Contracting Care

The rise – and risks – of digital contractor work in the NDIS

percapita
FIGHTING INEQUALITY IN AUSTRALIA

June 2022

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About Per Capita

Per Capita is an independent progressive think tank, dedicated to fighting inequality in Australia. We work to build a new vision for Australia based on fairness, shared prosperity, community and social justice.

Our research is rigorous, evidence-based and long-term in its outlook. We consider the national challenges of the next decade rather than the next election cycle. We ask original questions and offer fresh solutions, drawing on new thinking in social science, economics and public policy.

Our audience is the interested public, not just experts and policy makers. We engage all Australians who want to see rigorous thinking and evidence-based analysis applied to the issues facing our country's future.

Acknowledgements

The authors are indebted to the wide range of disability support organisations with whom we have engaged with during the writing of this report. Per Capita would like to thank the Hireup team for supporting this research project.

Executive Summary

The rise of contractor work, coordinated through digital platforms, has become one of the defining trends in the world of work over the past decade. From accountancy to food delivery, the seemingly inexorable rise of such work arrangements has been broadly seen as both a symptom, and a causal factor, of declining worker power.

Tech companies have seen the opportunity to absorb value, generated frequently by underpaid and marginalised workers, through monopolistic platform models in which former employees are outsourced to the position of digital contractors.

It is perhaps unsurprising then that the creation of a $20+ billion-dollar quasi-market for disability care through the NDIS would generate interest from such firms.

Within the NDIS market for care and support there are several companies operating as digital contractor marketplaces**,** with an operating model similar to that of Uber or Deliveroo. In such markets, disability support workers can, without registering with the NDIS Quality and Safeguards Commission, offer care and support services as sole traders. The digital contactor marketplaces then take a cut of the income received by the digital contractor, but without providing any of the legal supports that a traditional employer would provide, such as quality and safety guarantees for either the worker or the NDIS participant.

This report examines some of the potential consequences of these emerging trends in employment arrangements in the disability care labour market.

We discuss the implications of digital contractor marketplaces on 1., *NDIS participants,* 2., *NDIS workers,* and 3., *the market for care and support as a whole.*

While some may benefit from the increased flexibility that such work arrangements provide, moving from an employment to a self-employed status comes with considerable risks. The potential hazards of the digital contractor model for workers appear consistent across many industries: lower income security, more complex administrative requirements, fewer training and peer-to-peer support opportunities, higher personal liability risks, and fewer social protections like sick pay, parental leave and superannuation contributions.

Overall remuneration tends to be lower under digital contracting arrangements, and there is no reason to think this will be different in disability care. Based on modelling by the Actuaries Institute, we estimate that direct employees are likely to retire with a significantly higher superannuation fund than contractors carrying out the same work. Our modelling suggests that, on average, direct employees will receive $526,000 at maturation, compared to just $88,000 for contractors carrying out the same work.

What is perhaps less well known is the potential risks and challenges that such work arrangements may present to service users, and the market more broadly.

Digital contracting by definition reduces organisational knowledge and peer-to-peer support between employees, and may cause a decline in the structured training of workers. This will have broad implications for the workforce, and specific implications for individual NDIS participants who cannot fall back on an organisation which understands their specific needs.

We show how the NDIS model of self-management of plans may be specifically vulnerable to some of the risks associated with digital contracting, with the potential for NDIS participants to be regarded as employers in future legal judgements. Ironically enough, it could be the features of good care and support – a long-term, consistent and focussed relationship between carer and participant – which leads to a legal judgement that a contractor is actually an employee.

While there are potential benefits to digital platform models, the digital contractor model presents significant risks, and is structurally unsuited to care sector work. The idea that care and support work can be split into discrete tasks, and that workers are effectively interchangeable simply does not fit to the principles of good quality care and support, which relies on continuity, trust and skills which are difficult to fit into a contract.

The effects to individual workers, participants and organisations may also cause risks to the sustainability of the disability care and support market as a whole.

For example, if unregistered and under-regulated contractors increase their share of the disability market, they may undercut the price of employment-based providers, who maintain registration with the NIDS Commission, exhibit higher levels of ongoing professional training, and peer-to peer learning. This would lower the overall quality of the disability labour force.

We conclude by discussing the opportunities and challenges that these new models of care and support delivery present. In particular, we note that there are potential gains to be made by incorporating new platform technologies into the disability care and support space, with potential benefits to service users and support workers alike. However, without strong working conditions, and appropriate regulatory oversight, such changes are likely to lead to a net loss for service users and workers alike.

Ultimately, we find that government intervention and thoughtful regulation is sorely needed to ensure that care and support quality standards are maintained, worker rights are protected, and the integrity of our disability service sector is assured. Quality disability care and support is not a set of discrete emotionless tasks which can be 'gigged out' as necessary. It requires ongoing personal relationships with workers who are appropriately valued, well trained and have some certainty over their careers.

Decent care and support work is essential to the long-term stability of both our disability care economy and society: protecting the most vulnerable, and those who care and support for them, is the only way to ensure we are the fair and decent country we aspire to be.

A note on the case studies used in this report

The case studies interspersed through this report represent real issues experienced by NDIS participants and carers. They have been collated from online forums, media reports and other sources.

We have fictionalised these accounts to protect anonymity, but they illustrate some of the very real risks that are associated with digital contracting in the disability care

Introduction – Disability care and support in a time of digital contracting

The National Disability Insurance Scheme (NDIS) was created with the involvement of people with disabilities, their families, support workers and carers to be a transformative social insurance program, fully funded by government. Its intention is to provide people with disabilities with personalised care and support, controlled by the user, that will enable them to live securely and safely, and to participate fully in society.

The roll out of the scheme, completed in 2020, has seen an unprecedented financial investment in the sector. With the 2021-22 NDIS bill expected to reach $28.1 billion, the sector has experienced a vast increase in financial resources. As a social investment, the NDIS is likely to produce extensive positive economic outcomes – we have estimated previously that the 2020-21 NDIS budget would likely generate over $52 billion in economic activity,[1] and generate 1.5 additional jobs for each of the 270,00 directly created jobs created by the scheme.[2]

Such massive investment in a sector so chronically underfunded has led to an incredible 280,000 people receiving support for the first time.[3]

The roll out of the NDIS, and the decentralisation of disability service provision has coincided with the growth in use of digital platform technologies and digital contracting.

The two trends are frequently seen as co-dependent, and terms used interchangeably. At times the term "gig work" is used to describe both phenomena, or just to describe the digital contractor work. This sometimes make both data and discussion of these work and business changes complex and confusing. To a certain extent digital contracting work arrangements are reliant on digital platforms in order to make coordination easier.

