

# Negotiating labour standards in the gig economy: Airtasker and Unions New South Wales

The Economic and  
Labour Relations Review  
2017, Vol. 28(3) 438–454  
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sagepub.co.uk/journalsPermissions.nav  
DOI: 10.1177/1035304617724305  
journals.sagepub.com/home/elrr



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## Abstract

The ‘gig economy’ uses digital platforms to bypass many of the regular responsibilities and costs of employment. Ambiguity as to whether gig-economy workers are independent contractors, dependent contractors or employees allows the undermining of traditional labour standards governing minimum wages and other legislated employment conditions. Labour law and institutions need to catch up to the new reality of this form of work and develop new tools to protect and enhance minimum standards for workers in digital platform businesses. Unions, business and government all have a role to play in the long term. Meanwhile, direct engagement between these new firms and workers’ advocates can also help to mitigate the risks posed to labour standards by digital business models, by addressing regulatory gaps. This article is a case study of innovative negotiations between one platform business (Airtasker) and Unions New South Wales, a peak trade unions body in New South Wales, Australia, in order to establish agreed minimum standards for engagements negotiated through this platform.

**JEL Codes:** J82, J83, J88

## Keywords

Digital platform work, ‘gig’ economy, independent contractors, industrial relations, labour standards, ‘sharing economy’

## Introduction

Digital platform work in the so-called ‘gig economy’ is based on contracts that are individual rather than collective and irregular, both in terms of hours and duration and in terms of being poorly regulated. Work arrangements are usually covered by commercial

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not employment legislation, and workers in the ‘gig’ economy are generally engaged as independent contractors and, as such, are not entitled to minimum labour standards. This article addresses the question of whether unions can find strategies to maintain labour standards in such forms of work.

Digital platform businesses operate in many sectors of the economy, but the work they facilitate is generally concentrated in lower skilled sections of the labour market, where formal qualifications are not usually a requirement. In these segments of the labour market, the bargaining power of workers over contract terms and rates of pay is limited. This problem is exacerbated by digital platforms having full control over each worker’s access to the platform and in many cases determining rates and payments unilaterally.

Given such a level of control is maintained by platform businesses, the critical question is whether they can be described accurately as simply mediating between so-called ‘independent contractors’ and service consumers, or whether they hold a greater responsibility as labour brokers or even employers. Even before the advent of modern digital platforms, there has been ongoing debate about the appropriateness of the independent contractor classification in many work relationships which look similar to employment; the potential for these arrangements to undermine labour standards for workers has been addressed in part through limitations on ‘sham’ contracting and similar practices (Kaufman, 2010; Rawling, 2015). The traditional binary classification of workers as being either employees or independent contractors does not capture the complexities faced by dependent workers in the gig economy. Many digital platform businesses, thus, operate in a legal grey area when it comes to their employment practices (Coyle, 2017). Their workers are able to choose their hours of work, and indeed, whether to sign up for specific tasks; as a result, it is argued that they do not meet the strict definition of an ‘employee’. But at the same time, these workers have limited bargaining power and clearly do not possess many of the traditional attributes of truly independent contractors. Workers are fully dependent on the digital platform for the allocation and performance of their work, and the digital businesses maintain control over how work is performed and compensated; they also retain considerable capacity to monitor and supervise the actions of workers, and leverage to pressurise workers to work exclusively on their platforms.

Unions are concerned that if workers who do not genuinely meet the definition of an independent contractor are classified as such, they will be covered by commercial not employment legislation. If that classification is sustained, workers will be left with no protection under legislated minimum labour standards (Stewart et al., 2016). This has the potential to unleash competitive pressures that will significantly undermine labour standards across the economy, since platform businesses could use reduced labour costs to undercut a range of services traditionally provided by paid employees in more traditional firms, sparking a broader ‘race to the bottom’ in costs and standards (De Stefano, 2016).

This article provides a detailed Australian case study of one union body’s approach to addressing these concerns. It outlines and analyses negotiations between a peak union organisation, Unions New South Wales (NSW) and Airtasker, a digital platform offering a range of home repair, general labour and ‘odd job’ work services.

