marketisation. Under digital platforms, these risks become inevitabilities.

In the contest of ideas over the proper conceptualisation of care work – as a semi-profession or as an activity best organised through markets – digital intermediaries take an emphatically partisan position, insisting on the marketised conception as both socially desirable and historically inevitable. Numerous digital platform executives have suggested that traditional (i.e. employment-based) approaches to care work are 'unsustainable' (*Anthill Magazine*, 2017) and 'out of touch' with 'consumer expectations' (Scutt, 2016). Many of the platforms provide explicit instructions to potential care workers about how to reimagine themselves as entrepreneurial units (Foucault, 2008: 225), offering guides and resources for building a client base and marketing, and even suggesting that they approach public hospitals and local health and community organisations to encourage them to strike contracts for work with them via the platform. According to one platform executive, 'high-quality' workers should have nothing to fear from working in a competitive environment without workplace protections, as they will be 'greatly in demand and their hourly rates with reflect this over time' (Scutt, 2016).

Domestic service has always been the subject of powerful stories about its place and meaning, and the extent to which industrial laws and protections that govern other forms of work should apply. This section has traced three alternative

ideologies for home-based service work, beginning with the near-hegemonic notion of the 'private sphere' which was straightforwardly reproduced by labour registries for most of Australian history, followed by a more recent phase in which competing notions of care work as 'semi-professional' and 'entrepreneurial' are extant, a contest in which platforms have played an active and partisan role. A line of continuity can thus be drawn linking the part played by domestic service intermediaries in relation to ideas of care work in the past and present: whether it be because workers are understood to be 'angels of the hearth' or self-employed businesspeople, both invoke conceptions of domestic caring work that place it outside the reach of standard labour regulations.

Working time, discipline and surveillance

Surveillance and discipline were a heavy burden to domestic servants. Employers were typically suspicious and distrustful, viewing servants as potential thieves, destroyers of property and threats to the family's reputation and moral standing (Higman, 2002: 243). Surveillance and discipline overwhelmingly occurred in private physical space, by either direct observation of servants' work or conversations about it soon afterwards, and were temporally confined to the period in which the servant was employed by the household. The most despised of masters followed servants around the house closely, criticising their work relentlessly, although direct management of staff tended to give way over the course of the 19th century in favour of more indirect methods of instruction, such as weekly work plans written on a board and hung in the kitchen (Higman, 2002: 163).

Most servants were required to be at the 'beck and call' of their masters over the course of their very long working days. A range of physical and symbolic mechanisms and boundaries were deployed to this end, including bells, modes of address, uniforms, designated servants' rooms and places to eat, and social rituals and practices such as renaming (Hamilton, 2017). Such devices promoted an atmosphere of deference and compliance among servants, keeping them away from householders when they were not wanted and ensuring that they were promptly available as soon as required. The extent to which a servant was on-call at all hours depended heavily on the discretion of the employer; one instruction manual for housewives in the 1880s felt obliged to explain that 'you must give up the idea that you have a right to the whole of poor Mary Ann's time, to control the minute at which she shall go to sleep, and that which she shall wake in the morning, and to influence her leisure as well as her work' (Higman, 2002: 162).

Employer techniques of control and discipline were exercised against the backdrop of the Masters and Servants Acts, which governed the terms of relationships between households and servants from the colonial period into the 20th century. These were notoriously one-sided laws, even more asymmetric than the British counterparts from which they were derived, which granted sweeping coercive powers to employers and imposed harsh criminal penalties on non-compliant servants (Quinlan, 2004: 247). While servants could be subject to criminal punishment

for 'absconding, disobedience, refusal to work, misconduct, insolence, negligence, damage to property and theft', masters who failed to pay wages, ill-treated servants or detained their goods were subject only to civil penalties (Higman, 2002: 176). They were powerfully shaped by an undersupply of workers in the colony, which aroused the strong imperative to restrict worker mobility (Quinlan, 2004: 234). Their administration, while nominally public, was not without apprehended bias, as the magistrates who decided matters were themselves drawn from the servant-employing classes and were seen to lack impartial moral authority by many servants, particularly in rural areas (Quinlan, 2004: 237).