However, some firms utilise one or the other. The obvious case in point in the NDIS space is that of Hireup which employs disability support workers as staff, while presenting clients with a digital platform user experience. Over 28% of respondents to a recent survey of digital platform workers reported that "the platform treats me as an employee", although the proportion of actual employees in this sample was unknown.[4]

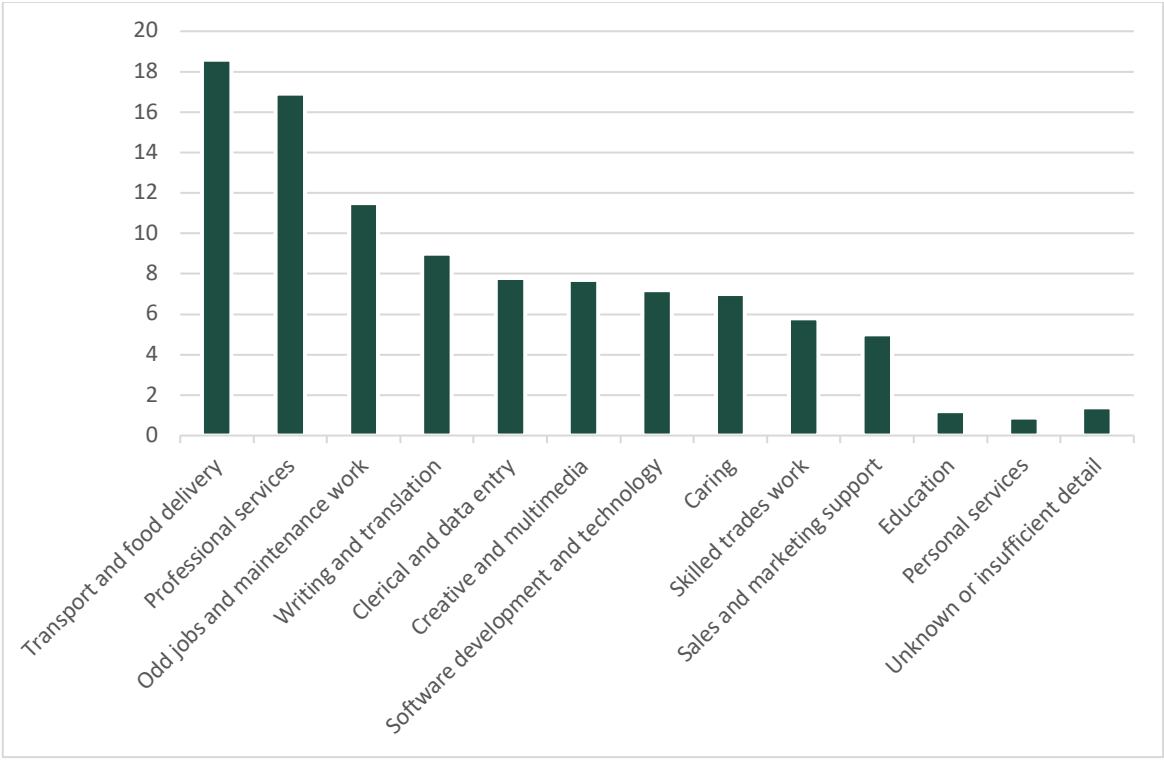
The rapid expansion of digital contracting work has truly been dramatic, rising nine times in value between 2015 and 2019 - from $700 million to $6.3 billion.[5] While we found no more recent data on the total size of the sector, the growth of nearly 1/3rd in 2019 would likely have been matched or increased during the pandemic years, where the home delivery of

[1] D'Rosario, Michael, and Matt Lloyd-Cape. 2021. False Economy: The Economic Benefits of the NDIS and the Consequences of Government Cost-Cutting - Per Capita.
[2] Forthcoming, Sam Ibrahim, Michael D'Rosario and Matt Lloyd-Cape
[3] https://www.ndis.gov.au/understanding/ndis-each-state
[4] McDonald, Paula et al. 2019. Digital Platform Work in Australia: Prevalence, Nature and Impact.
5 Actuaries Institute. 2020. "The Rise of the Gig Economy and Its Impact on the Australian Workforce."

goods, food and services skyrocketed. These digital contractors became "essential workers"[6] or even seen as part of the "emergency services".[7]

While workers such as rideshare drivers, and delivery drivers are the most visible and obvious segment of the digital platform workforce, the type of work done under such arrangements is broad. Transport and food deliveries are only slightly more common than professional services, including accounting, project management and legal services (18.6% and 16.9% of workers respectively).[8]

Figure 1. digital platform work by type



Source: Stewart, A. et al. 2019. "Digital Platform Work in Australia Preliminary Findings from a National Survey."

Despite this significant proportion of professional workers, people in the digital contractor economy tend to be young, low paid and in vulnerable segments of the workforce.[9]

[6] Victorian State Government. 2020. Essential Workers and Essential Providers List.
[7] Rani, Uma, · Rishabh, and Kumar Dhir. 123AD. "Platform Work and the COVID-19 Pandemic." The Indian Journal of Labour Economics (1): 163–71.
[8] McDonald, Paula et al. 2019. "Digital Platform Work in Australia: Preliminary Findings from a National Survey." (June).
[9] Actuaries Institute. 2020. "The Rise of the Gig Economy and Its Impact on the Australian Workforce."

Job satisfaction appears lower for digital contractors on several metrics. While 79%[10] of employees find their job itself rewarding, only 63% of digital contractors enjoy the work that they do.[11]

Nationally, 71% of employees report satisfaction with their pay according to a recent assessment.[12] However, in one survey of digital contractors, just fewer than half of such workers agreed that their income was fair (47.3%), while 44% felt that "The fees and costs associated with work through the platform are fair".[13]

Alongside changes to working conditions, the capacity for digital contractors to negotiate better outcomes have also shifted significantly. These changes have brought about enormous implications for the experience of work, and opportunities for digital contractors to negotiate better conditions and collectively organise.[14]

Estimating how many workers are digital platform workers, either as their main or secondary occupation, is a challenge given the national data collection methods,[15] Estimates range from quarter of a million workers[16] to 7.1% of the total active workforce[17] - a figure which would today represent over 940,000 people.

Within the disability care and support market, the share of platform-based providers is growing. One 2017 estimate found that digital platform workers accounted for only one per cent of the workforce.[18] An NDIS worker survey in 2020 found that 5% of respondents had worked for a platform provider service.[19]

While these figures are low, the potential for digital contractor model to become more widespread is well understood, and was a specific concern raised by the Senate Select Committee on Job Security in their first interim report in June 2021.