The article begins with a brief literature review, summarising the major features of work in the gig economy, its origins and the various employment models utilised by different digital platforms, focusing, in particular, on the relationships between contractors and

digital platform businesses. The second section describes the details of Airtasker business model and contests the ‘independent contractor’ designation as a way of defining the position of the workers performing Airtasker-mediated work. It also seeks to identify why a peak organisation such as Unions NSW was well placed to step in. The third section outlines the case study methodology. The fourth section provides a detailed analysis of a specific initiative to establish and enforce some minimum standards within Airtasker’s activities, arising from negotiations between Airtasker and Unions NSW. This initiative established certain standards, enforcement mechanisms and dispute settlement procedures, covering topics such as minimum payment, safety, insurance and dispute resolution.

The concluding discussion suggests that in the absence of legislative protections for workers employed through digital platforms, businesses, unions and governments need to implement measures that limit exploitation and the undermining of labour standards. In the short term, this will involve digital platform businesses agreeing to modify their practices to respect minimum labour standards, including rates of pay, safety and injury insurance. In the long term, however, these protections will likely need to be legislated in order to ensure effective compliance and to create a more level regulatory playing field between work in the gig economy and work in more traditional settings.

### **Conceptual framework: Gig-economy work, its regulation and the role of peak union bodies**

The term ‘gig economy’ first became commonplace at the height of the global financial crisis (Hook, 2015); at that time many workers lost permanent, full-time employment and turned increasingly to sporadic, casual and freelance work or ‘gigs’ to support themselves in the absence of better alternatives (Hong, 2015). Since then, the term has evolved to encompass a growing range of online platforms developed by for-profit companies using digital technology to pair workers with tasks or jobs, involving both online and offline work in what are referred to as ‘online marketplaces’ (Productivity Commission, 2016).

The labour practices of digital platform businesses usually encompass several common features:<sup>1</sup>

- (a) Work is fragmented into specific individual tasks or jobs, and workers are engaged on a task-by-task basis with no guarantee of continuing work.
- (b) Tasks are performed by individual workers but commissioned by an end-user (an individual consumer or a business).
- (c) The performance of labour by workers for end-users is facilitated by a for-profit company (like Airtasker or Uber), which charges users for the work and pays workers for each task. These transactions are conducted through web-based applications controlled or managed by the platform business.
- (d) Workers are treated by the facilitating companies as independent contractors and lack standard employment entitlements and conditions, including sick leave, minimum wages, annual leave and access to workers’ compensation.
- (e) The price charged for each job is set by the facilitating company or by the commissioning customer. Payment is collected through the platform, and compensation (net of the platform’s margin) is then disbursed to the worker.

Currently, this business model is concentrated in a few major industries, including cleaning, courier and passenger transport, task-based work and food delivery (Allen and Berg, 2014; Torpay and Hogan, 2016). A growing number of companies are developing and introducing platforms in these sectors; however, the practice so far has been dominated by a small number of large, high-profile and in some cases international companies. Leading examples include Uber and GoCatch (transport), Whizz and Helping (cleaning services), Airtasker and Freelancer (covering a range of jobs and tasks), and Deliveroo, Foodora and UberEats (food delivery).

The extent of this type of work is difficult to measure, but researchers agree that it currently accounts for a small proportion of the overall labour market (Katz and Krueger, 2016; Minifie, 2016). The state government of NSW, Australia (where the case study described in this article is based) recently estimated the broader ‘sharing economy’ contributes AUD504 million to the State’s economy annually and provided 45,000 people with some form of work or income (Deloitte Access Economics, 2015).<sup>2</sup> The general practice of platform-based business models is likely to expand further across the service sector, including in areas such as care, education, health, legal, financial and accounting services.

The digital platform business model relies on the use of independent contractors to perform the ultimate work. Some firms unilaterally set the price for specific tasks (like Uber and Deliveroo), while in others (like Airtasker) an unregulated online marketplace determines the price of labour. The activity of independent contractors is governed by commercial rather than employment law, bypassing the normal requirements of minimum wages and employment standards.<sup>3</sup> The companies typically claim that they do not employ the workers who perform the advertised service or tasks. Instead, they define themselves as ‘technology providers’, whose proprietary applications connect workers (the contractors) and customers, who then interact under a separate service contract (explicit or implicit) which is held to absolve the platform provider of direct responsibility or involvement in the work that takes place (Prassl and Risak, 2016).<sup>4</sup>

In Australia, legislated minimum labour standards are established through the Fair Work Act 2009 (Cwth) and a set of ten National Employment Standards. This legislation also governs the operation of an industrial relations tribunal which lays down further conditions through industry-specific Modern Awards and collectively bargained workplace agreements (Stewart et al., 2016). Individual common law employment contracts cannot legally undercut these standards. Independent contractors are not subject to these regulations.