In the absence of unions and faced with a hostile legal framework, the primary means of power exercised by servants was the threat of leaving, an act that had the potential to cause considerable inconvenience and expense given the fact that demand for servants outstripped supply. Workforce turnover in domestic service was higher than is often presumed (Delap, 2011: 27). Once a servant left a post, no data trail followed her. At worst, a future employer might independently receive a negative reference direct from a former employer, but labour intermediaries – registries and newspapers – played no systematic role in brokering such information exchanges. In general, the reputation of servants as good or bad workers played an indifferent role in a servants' future prospects. Domestic service was understood to be a 'life-cycle occupation', an activity that occupied a brief part of young working-class women's lives in the period between leaving home and marrying, or transferring to another occupation such as nursing or cleaning (Laslett, 1977: 104). There were virtually no opportunities for promotion based on higher skills or experience, apart from in the minority of homes that employed multiple servants (Higman, 2002: 158). A servant's reputation, therefore, played a minimal role in either enabling or preventing a rise through the ranks over time, as most jobs were offered at a similar low level.

Ostensibly, the working time, discipline and surveillance pressures facing modern-day service workers differ from those of their predecessors in nearly every way. Where domestic servants suffered unreasonably long hours, confined within the walls of their masters' house, gig employees are in simultaneous potential service to many masters, under conditions of inadequate and fragmented working time (Macdonald et al., 2018), porous boundaries between work and non-work time (De Stefano, 2016) and unpaid travel time moving between work sites (Charlesworth and Malone, 2017: 6). No equivalent of the punitive Masters and Servants Acts that policed servant 'loyalty' under threat of criminal sanction now exists: today the Independent Contractors Act 2006 (Cth) merely ensures that contracts between parties are not unfair, unconscionable or unjust. The face-to-face techniques of control that once pertained in the household (backed by the coercive machinery of the state) are no longer a common feature of the experience of home-based service workers, who rather confront the consequences of work disputes in temporally and spatially deferred and dematerialised forms, through the provision of ratings, rankings and customer reviews published online (Aloisi, 2016: 662; De Stefano, 2016: 492).

Discussion

What, then, can be learned about contemporary processes of worker control in the gig economy through comparison with past practices applied to domestic service? Superficial similarities may of course be observed, such as the 'dead end' nature of both forms of work and the indifferent status according to waiting time. More significant, though, is a paradigm shift that historical comparison reveals in the primary mechanism for control over workers, from one of *dyadic* to *structural* domination. These concepts are drawn from the work of the American philosopher John Dewey, who recognised that domination can occur as a consequence of the asymmetric power relationship between an individual and the intentional acts of known others, such as employers ('dyadic' domination), or alternatively through diffuse and decentralised systems, involving a vast multiplicity of potential 'masters' who are brought together within a common, economised matrix founded on the private laws of contract, tort and property ('structural' domination). Workers living in conditions of structural domination have the liberty, at any time, to change employers, but this 'freedom' is not a substantive one, because none of the alternatives available offer sufficient remuneration or security to facilitate the conditions for a flourishing life (Rahman, 2017). Domestic servants, I wish to suggest, historically worked under archetypical conditions of dyadic domination, obliged to obey the whims of their individual employers. Contemporary digital platform workers labour today under a regime of structural domination, where the market system itself provides the primary mechanism for worker discipline, and the rules of the game are set by private law and are embedded within the terms of the platform on a hidden and non-contestable basis. Unlike their predecessors, they are able to leave households at any time (and may thus escape long-term arrangements that may be riven with exploitation or sexual harassment), and yet this ability to quit cannot be said to equate to anything like true 'freedom'.

There is a spatial dimension to the shift that has occurred between regimes of dyadic to structural domination. Where masters formerly used bells, designated servant quarters and other devices to keep servants 'in their place' within the walls of the dwelling, and 'on call' as required, such mechanisms are now provided through the terms of the platform, which can summon a worker – any worker – from somewhere in the city to attend to the householders' requirements within a certain period of time and for a duration specified by the householder in advance, without any negotiation process with the worker. The fact that modern service workers must serve multiple employers simultaneously through the platform does not mean that there is necessarily any reduced sense of vigilance and conscientiousness in responding to requests in a timely manner to the endeavour. Indeed, digital intermediaries provide the potential for far stricter monitoring and recording of response times than the masters of old, including punishments to workers with 'slow' response times through lowered ratings or financial sanctions (UberCare workers who do not attend an engagement after a set period of time, for instance, must pay a $40 penalty). For workers reliant on accruing extensive hours to survive, the indifference of

the platform regime of work to waiting time is potentially tyrannical; workers are unable to devote time to other commitments while they wait, without pay, while the boundaries between their working and non-working time become more permeable (De Stefano, 2016; McCann and Murray, 2010: 29–30).