The committee noted that the potential for digital contractor work to spread more widely in the disability sector "…is especially significant due to the size of the workforce, the fact that it is already low paid and female-dominated, the complexity and risks associated with care work, and the importance of this workforce to Australian society and the economy. The

[10] Curtain University/MWAH. 2017. Happy Workers: HOW SATISFIED ARE AUSTRALIANS AT WORK?
[11] McDonald, Paula et al. 2019. "Digital Platform Work in Australia: Preliminary Findings from a National Survey."
[12] Curtain University/MWAH. 2017. Happy Workers: HOW SATISFIED ARE AUSTRALIANS AT WORK?
[13] McDonald, Paula et al. 2019. "Digital Platform Work in Australia: Preliminary Findings from a National Survey."
[14] Veen, Alex, Sarah Kaine, Caleb Goods, and Tom Barratt. 2020. "The 'Gigification' of Work in the 21st Century." Contemporary Work and the Future of Employment in Developed Countries: 15–32.
[15] See Chapter 3, Natalie James. 2020. Report of the Inquiry into the Victorian On-Demand Workforce Genuine Choice
[16] Actuaries Institute. 2020. "The Rise of the Gig Economy and Its Impact on the Australian Workforce.
[17] McDonald, Paula et al. 2019. "Digital Platform Work in Australia: Preliminary Findings from a National Survey.
[18] McKinsey & Company (2018), Independent Pricing Review for the National Disability Insurance Agency – Final Report
[19] Cortis, Natasha, and Georgia Van Toorn. 2020. "Working in New Disability Markets: A Survey of Australia's Disability Workforce." P82

Commonwealth must move to regulate in order to protect secure, high-quality jobs for the future."[20]

[20] Select Committee on Job Security. 2021. "The Senate Select Committee on Job Security First Interim Report: On-Demand Platform Work in Australia." P165

Section 1 – The NDIS and the evolving quasi-market for disability care and support services in Australia

The creation of a quasi-market for care and support

The market structure of the NDIS is that of a "quasi-market" – a market in which governments fund a service but are limited in service delivery. Instead, private organisations, both profitmaking and not-for-profits, compete to deliver services paid by service users who are funded by the state through individualised support packages.

Quasi-markets are used under the assumption that some level of market forces can improve on service provision. The perceived benefits include efficient provision, lower costs, consumer choice, and innovation.[21] These assumptions are embedded in the *National Disability Insurance Scheme Act 2013* which sets out its objectives to:

> *"(e) enable people with disability to exercise choice and control in the pursuit of their goals and the planning and delivery of their supports; and*
>
> *(f) facilitate the development of a nationally consistent approach to the access to, and the planning and funding of, supports for people with disability; and*
>
> *(g) promote the provision of high quality and innovative supports that enable people with disability to maximise independent lifestyles and full inclusion in the community; and*
>
> *(ga) protect and prevent people with disability from experiencing harm arising from poor quality or unsafe supports or services provided under the National Disability Insurance Scheme"*[22]

Mei is a disability support worker in West Sydney.

She loves her job and has worked in the sector for 5 years.

As a platform worker, she was told that she would earn more per hour than as an employee. This is true some of the time, but increasingly she finds herself competing with others who advertise their rates at below NDIS Price Guide Rates.

Mei is extremely confident in the quality of her work and maintains her registration and qualifications. However, she worries that she will miss out on new clients, with unregistered providers undercutting her.

Income is tight in her family, so Mei has never gotten around to paying in anything to her super since leaving her previous job.

Mei is worried for her future.

[21] Jordahl, Henrik. 2019. "Perspectives on Public Sector Outsourcing: Quasi-Markets and Prices." CESifo Economic Studies 65(4).

[22] https://www.legislation.gov.au/Details/C2021C00540

The potential drawbacks include the risk of low quality due to cost minimization, segregation, and a degradation of job quality.[23] Early research also suggests that the pre-existing collaborative relationship between disability service providers is being eroded by competitive imperatives.[24]

Many examples of quasi-markets for care show that competition on price can lead to a deterioration of quality. For example, price competition between hospitals in the NHS led to a lower quality of care, with both hospitals seeking to outbid each other on price.[25]

Service quality can be particularly at risk in contexts where there are high levels of "non-contractable" service quality,[26] with the care sectors being obvious examples.

The NDIS labour market at a glance

There are currently 9,287 active registered service providers in the NDIS, employing 270,000 workers. An estimated 67% of providers are organisations, with 33% being sole traders. a further 8,633 registered providers were not currently active. The total number of NDIS registered providers who supported plan managed participants was 12,933[27]

Recently, the NDIS Quarterly Reports began to report on the extent of unregistered providers. As of March 2022, there were115,000 plan managed participants, engaging unregistered providers for services costing $1.12 billion in payments. This means that unregistered providers accounted for about two fifths of total spending.

Table 1. Payments by support category and provider registration in Q3 2021-22 – participants with plan managers ($m)

	Registered providers	***Unregistered providers***	***Total***
Core support			
Daily activities - SIL	109	29	138
Daily activities - non-SIL	721	592	1,312
Social and community participation	519	275	794
Consumables and transport	50	25	75
Total core support	**1,399**	**921**	**2,320**
Capacity building			
Daily activities	281	160	441
Support coordination	29	16	44

[23] Poutvaara, Panu. "Public-sector outsourcing." The IZA World of Labor (2014): 1-65.
[24] Green, Celia et al. 2017. Competition and Collaboration between Service Providers in the NDIS.
[25] Propper, Carol. 2012. "Competition, Incentives and the English NHS." Health Economics 21(1): 33–40..
[26] Hart, O., A. Shleifer, and R. W. Vishny. "The proper scope of government: Theory and an application to prisons." Quarterly Journal of Economics 112:4 (1997): 1127–1161.
[27] https://www.ndis.gov.au/media/4379/download?attachment; Queensland Productivity Commission. 2021. The NDIS Market in Queensland: Final Report. https://s3.treasury.qld.gov.au/files/NDIS-final-report-volume-1.pdf (March 9, 2022).

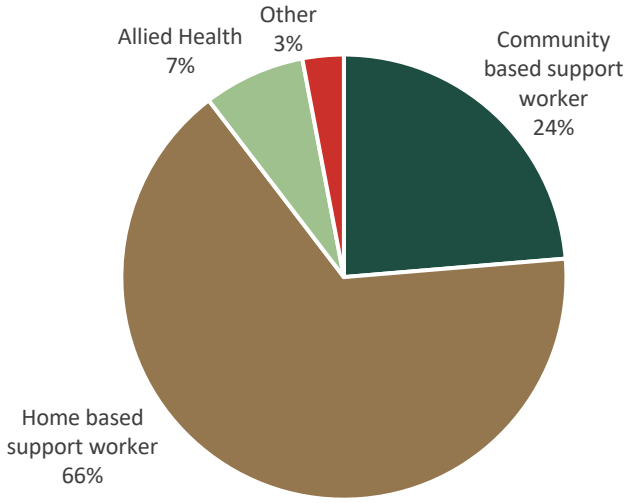
Other capacity building support	24	13	37
Total capacity building support	**334**	**189**	**523**
Capital supports	**36**	**9**	**45**
Total	**1,769**	**1,120**	**2,888**

Source: NDIS. 2022. NDIS Quarterly Report to Disability Ministers: Q3 2021-2022.