The use of independent contractors as a tool to reduce company labour costs and evade minimum labour standards predates the rise of digital platforms (Goodwin and Maconachie, 2011; Gunasekara, 2011). Under Australian labour law, the Fair Work Act 2009 (Cwth) s. 357 provides for a claim of contravention if employment is misrepresented as an independent contracting arrangement known as ‘sham contracting’ (Stewart et al., 2016: 199–220). One key difference between a genuine independent contractor and an employee is the level of control the worker has over the performance of his or her work, and his or her reliance on another company or individual to commission that work (Roles and Stewart, 2012). Case law considers the totality of the relationship between the worker and the employer through the so-called ‘multi-factor test’ (Stewart et al., 2016: 204) in determining employee or independent contractor status.<sup>5</sup>

Despite legislative and common law restrictions, in practice, the use of sham contracting strategies is still widespread, particularly in cleaning services and call centres (Fair Work Ombudsman, 2011). The broader repercussions are an undermining of established labour standards in the industry. In digital platform businesses, most work typically requires few if any formal qualifications and training, with low barriers to entry. In such an environment, unregulated competition for work can readily undercut socially accepted minimum rates of pay and working conditions.

The legitimacy of the independent contractor classification for workers in digital platforms must be considered on a company-by-company basis, including careful consideration of how the company regulates and controls work performed through the platform, determines the price of labour and facilitates payment. It is also important to consider the level of wages paid (including superannuation and paid leave) and how they compare to those of employees working in comparable roles and industries under more traditional employment relationships. In sum, the fact that price, payment and access to work are governed by an intermediary for-profit company should raise immediate and serious questions about the legitimacy of the application of the independent contractor classification to this form of work.

In order to understand how and why Unions NSW intervened to address the lack of regulatory protection for workers using digital platforms, it is necessary to understand a little of the role and method of operation of peak union bodies in Australia. Such inter-union organisations, which have historically operated at regional, state and national levels, are relatively under-researched (Ellem et al., 2004: 1–2). Unions NSW (the organisational name since 2005 of the *Labor Council of NSW*) is Australia's oldest peak union council. Founded in 1871, it pre-dated, and worked towards, the 1927 creation of the national peak body, the Australian Council of Trade Unions (ACTU), to which, along with other state labour councils, it is affiliated (Markey, 1994). Its role in coordinating industrial disputes waned as federal coordination of industrial relations grew from the 1980s on culminating in the transition to a national system under the Fair Work Act 2009 (Cwth). Like other peak union bodies, it has balanced an inward and an outward focus on organisation and mobilisation; on economic and political goals; and on negotiation, representation and service provision (Briggs, 2004; Ellem and Shields, 2004; Markey, 1994). Campaigns crossing the boundaries of individual unions have historically included those on working hours and leave, gender pay equity, work-based childcare, secure employment, health, safety and injury compensation and ethical clothing manufacture (Unions NSW, n.d.). Particularly in the last decade, Unions NSW has been actively involved in building new community-based worker rights and social justice outreach campaigns (Barnes and Balnave, 2015). It was, thus, well equipped to move beyond reliance on traditional regulatory structures to initiate a campaign combining public awareness and direct negotiation with digital platform providers.

## Methodology

The account that follows draws on a detailed review of Airtasker's labour practices which the author helped prepare in 2016 (Unions, 2016). As such, it is an example of qualitative research of a type called 'strategic', used as a source of evidence for public

policy (Ritchie and Spencer, 2002). It involved cross-referencing several of the data sources identified by Yin (2003): documentary materials, web-based artefacts, practitioner conversations, participant observation and reflective practice. Case studies are the preferred qualitative research strategy when the phenomenon under investigation must be studied in its setting and when the focus is on contemporary events and contextual conditions are relevant. (Iacono et al., 2009). This article is based on what Evered and Reis Louis (2001) call ‘inquiry from the inside’, whereby the researcher is immersed as a participant. As Harris (2001) argues, the practitioner’s experience is a legitimate source of knowledge. At the same time, it is important that the practitioner engages in reflective practice, structuring and formalising knowledge gained through practical engagement and offering this analysis for testing, as is being done here (Benbasat et al., 1987).

The research into Airtasker business model was undertaken as a basis for intervention. It was conducted through a study of the platform’s online documentation, media statements and evidence provided to an Australian Senate enquiry by its principals (see, for example, Fung, 2016, 2017; Airtasker, 2016a, 2016b, 2016c; Unions, 2016 provides a fuller list of sources).