Worker ratings and rankings are crucial in enabling digital platforms to exercise structural domination, operating as a kind of 'memory' that is held by the entire market, as opposed to the real-life memories retained by individual masters under the older dyadic domination model. As many commentators have observed, the process of collecting and disseminating client appraisals of work is overwhelmingly one-sided. Most platforms only provide rating rights to households, leaving workers with no mechanism to contest adverse ratings or recount instances of abuse, discrimination, unsafe working conditions, unreasonable requests or failures to provide payment. Platforms in general take no responsibility for unfair or dishonest reviews and do not provide for any independent or transparent process for adjudicating disputes. The use of customer reviews and ratings is far from exclusive to digital work platforms, and forms part of a wider, demotic shift in the governance of time and space, described by historian Patrick Joyce as the rise of the 'omniopticon', the governance of the many by the many, in place of the 'panopticon' of the last two centuries (Joyce, 2003: 16).

Worker fungibility is crucial to the operation of this system of discipline. Without a market that enables one worker to be readily replaced by another, ratings and reviews (which are only generated at the end of relationships) will not be published and the disciplinary effect of the market cannot function. Short time frames for each engagement, and/or the act of leaving as a first resort response to conflict are necessary features of the system. Most platforms emphasise householders' powers to 'terminate the contract at any time' as a highly desirable feature of their service, the 'stick' that will provide the necessary pressure to ensure that workers are driven to provide exceptional service. Workers and householders operating in harmony and for a long duration – the ideal circumstances for high-quality care – presents a challenge to the smooth functioning of the gig economy. This predicament is implicitly recognised by one platform that explicitly instructs households to leave positive reviews for workers even if they want to 'keep them to themselves'.

The centrality of worker fungibility is also at the heart of the similarities and differences in the 'dead end' nature of home-based service work in the past and present. Where formerly it was the authority of God that deigned domestic service as a 'humble station' (Darling, 1837: 33), gig-based service work does not countenance a long-term career trajectory because it fundamentally relies on fast turnover and interchangeable workers. The gig economy is, as one scholar has observed, 'timeless'; workers are hired without regard for their past employment and experience, with no promise of any future employment, nor of any increased pay trajectory that recognises increased levels of experience and skill (Friedman, 2014: 172). Where employment under the SCHCADS award contemplates a three-tiered career structure (which is still relatively flat, in comparison with other occupations), the temporal regime inherent to digital care platform work is a sort of

'permanent present', as workers are invited to perform gigs either immediately with no minimum requirements (as is the case with Care.com and Find-a-babysitter) or alternatively after security and reference checks and/or the presentation of first aid certificates, that constitute one-off 'gates' of entry (Hireup, Mynder, Find a Carer and Sittr).

There has been a historic change in the mechanism by which the working time, discipline and surveillance of service workers are governed, which may be thought of as a systemic shift from dyadic to structural domination. 'Matching' intermediaries played virtually no role in the operation of the former system in the 19th and 20th centuries, but they play a fundamental role in the current system as aggregators and publishers of data about workers' responsiveness, speed and acceptability to householders. While the disciplinary mechanisms of the market operate fundamentally differently from those in the former era – without reference to legislation, across cities rather than dwellings, and using the threat of damage to workers' reputation as an instrument of labour extraction – they have resulted in a number of characteristics in service work similar to those suffered by domestic servants in the 19th and 20th centuries. Then, as now, these workers are required to maintain an orientation of vigilance in their non-working time, must be prepared to respond to requests quickly or suffer punishment, and work in conditions where no credit is given for their past experience or skills and where they are offered no possibility of a rising career trajectory.

Conclusion

This article has not only suggested that the digital gig economy signals the prospect of a 'return' to the conditions of work endured by domestic servants, but also that there are a range of ways in which digital platforms threaten to intensify and deepen the systems of contractualism and private law that governed the 19th-century labour market. This is because first, unlike the newspapers and labour registries of old, many modern digital intermediaries exist as part of much larger monopolistic global corporate entities, capable of cross-subsidising and thus being rendered unresponsive to conventional economic pressures. They have the potential to continue to exist, depress labour standards and gather data for a range of purposes that go beyond matching households and service workers, for far longer than their predecessors ever could. Second, the 'click-wrap' nature of the contracts offered by such platforms offers a self-contained universe for the resolution of disputes, without reference to wider laws or legal institutions in the way that earlier systems contemplated, no matter how flawed and one-sided these laws may have been. The disciplinary mechanisms that platforms deploy instead are founded on the threat of reputational damage through unaccountable ratings and review systems, with consequences for workers' future earnings and security that are potentially lifelong. Finally, modern platforms elevate short-termism and the fungibility of workers as pre-eminent features of their model, values that are arguably intrinsically highly alienating to workers and particularly corrosive of quality caring relationships

which demand an atmosphere of trust, non-instrumentality, and the capacity to exercise emotional judgement free from the expectation of imminent termination. Worker mobility is an irreplaceable element of digital gig systems and crucial to their profitability, yet the costs of this suppleness, through unpaid travel time and transport costs, are shouldered wholly by workers themselves.