Workers in the home care and support sector are by far the most numerous, accounting for 66% of the workforce.

This means that there are approximately 178,000 home-based disability support workers, 63,000 community-based disability support workers, 19,900 allied health professionals and 8,000 workers in other occupations.[28]

Figure 2. NDIS workforce structure



Source: Department of Social Services. 2021. NDIS National Workforce Plan: 2021–2025.

By 2024, it is estimated by the Department of Social Services that there will be around 500,000 participants requiring support from almost 353,000 workers.[29]

About 70% of disability support workers are women, compared to a figure of 46% in the wider Australian workforce. Disability support workers are also slightly older than the Australian workforce: some 44% are aged 45 years or more. In the workforce more generally, the figure is 39%.[30]

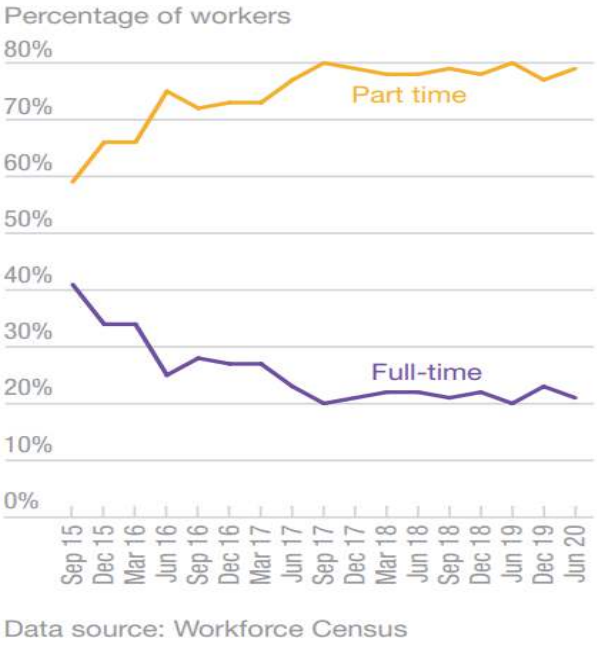
[28] Australian Government. 2019. Joint Standing Committee on the National Disability Insurance Scheme. NDIS Planning Interim Report.
[29] Department of Social Services. 2021. NDIS National Workforce Plan: 2021–2025.
[30] National Disability Services. 2018. Australian Disability Workforce Report.

Average earnings were around $746 per week in 2018 for aged and disability care and support workers, compared to around $1200 for all earners.[31]

42% of the workforce was employed on a casual basis, compared to 24% of the total Australian workforce.[32] The 2018 Workforce Report found that casual employment accounted for much of the growth in employment. Casual workers receive no annual, personal or sick leave, but are remunerated through 25% leave loading of their income. Turnover among casual workers is about 1.5 times higher than for permanent workers.[33]

Over the five years between 2015-2020, the proportion of full-time workers roughly halved (Figure 3).

Figure 3. proportion of workers by contract type[34]



Data source: Workforce Census

The disability labour force exhibits very high levels of turnover; estimated to be between 17% and 25% per year (see Figure 4). This level of turnover far outstrips even hospitality, an industry synonymous with very high levels of workforce churn. The issue of turnover has significant impacts on worker safety and client wellbeing. A respondent to a 2019 study by the Centre for Future Work pithily noted that:

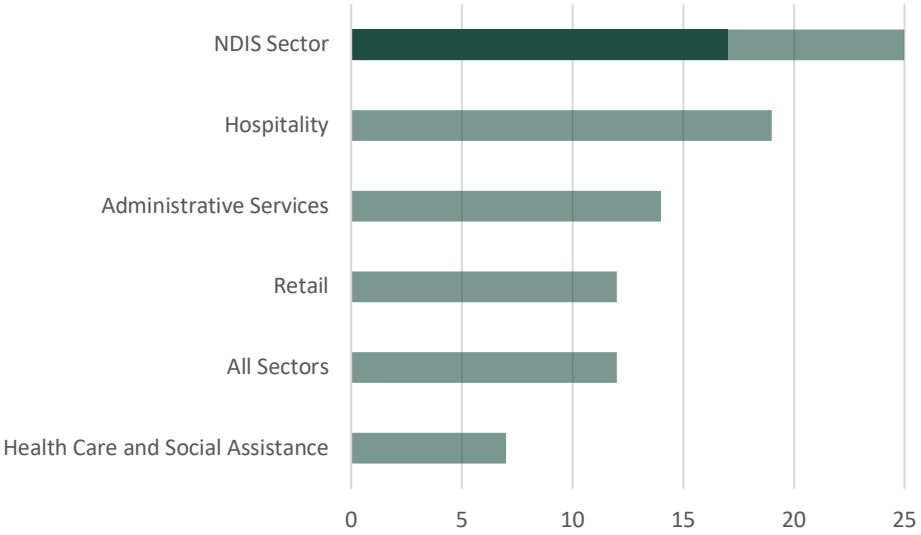
"We all know that 'routine is king' in the disability world and swapping up or changing up staff constantly can create challenges for both clients and staff… In the past three weeks,

[31] https://www.aihw.gov.au/reports/aus/228/welfare-in-australia/welfare-workforce
[32] National Disability Practitioners. 2020. NDP Fact Sheet - October 2020 Figuring Out the Disability Workforce.
[33] National Disability Services. 2018. Australian Disability Workforce Report. https://www.nds.org.au/images/workforce/ADWR-third-edition_2018_final.pdf.
[34] https://www.ndp.org.au/images/Careers/NDP_factsheet_workforce_2020.pdf

I've seen this lead to damage to property from clients and self-harm. Makes the work harder for everyone. Makes it stressful and depressing. Where is service user choice in all this? It's nowhere. We are all in the same boat: the work is harder and the clients' needs aren't being met!"[35]

With such high levels of turnover, and retention being a critical issue for the long-term stability of the NDIS, it is clear that all possible measures should be taken to ensure that work within the sector is fairly remunerated, secure and socially recognised.

Figure 4. Annual Workforce Turnover in Selected Industries (%), 2015-16 to 2017-2018



Source: Department of Social Services. 2021. NDIS National Workforce Plan: 2021–2025.