## The Airtasker business model

This section describes the Airtasker business model and the specific work practices which are facilitated through its platform. The next section then reviews negotiations between Airtasker and Unions NSW, including an agreement reached to clarify and strengthen minimum standards and other worker protections for labour intermediated through the platform.

The following outline of Airtasker provides details on how the platform facilitates a wide range of work on specific tasks and ‘odd jobs’ by matching consumers who need something done with workers. It includes a detailed assessment of the elements of control over work the company maintains through its digital platform, arguing that for this reason Airtasker workers do not accurately fit the definition of independent contractors. Airtasker’s work organisation practices are similar to those utilised by other digital platform businesses, thus, raising questions about the general suitability of the independent contractor classification across the gig economy. At the same time, however, Airtasker workers may not meet the traditional threshold for classification as employees. Airtasker is, thus, a useful case to assess the ambiguous legal status of work typical in many digital platform businesses.

Airtasker was established in 2012. It defines itself as ‘a trusted community marketplace for people and businesses to outsource tasks, find local services or hire flexible staff in minutes – online or via mobile’ (Airtasker, 2016b). Airtasker is the leading provider of task-based services in Australia; it has 1.2 million users and generated AUD75 million in paid tasks in 2016 (Fung, 2017). The centrepiece of the business model is a website and associated mobile application (<http://www.airtasker.com.au>). On this site, a *job-poster* (either an individual consumer or another business) advertises a task or small job, and then individual workers can offer to perform that work. The job-poster creates a new task by specifying details and assigning a rate of pay. Payments are determined only for a completed task, not on an hourly or daily rate; this shifts risk

associated with the time required to complete a job from the consumer to the worker (Kaine and Josserand, 2016). The rate advertised by the job-poster includes both the payment to be provided to the worker and a 15% margin which is retained by Airtasker as a fee for its intermediation service (Airtasker, 2016b). A worker interested in an advertised job may offer to do the job for the advertised price, or they can bid down the compensation initially offered in an attempt to be awarded the work. Bids are 'blind', meaning that only the job-poster can see what various workers are bidding. This clearly encourages an ultra-competitive bidding environment, in which workers attempt to undercut the advertised rate to gain a competitive advantage. Job-posters are free to choose their supplier on criteria other than lowest price. For example, they might select workers based on an Airtasker-rating system, in which workers are graded on the basis of work they performed for other job-posters through the platform.

There are few limitations on what sorts of tasks job-posters can request on Airtasker: the only restrictions being illegal activities, escort services and tasks regarding completion of school or university assignments. The bulk of jobs on Airtasker fall into the following four main categories (with the proportion of tasks in each category reported by Fung, 2016): home and garden (29.6%), delivery and removals (22.4%), trades work (16.5%) and market research (16.4%). The Airtasker business model is not dissimilar to that of a labour hire agency, charging a fee to locate and recruit workers to perform specified tasks; this analogy is especially close in the case of the many businesses which use Airtasker to recruit contingent labour for their own operations.

### *Neither independent contractor nor employee? – a 'grey area' of regulation*

Airtasker defines its workers as independent contractors who are engaged directly by the job-posters. In this view, workers are governed by commercial rather than employment law, and thus, Airtasker does not see itself responsible for minimum payments or other features of the normal employment safety net. Obviously, mobilising labour in the form of independent contractors significantly reduces the business' labour costs. However, the nature of work by Airtasker workers is arguably different from a genuine independent contractor arrangement, because Airtasker takes an active role in regulating both the performance of the work and the relationship between the job-posters and workers. In managing the work process that its platform facilitates, Airtasker:

- (a) *Charges a work fee.* It collects 15% of payments for all jobs. This fee is built into the cost agreed between job-posters and workers, meaning that the fee is effectively paid by the worker out of the price they successfully bid to perform the work (Unions NSW, 2016: 2);
- (b) *Regulates the behaviour of workers.* Airtasker regulates the public image and brand of its business. This extends to controlling the public interaction of workers on the website. Workers can be blocked from applying for future work for publicly expressing views with which Airtasker disagrees (Airtasker, 2017c);
- (c) *Facilitates a platform where workers are dependent on Airtasker to find tasks.* The ability of workers to find work outside of the platform is limited.