In sum, then, this article suggests that gig platform work risks entrenching a new kind of 'life cycle' occupation in Australia society, only viable for young adults or those without caring responsibilities, where the only means of improvement is 'exit' rather than 'voice', and where the consequences of one mistake or misunderstanding may cast a reputational shadow over an entire lifetime of future work.

The implications of this analysis are threefold. The first is the necessity for platforms to be subject to democratic regulation, in recognition of the fact that digital intermediaries are not value-free engines for maximising efficiency, but rather partisans for and instruments of the deepened commodification of labour. In this regard, the ILO's 1933 convention on Fee-charging Employment Agencies that only permitted for-profit intermediaries to operate in relation to certain categories of workers is equally apposite to digital platforms today (ILO, 1933). In particular, it is crucial that governments and policy makers contest platforms' own claims that flexibility, choice, communicative facility and speed can only ever come at the price of adequate worker protections and career paths. Such false binaries must be refused, even if their plausibility has been fuelled by the embrace of marketised care models by governments over the last decade. Certainly, the terms of the democratic regulation of platforms should include the requirement that workers have access to independent arbitration, as well as portability, ownership and the right to contest their digital work records. Democratic consideration should also be afforded to whether such platforms should be permitted to operate at all in industries where there is a high degree of incompatibility between quality work and an ethos of short-termism and worker fungibility.

Second, it is crucial that unions are supported and encouraged to expand their operations so as to meet the challenge of exercising countervailing power on behalf of workers under conditions of structural, rather than dyadic, domination. This will be extremely challenging and will require, at minimum, the amendment of Australian anti-competition legislation that currently prohibits independent contractors from organising and placing collective demands. There were a variety of reasons why unions were unable to meaningfully include domestic servants in the past, including the spatially isolated conditions of work, near-hegemonic assumptions about the 'non-industrial' character of domestic labour, and patriarchal traditions within unions themselves. The latter two conditions are already far less significant than they were in the last century, and the rise of digital technology awakens the possibility of transcending the challenge of the first in unprecedented ways, and developing new avenues for worker 'voice'.

Finally, it is essential that governments invest in creating secure service jobs that are genuinely flexible, facilitate choice on the part of those requiring care and ensure that workers have the time and support they need to perform high-quality

caring work over the course of their careers. We are not empty-handed in searching for an appropriate paradigm. The ILO model law, based on the concept of 'framed flexibility', provides one promising path, with its framework of limited working hours, unsocial hours and rest periods, pared with flexibility standards that promote both employer- and worker-orientated forms of flexibility (Charlesworth and Malone, 2017: 4). A historical perspective on home-based service work indicates that it was not, ultimately, amendments to Masters and Servants legislation that enabled those in service to leave their stations, but rather the availability of secure and regulated work in wartime industries. The human workforce required to address the needs of an ageing population will look nothing like the wartime 'manpower shortage' that gave rise to the standard employment relationship in the mid-20th century; but it should nevertheless enliven creative re-envisioning of the collective political, economic and legal institutions that are required to support the performance of quality home-based service work on a large scale, in ways that go beyond the rehearsal and deepening of the ideology of marketisation.

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Notes

1. Better Caring and UberCare are able to receive funds for brokering services to self-managed home care and NDIS package recipients, and they may also act as subcontractors or labour hire companies to registered NDIS providers or residential care facilities. To date, UberCare is the only digital platform registered to manage government-funded NDIS packages.
2. The analysis proceeds on the basis that the contemporary occupational categories of aged care, child care, disability care, housekeeping and cleaning are the modern descendants of domestic service. It should be acknowledged from the outset that then, as now, most home-based work was performed on an uncommodified and unpaid basis, by members of the household themselves. While domestic servants were predominantly associated with housekeeping and cleaning in the popular imagination, they also performed work that would be today deemed to be 'personal care', including nursing, bathing, grooming and toileting the elderly, sick or very young (Hamilton, 2017).

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