People from CALD backgrounds are likely overrepresented in the disability care and support workforce, although there seems to be a limited amount of evidence as to the actual figure.[36] In aged care, the number of direct care workers who identify as being from a CALD background in 2020 around 21%. Primary care workers account for 91 per cent of all CALD direct care workers.[37] We expect that the figures for disability workers would be similar.

Care work in Australia has always been undervalued. The gendered origins of care work are underpinned by a suite of archaic beliefs: care work is supposedly performed for 'altruistic' reasons, is 'unskilled' and therefore not deserving of social recognition, secure employment or decent wages.

Prior to the introduction of the NDIS, disability support workers in Australia were mostly employed in organisations which managed groups of workers around regular shifts in a

[35] Macdonald, Fiona, and Jim Stanford. 2019. "Precarity and Job Instability on the Frontlines of NDIS Support Work." (September): 8–49.
[36] For example, it is not included in the NDIS National Workforce Plan: 2021–2025, or the NDS Australian Disability
Workforce Report 2018
[37] https://www.health.gov.au/sites/default/files/documents/2021/09/2020-aged-care-workforce-census.pdf

single location. The NDIS shifts the focus of support to individuals at home and in the community, with work organised round individual units of care and support.[38] This new model increases the viability of the digital contractor work model in the NDIS, with care being divided more into discrete packets of time or specific tasks; a departure from the traditional view of care work being that such work is on ongoing and relational.

There are deep challenges to increasing the workforce to fit the increasing demand. This is in part due to the large increase in demand for workers, but also because of issues such as a lack of recognition, relatively low pay, and challenging conditions. For example, 54% of disability workers agreed with the statement 'I worry about the future of my job' in a recent survey.[39]

Organisational structures in the NDIS market

The market for care and support is not just expanding; it is changing.

Many providers are what can be called "traditional providers" – for-profit and not-for-profit organisations, employing staff directly, with internal training, quality control, and human resources systems.

However, there are a number of models emerging within the market for disability care and support services, most notably novel online platforms through which NDIS participants can purchase services.

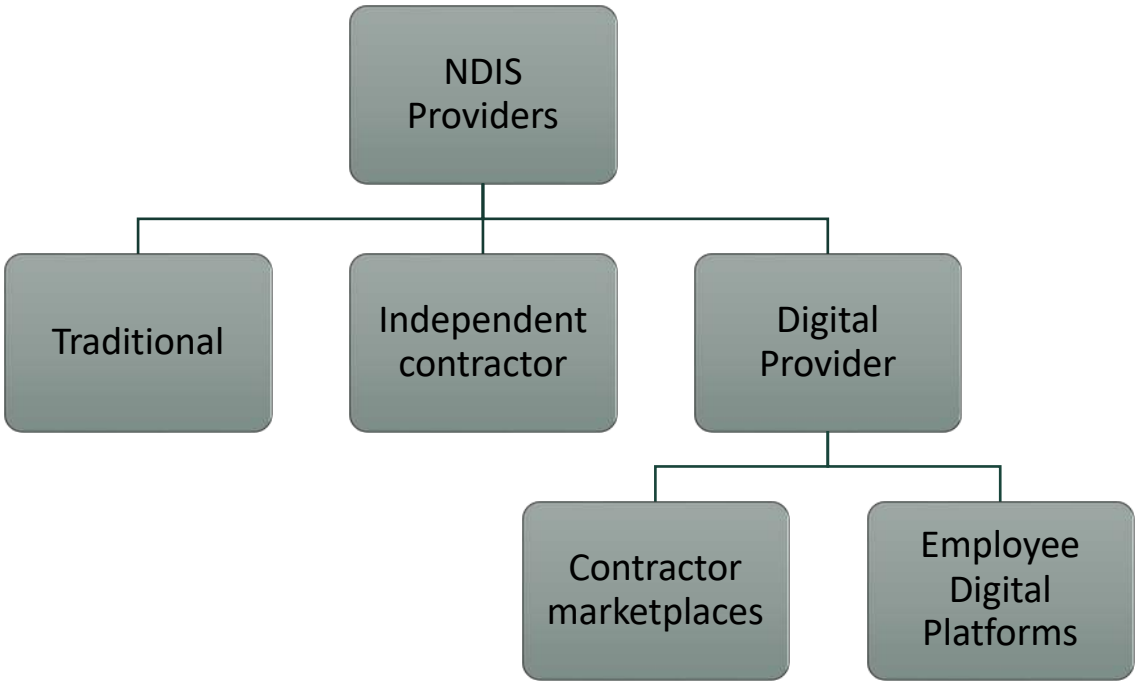
There are major differences between the emergent platforms.

Some businesses, such as Mable and Careseekers, act purely as intermediary platforms, bringing together participants and independent contractors. The businesses take no responsibilities regarding the safety of the work environment for workers, or the quality of the work provided to the participant beyond a basic safety level. In some ways they are comparable to food delivery platforms such as Uber Eats or Deliveroo.

Others, such as Hireup, offer a hybrid type model in which they operate through an online platform, but maintain an employment relationship with the strict price guidance in line with industrial awards, casual loading, the application of peer review processes, the use of traditional or digital triage processes, and the ability to provide or support continuity of care and support.

[38] Macdonald, Fiona, and Sara Charlesworth. 2016. "Cash for Care under the NDIS: Shaping Care Workers' Working Conditions?" Journal of Industrial Relations 58(5): 627–46.
[39] Cortis, Natasha, and Georgia Van Toorn. 2020. "Working in New Disability Markets: A Survey of Australia's Disability Workforce." (May).

Figure 5 – NDIS Provider and Platform models



Source: Adapted from McKinsey & Company (2018), Independent Pricing Review for the National Disability Insurance Agency – Final Report

For the purpose of this paper, we categorise the models based on their approach to contracting and employment, and their use of digital platforms to facilitate engagement between stakeholders. Our framework aligns to the framework and categorisations employed by McKinsey's 2018 Pricing Review of the NDIS,[40] extending upon their categorisation to capture significant subsections based on the use of employees or contractors within such models (Figure 5).

Traditional provider (Employee based, primarily non-digital interface)

Traditional providers are the most established within the market for care and support, with many firms predating the implementation of the NDIS. They tend to operate at a state level or within multiple states.

While all providers are regulated to some degree by the NDIS Quality and Safeguards Commission, only registered providers must meet NDIS Practice Standards as part of their registration. Unregistered providers are not proactively monitored by the Commission. To our knowledge, it is unknown what proportion of traditional providers are unregistered.

Such providers may be for-profit, or not-for-profit, and generally employ staff as employees, although may also sub-contract work to independent contractors.