Workers gain work on the basis of the brand and marketing of Airtasker, as well as the ratings they have accrued within the platform. This curtails the ability of workers to build their own client base or flexibly move their work outside the Airtasker platform;

- (d) *Maintains the right to remove workers and, thus, restrict their ability to work.* Airtasker maintains the right to block workers from Airtasker at its sole discretion (Airtasker, 2017c). Airtasker is the leader in the market for on-demand labour services, making it difficult for blocked workers to continue working in this field. Depending on the nature of their work, blocked workers may in effect be ‘blacklisted’ and restricted from attaining task-based work even through other channels;
- (e) *Provides (limited) insurance protection.* While Airtasker does not cover workers’ compensation insurance, it does provide coverage for third-party damages that a customer might incur in the course of contracting work through the platform (Airtasker, 2016a). In this important sense, Airtasker is effectively acknowledging some responsibility for its workers;
- (f) *Regulates the service contract by providing mediation and arbitration.* Airtasker offers a mediation and arbitration service to workers and job-posters who are unhappy with any aspect of their relationship (Airtasker, 2016c);
- (g) *Controls who perform the work.* Airtasker restricts workers from secondary outsourcing of a task or having the work partially performed by another contractor. This further limits the ability of workers to fully control the performance of their work (Airtasker, 2017c);
- (h) *Interviews and screens workers.* The company has created a premium subset of workers, called ‘Airtasker Pro’, in a further effort to enhance consumer confidence in the quality of services arranged through the platform (Airtasker, 2017a). To qualify for this category, workers must be interviewed and screened. If they meet the standards unilaterally specified by Airtasker (not by the end-users of their services), these workers are provided with preferential allocation for advertised tasks. This is a further indication that Airtasker sees its role as extending beyond, simply connecting end-users with workers, as the company is taking on incremental responsibility for overseeing the quality of labour.

The validity of the independent contractor classification for Airtasker workers has not yet been tested in law. Although Airtasker maintains control over workers through all of these aspects of its business model, there are some aspects of working for Airtasker that may still be consistent with the independent contractor classification. In particular, the fact that workers are able to select which jobs they perform and when they are performed is not consistent with defining these workers as true employees. Nevertheless, workers are still dependent on the Airtasker platform for work, and Airtasker controls many aspects of their work, they do not set the price for their work nor process payment and they are restricted from subcontracting their jobs to other workers. All of this challenges the purportedly ‘independent’ nature of their engagement. In sum, neither of the current definitions for ‘independent contractors’ and ‘employees’ fully apply to workers engaged through the Airtasker platform. Airtasker workers therefore occupy a grey zone of



employment law. Failure to address this ambiguity with protections which affirm traditional minimum standards, given the ways in which workers are still clearly dependent on Airtasker for their work and incomes, has the potential to undermine labour standards – not just for workers on the platform but also for employees doing similar work in more traditional employment positions.

*Minimum rates of pay.* Rates of pay for work arranged through Airtasker are ultimately controlled by the job-poster, who accepts the winning bid for each task negotiated. Their decisions are guided by the ‘Airtasker market’, which provides job-posters with a sense of what workers are willing to work for. Jobs are paid on a per-task basis, not as an hourly or daily rate of pay. There is an option for job-posters to include how long they expect the task to take, but this is not mandatory. Even when estimated times are posted, they are considered only suggestions, and there is no obligation for the job-poster to make additional payments to the worker if the task takes longer than expected. Moreover, the payment rate advertised and agreed to by job-posters is not what is actually paid to workers, as this rate includes the 15% fee taken by Airtasker.

The Airtasker website does not provide information regarding minimum wage rates, the terms of relevant Awards or other employment standards. However, it does provide recommended hourly rates of pay for the most common job categories (Airtasker, 2017b). Initially, when the author analysed recommended rates of pay as part of a Unions NSW study of Airtasker, they were below the relevant Award minima. For example, in August 2016, Airtasker’s lowest suggested hourly rate was for data entry with a suggested rate of AUD17.00 per hour. When the 15% Airtasker fee was deducted, this saw workers paid AUD14.45 per hour – well below the minimum award rate of AUD23.53,<sup>6</sup> and even lower than the statutory minimum wage of AUD17.70. The recommended rate for cleaning was AUD20.00 per hour (with AUD17.00 paid to the worker) and AUD25.00 per hour for retail (AUD21.25 paid to the worker). Airtasker workers are not paid superannuation, casual loadings or additional allowances. Taking into account these additional costs, Airtasker’s recommended rates of pay in August 2016 represented a significant underpayment compared to the relevant Awards. The rates contained no allowances for tools, travel time or other related costs incurred by workers (Airtasker, 2017b)

The rates of pay recommended by Airtasker were (and are) only provided as a guide and are not enforceable. In defending this approach, Airtasker claims to be facilitating a marketplace in which the interaction of end-users and workers determines the value of jobs (Airtasker, 2017b). This claim, assuming equal exchange on an online marketplace, ignores the lack of full information, the dependent nature of workers, their limited individual bargaining power and the degree of compulsion exerted by high levels of unemployment and underemployment in the broader labour market. The purpose of minimum legal standards, after all, is to establish a ‘floor’ to the labour market, below which market competition is not allowed to drive wages and conditions. As long as workers on Airtasker and similar platforms continue to be treated as independent contractors, with pay determined through micro-agreements between customers and workers, it will be difficult for minimum rates of pay to ever be truly enforceable. Increasing recommended rates of pay, and at least acknowledging the relevance of statutory minimums, is an important step towards acknowledging that basic standards should apply to work and

wages regardless of a worker's classification. This would need to be accompanied by meaningful efforts to enforce those recommended minimums.

*Insurance and safety.* Airtasker workers are covered under the company's AUD20 million insurance policy, which provides insurance for third-party damage caused to the job-poster or their property (Airtasker, 2016a). The policy does not include workers' compensation protections and explicitly excludes personal injury or property claims on the part of workers. This dichotomy between Airtasker's recognition that it could be responsible for harm caused *by* its workers, but not for harm caused *to* its workers, is self-evidently asymmetrical, suggesting that the company is more concerned with assuring its potential customers than with protecting its workers.

The lack of insurance to cover injury or damages to Airtasker workers, however, does not absolve job-posters or Airtasker of their safety obligations – nor does it absolve them of potential liability in the case of a worker being injured. As a general rule, independent contractors are not entitled to workers' compensation insurance. However, under the *Work Health and Safety Act (Cwth) 2011 (WHS Act)*, a service hirer is obligated to provide a safe and hazard-free workplace. The WHS Act also provides that more than one duty holder may be held responsible for the safety of workers – specifically including both the labour hire company and the host of the independent contractor. The duty of care must be fulfilled by both parties to the extent that they have the ability to control and influence the matter. In the case of Airtasker, this would require Airtasker to ensure that job-posters are aware of their safety obligations and risks associated with certain tasks, and that workers are also made aware of the job-poster's responsibilities (so they can enter their arrangement with a certain expectation those responsibilities will be met). Until April 2017, Airtasker did not provide readily available information on safety obligations or potential hazards on their app or website. Furthermore, no verification or proof of licences was required by workers who perform trades skills, including electrical, plumbing and building work. Similarly, job-posters were not provided guidance on what kinds of tasks should be undertaken only by qualified and/or licenced workers. If tested, Airtasker's *laissez faire* approach to safety may not meet the requirements of the WHS Act, and this could open both the job-poster and Airtasker up to liability for accidents that occur in the course of Airtasker work.

In the case of a job-poster being found liable for an injury in their home, they could potentially be left without insurance coverage for costs resulting from an Airtasker-related injury. Standard home and contents insurance generally provides coverage for third-party injuries or damage occurring on someone's property. However, in many insurance policies, this liability coverage is void if the injured individual was performing paid work at the property. While there are variations between insurance policies and within various jurisdictions, there is no uniform approach to third-party injury insurance coverage as it would apply to job-posters. As discussed, the independent contractor model (if legally sustained) would seem to absolve Airtasker and job-posters of obligations for workers' compensation insurance, but does not release either party from the broader duties and liabilities of providing a safe and healthy workplace. The lack of injury insurance and guidance on workplace safety therefore leaves Airtasker workers uncertain of their legal position regarding safety concerns at work – another 'grey area' in Airtasker workers' legal status.