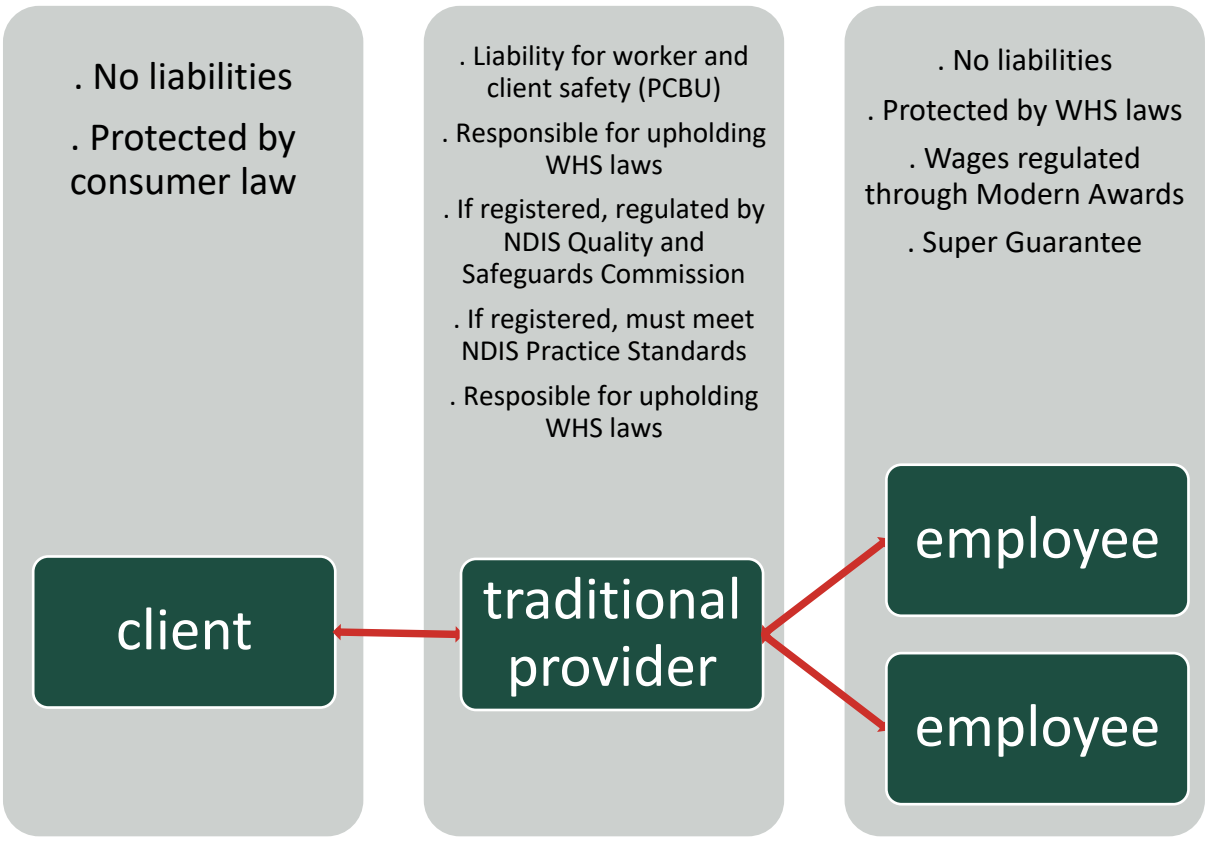
[40] Stewart, Andrew, Damian Oliver, and Robyn Mayes. 2019. "Digital Platform Work in Australia Preliminary Findings from a National Survey."

Consequently, prices are set by the provider and determined by the SCHADS Award or enterprise agreements, and the Superannuation Guarantee applies. Coupled with the relevant administrative cost models and functional cap set by the NDIA, this creates a functional price collar, a price cap and floor.

Traditional providers often maintain staff training schedules, and implement peer review processes, as well as traditional face-to-face or digital triage to improve service quality. While they tend to assign work based on proscribed work schedules, increasingly they are employing technology to coordinate service delivery.

Companies providing care and support workers are defined as a 'person conducting a business or undertaking' (PCBU) under work health and safety legislation. This means the company has a primary duty of care to limit exposure to WHS issues.

Figure 6 – Traditional Provider features



Independent provider/contractor model (Individual)

Independent providers who operate as sole practitioners, take on many of the core functions that an employer would normally provide their employees. They are responsible for maintaining their own compliance programs and procedures, should have liability insurance, and are responsible for ongoing professional training.

They may be registered directly with the NDIS and if so, must prove that they have the requisite capability for registration. This requires them to meet the NDIS Practice Standards, undertake a Worker Screening Check, undergo auditing, and report certain incidents and practices.

Unregistered independent providers are not required to meet NDIS Practice Standards, and are not proactively monitored by the NDIS Quality and Safeguards Commission. However, unregistered providers must be able to effectively manage complaints that may concern the quality and safety of supports and services being provided.

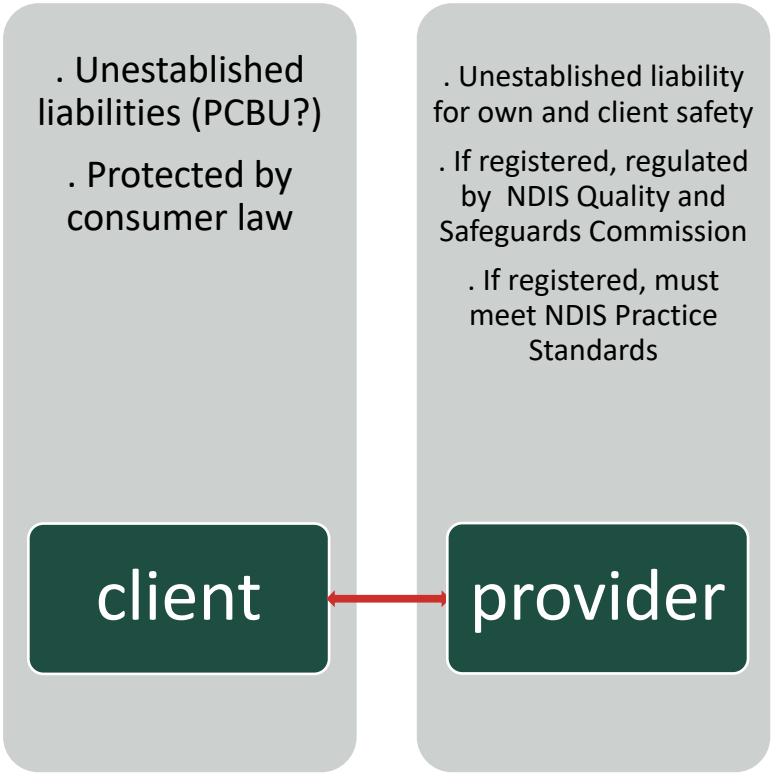
Independent providers are responsible for their own professional development and upkeep of skills.