*Dispute resolution.* When there is a disagreement or dispute between an Airtasker worker and job-poster, Airtasker provides mediation and arbitration. In the first instance, Airtasker acts as the mediator. If an agreement still cannot be reached, the dispute can be referred to an external arbitrator, with the parties (the job-poster and the worker) covering costs. In a hypothetical example provided on the Airtasker website, a worker (Mike) requested mediation assistance after a job-poster (Sophie) cancelled the job when it was due. Mike was already waiting at the property to perform the work and requested partial payment to cover time and petrol. Sophie declined to pay. Airtasker provided mediation and found that because the party had not had a prior arrangement in the event, the job would be cancelled, and Mike would not receive any payment (Airtasker, 2016c). This example demonstrates the weakness of the dispute settlement system and Airtasker's bias in favour of the job-poster. As in the case of insurance coverage, Airtasker seems more concerned with reassuring job-posters about the lack of risk of hiring work through its platform than with reassuring workers that they will be treated fairly. Unless provisions like cancellation, lost earning capacity, or travel time are explicitly specified in an agreement between a job-poster and the worker (which seems highly unlikely), the default practice is for workers to bear the risks associated with a collapse in the relationship with a job-poster. This is in addition to the unequal bargaining position workers already face, by virtue of very weak overall labour market conditions – not to mention the requirement that they maintain good ratings on the Airtasker website in order to win future work. The dependence of workers on the Airtasker platform for their income implies a dependence that is closer to a traditional employment relationship; this should be considered in any process for mediating and arbitrating disputes between workers and job-posters.

In summary, analysis of the details of the Airtasker business model confirms that the firm's activities go well beyond simply creating a neutral marketplace. Airtasker implicitly recognises that there are, indeed, some obligations associated with arranging labour services for its customers (the job-posters) – such as, for example, its provision of third-party insurance. It unilaterally controls access to work opportunity, imposes important restrictions on the actions of Airtasker workers and controls payment to them (after deducting the company's margin). Rather than simply being independent contractors, workers are dependent on Airtasker (potentially as their major or sole source of income) in ways that are more typical of paid employees or labour hire workers.

## **Unions NSW's engagement with Airtasker**

In August 2016, Unions NSW released a detailed public report on Airtasker (Unions, 2016), which challenged the company's claim that its workers were independent contractors, and considered how this practice impacted on the rights and conditions of workers hired through the platform. Unions NSW argued that Airtasker workers were not genuine independent contractors, since the company maintained an important element of control over the work, how it was performed and how it was remunerated. The union body also drew attention to the risks that this business model posed to pay, safety and fairness – not only for Airtasker workers but also for the workers in more traditional settings who now must compete with this model to retain their own positions.

The release of this report sparked a process of ongoing negotiations between Unions NSW and Airtasker, regarding how to better protect workers hired through the platform in light of this element of dependency (as well as the compulsion to work for less instilled as a result of broader labour market weakness). In the absence of clear legal protections and entitlements, Unions NSW opted to attempt to negotiate incremental improvements in Airtasker's practices, focusing on more and better information, an explicit recognition of the relevance and importance of minimum legal standards, and better protections for workers regarding safety, dispute settlement and other matters. These negotiations were based on the dependent nature of workers on the platform. A 2017 agreement between Unions NSW and Airtasker specifies several basic practices and protections for workers, including measures around recommended rates of pay, injury insurance, safety and dispute resolution (Patty, 2017).

The major features of the negotiations and agreements reached between Airtasker and Unions NSW involved the application of the following accepted minimum labour standards to Airtasker business model:

- (a) *Minimum rates of pay.* Since August 2016, Unions NSW has worked with Airtasker to identify and communicate the minimum award rates of pay for the platform's most common industries and classifications. As of March 2017, Airtasker no longer posts any recommended pay rates below the 2016–2017 National Minimum Wage for casual workers of AUD22.13 per hour (a rate which includes a 25% casual loading factor). Additionally, in the process of posting a job, users are notified of minimum Award rates of pay for each of ten key categories of work. The revision of rates has seen the recommended hourly rate of pay on Airtasker increase by up to 75% (Airtasker, 2017b);
- (b) *Insurance.* Unions NSW is now working with Airtasker and external insurance suppliers to develop an optional insurance policy which provides workers with coverage for personal injury. The insurance will be affordable and flexible, and provide insurance protection for workers injured in the course of Airtasker work;
- (c) *Safety.* Unions NSW will also work with Airtasker to develop task-specific safety guidelines and information for both workers and job-posters, identifying potential workplace hazards and necessary safety precautions. This will assist Airtasker and job-posters in ensuring that they are compliant with their safety obligations under the *WHS Act*;
- (d) *Dispute settlement.* Unions NSW, Airtasker and the Fair Work Commission have agreed to develop an appropriate dispute resolution system which would be overseen by the Commission, which would also act as the ultimate arbitrator. This is an important step in acknowledging the dependent nature of workers on the platform and the importance of an independent and transparent arbitration system in the case of disputes – rather than pretending that workers and end-users somehow enter their relationship on an equal footing.

## Conclusion

In its agreement with Unions NSW, Airtasker has taken important steps in acknowledging the potential risks of gig-economy business models for the people who perform the

actual work. The agreement facilitates the introduction of some basic protections regarding recommended rates of pay, safety, insurance and dispute resolution. Despite these protections, workers at Airtasker (and other digital platforms) ultimately need the introduction of truly enforceable labour standards, including mandatory minimum rates of pay and universal access to the Fair Work Commission for the resolution of disputes. As companies like Airtasker and others in the gig economy grow and expand into new industries, business, governments, unions and workers are faced with the challenge of ensuring that labour standards and industrial legislation are not completely sidelined. In the short term, this will involve formal agreements with gig-economy companies, similar to those achieved with Airtasker. Efforts by non-state actors (in this case, the union peak body) to work parallel with the application of formal regulatory standards to strengthen their awareness and enforcement are not unprecedented; other bodies have taken similar initiatives to independently try to enforce minimum standards that in theory should be secured through the regular actions of the state (Hardy, 2011).

Initiatives like the Airtasker–Unions NSW agreement cannot single-handedly eliminate the risks of exploitation and the downward bidding of labour standards in platform businesses. The recommended minimum rates of pay included in the agreement now match or exceed minimum award rates; however, they are still not compulsory and cannot be enforced. Airtasker’s job-bidding system will still encourage workers to undercut the legal minimums in order to attain more work (Kaine, 2017). For these reasons, in the longer term, Airtasker workers (and others in the gig economy) need the full, formal protection that can only be provided by the complete set of labour standards available to other workers. This protection will need to be formalised through legislation and regulation which defines and guarantees normal minimum labour standards of all workers, even in cases where they do not meet the legal criteria to be defined as ‘employees’.<sup>7</sup>

Several options for legislative and regulatory reforms to strengthen the rights of workers in the gig economy can be considered. A specific focus on strengthening the definition of employment to restrict the use of independent contractors, as well as the provision of safety nets and minimum labour standards for independent contractors, will likely be needed. In the case of Airtasker, there is ambiguity around whether workers should be classified as independent contractors, employees or some new category. For other digital platform businesses which use independent contractors, the line is not as blurred, making regulation easier. It is also important that new standards accepted by market-leading firms be actively leveraged to place upward pressure on other digital firms.

There is reason to hope for some progress. In October 2016, London Uber drivers won a tribunal case to be treated as employees and, hence, receive entitlements of employment, including the minimum wage, rest breaks and holiday pay (Osborne, 2016). Subsequently, European Union regulators determined that Uber is, indeed, a provider of transportation services (refuting its claim that it merely provides the communications services to intermediate riders and drivers); this will open up the firm to regulation of its labour practices (Kollewe, 2017). Legal challenges against the practices of Uber and other platform-based businesses are flourishing in countries around the world. In Australia, for example, food delivery companies Foodora and Deliveroo are facing a legal challenge to their use of independent contractors (Toscano, 2016).

Initiatives like Unions NSW’s negotiations and agreement with Airtasker hold considerable promise for highlighting the risks facing workers in digital platform companies

and exposing the failure of existing regulatory tools to adequately protect these workers. To some extent, these initiatives can provide direct benefits and protections for affected workers. However, ensuring more comprehensive and enforceable standards will ultimately require formal legal regulation to establish and enforce minimum standards in digital platforms that are comparable to those governing more traditional forms of employment.

## Funding

The author received no financial support for the research, authorship and/or publication of this article.

## Notes

1. See also De Stefano (2016); Sundararajan (2016) and Productivity Commission (2016).
2. This estimate includes ‘peer-to-peer’ resale activities, such as eBay, which do not involve much productive work.
3. Research attests to the negative impact of the shift from employment to contractual relationships on wages and working conditions; see Holley (2014) and Campbell and Peeters (2008).
4. As Stewart and Stanford (2017) argue in this symposium, the existence and effectiveness of this supposed ‘contract’ are often doubtful.
5. See, for example, Hollis versus Vabu Pty Ltd.
6. Clerks Private Sector Award, 2010, Level 1, adult, casual, rate as of 1 July 2016 (Fair Work Ombudsman, 2017).
7. Options in this regard are explored by Stewart and Stanford (2017) and Prassl and Risak (2017).

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