Registered or not, all providers must abide by the NDIS Code of Conduct.

Independent providers are not generally employees, though they may choose to enter into employment agreements with specific clients. As such, they are not necessarily moderated by the industrial awards or the Superannuation guarantee.

Under an employee relationship, the client legally assumes the primary duty of care responsibilities of a PCBU. This means ensuring systems are in place to limit exposure to WHS issues. There is some legal uncertainty over whether an NDIS participant could be considered a PCBU under certain conditions.

Figure 7 – Independent Provider features



Digital Contractor Marketplaces

Digital contractor marketplaces have emerged within the care sectors in recent years.

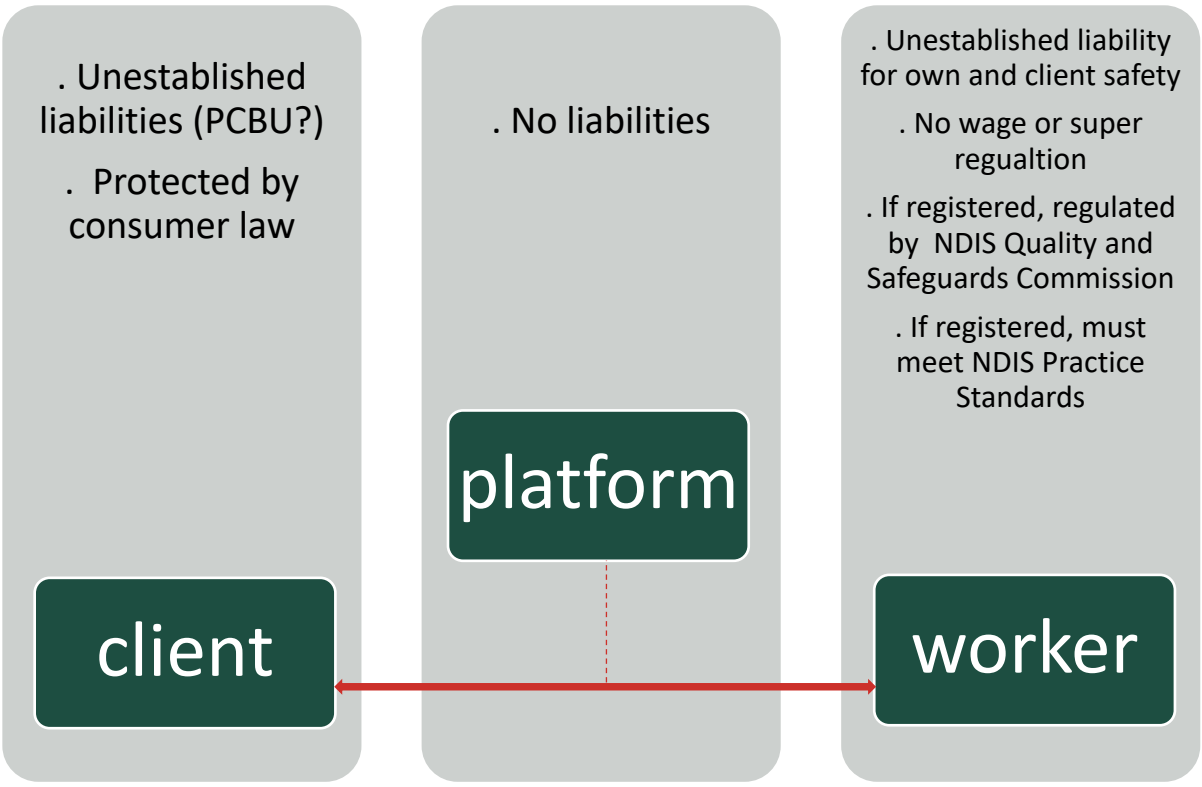
Two-sided platforms connect two distinct groups of users – NDIS participants and care and support professionals - and make a profit by facilitating contracts or transactions between them. They have been a source of both disruption and innovation in many sectors but have often been associated with worsening labour conditions.

One of the unique features of digital contractor marketplaces is that the platform provider does not triage clients or employ support workers directly. Support workers respond to advertisements placed by prospective clients and are able to respond, potentially negotiate or accept client terms.

Once these terms are agreed upon, the platform withdraws from the arrangement, retaining a percentage of the earnings (for Mable, the largest platform, it is 10%), plus a commission from the NDIS participant based on some percentage of the contract value (for Mable it is 5%).

Similarly, clients are able to search for prospective contractors and benefit from their support. This may expedite the process of service matching and improve the ability of service users to exercise agency and co-ordinate their own services, although no research exists to support this claim.

Figure 8. Contractor Digital Marketplace features



In terms of risk, legal liabilities are shifted to the worker, and may potentially lead to liability on the part of the NDIS participant.

Contractor platforms implement risk management and mitigation procedures through their contractor evaluations. Some also provide recourse for aggrieved clients and support workers, as well as counselling services. Contractor marketplaces are structurally unsuited to manage emerging risk and to carry out strong risk reviews, given the absence of service provider peer review mechanisms, and the reliance on individual contractors implementing such risk mitigation practices generally.

Perhaps most importantly, platforms assume no legal risk for WHS or consumer protection and the legal liabilities and regulations surrounding digital platforms are not yet clarified. There is the potential for a case to be brought, whereby that the NDIS participant or a platform operator is effectively considered a PCBU. Under legal definitions, a person owes a duty of care as a PCBU when they:

- direct or influence work carried out by a worker
- engage or cause to engage a worker to carry out work (including through sub-contracting)
- have management or control of a workplace.[41]

[41] https://www.safework.nsw.gov.au/about-us/glossary/glossary-acordion/pcbu

Unregistered independent providers are not required to meet NDIS Practice Standards, and are not proactively monitored by the NDIS Quality and Safeguards Commission. However, unregistered providers must be able to effectively manage complaints that may concern the quality and safety of supports and services being provided.

Independent providers are responsible for their own liability insurance and professional development and upkeep of skills.

Some participants may employ the two-sided platforms in a manner akin to a reverse auction, whereby potential service users seek to identify providers who will deliver service at lowest plausible rate. This is possible because there are no legally defined pricing floors and many providers operate as sole traders, not aligned to the industrial awards. This model has the potential to create perverse incentives for the contractor, and encourage service users to focus on lowest price, leading to lower standards of care and the underpayment of workers.

While prices on digital contractor platforms can be equivalent to award wages, this is not universal or guaranteed. Some platform rates are significantly below SCHADS Award rates, particularly for weekend our out of standard hours of work. This arrangement creates a structural weakness which leaves workers vulnerable to changes in labour market supply or changes to service demand. if labour market conditions change.

The ability for such platforms to mimic or replicate the dynamics of a reverse auction presents a challenge for regulators, and may result in reduced care quality. In a market where the buyer does not have reliable information about the quality of products on offer, and sellers compete primarily on price, there can be market-wide implications for quality. In such a market, if a sufficient number of service providers enter the market with the focus on lower prices, higher quality service providers will be unable to compete on price and potentially leave the market, leading to an overall reduction in quality.

Two-sided platform models generally employ provider rating systems, allowing clients to identify which providers have the best ratings and to reduce the likelihood of adverse selection.

However, this approach incorporates less professional scrutiny and is likely to be less effective than peer moderation and review. It also may result in service providers only taking jobs with low care and support complexity. The impact of adverse selection in this market may be immaterial in some cases but does pose significant risk given the vulnerable nature of clients.

Employee Digital Platforms

Digital platforms using an employee model use platform coordination technology to support clients and provide employees with flexibility. While some may see these models as similar to contractor marketplaces, employee models are required to provide training,

upskilling, triage support, superannuation, insurance and a defined award rate to their employees, as well as workers compensation and responsibility when incidents occur.

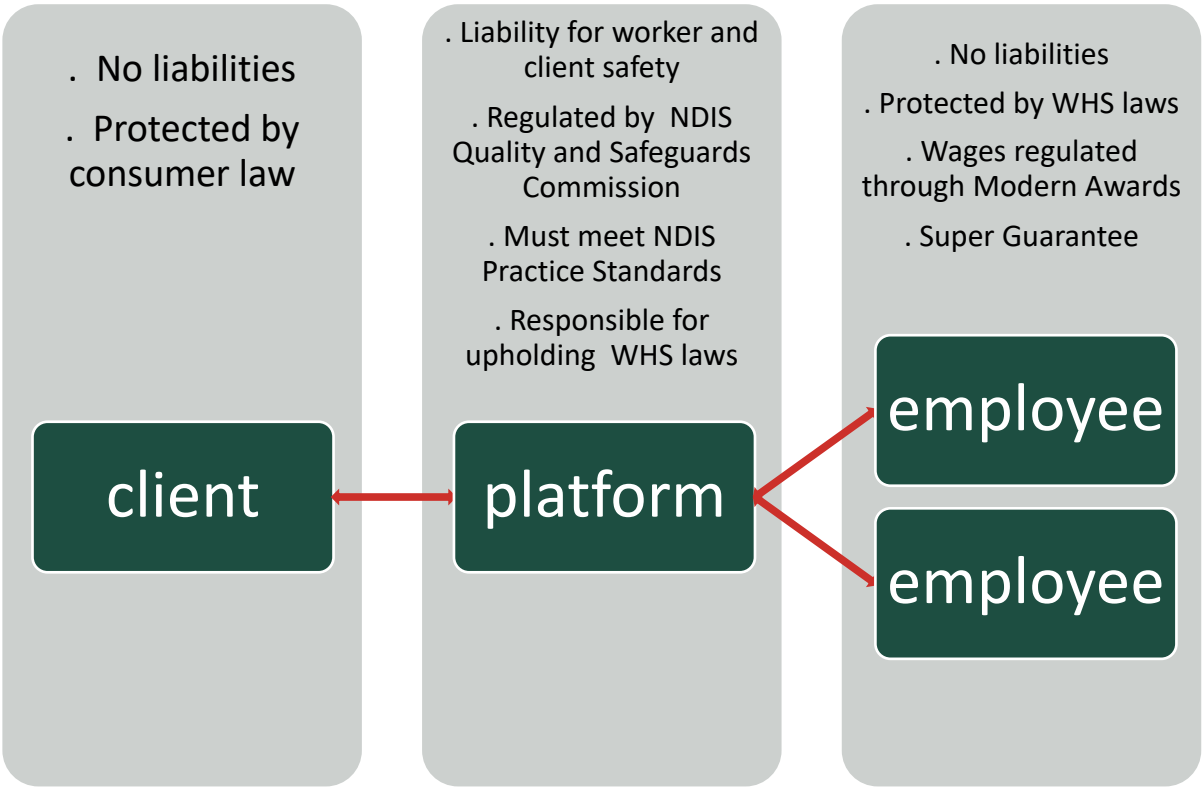
Most research does not distinguish between employee digital platforms and digital contractor marketplaces because of the use of digital platform technology. However, by using an employee digital platform model, providers allow workers to take on gig-based or episodic work while maintaining secure employment that is, to a certain degree, predictable and recurrent.

As with other provider types, unregistered providers are not required to meet NDIS Practice Standards, and are not proactively monitored by the NDIS Quality and Safeguards Commission. However, unregistered providers must be able to effectively manage complaints that may concern the quality and safety of supports and services being provided.

Employee digital platform models evidence both a functional cap and price floor given their adherence to both the award system and the NDIA price framework. Employees benefit from all the protections associated with employment agreements. The Employee digital platform model is one of several dual-sided platform models emerging within the market for care. As with other dual-sided models, the model generates much of its utility through network effects.

Regarding participant and worker health and safety, employee digital platforms assume the role of a PCBU, similarly to traditional providers. This means the company has a primary duty of care to limit exposure to WHS issues.

Figure 9 –Employee Digital Platform features



Section 2 - The implications of digital contractor marketplaces for NDIS participants

The appropriateness of the digital contractor work model for service users in the care sector has received an increasing amount of attention in recent years, particularly since the Royal Commission into Aged Care Quality and Safety (RACQS).

The RACQS saw significant evidence that contractor-based care led to negative outcomes for aged care workers and their clients. Indeed, the Commissions' Final Report explicitly stated:

"We consider permanent employment as a mode of engagement of the workforce is more compatible with achievement of our broad objectives of developing a skilled, career based, stable and engaged workforce providing high quality aged care."[42]

As a starting point, it should be noted that digital contractor marketplaces in the disability space do not always take responsibility for the quality or safety of supports for either participants or workers. Most platforms are also not registered with the Quality and Safeguards Commission (QSC), leading to understandable concerns as to the degree to which care and support quality can be ensured for participants.

Ahmed is fairly new to the NDIS. He has an intellectual disability but lives very independently. He wanted to use his NDIS plan to hire a DSW to help him organise his personal affairs and found someone on an app that a friend recommended.

After a few weeks his DSW asked him for payment in cash. Ahmed didn't really understand the NDIS, and his DSW showed him what looked like a bill. He paid up in cash.

A few months later, he was telling his brother about paying the DSW. His brother explained that the NDIS was already paying him directly, and that he should never have been giving out money at all.

When confronted with this, the DSW simply refuted that he had ever been paid cash. He simply stopped working for Ahmed and moved on to a new client. The platform where Ahmed found his DSW said they would look into it, but Ahmed has not heard from them again.

Arguably, the core features of the digital contractor model - short-termism and the fungibility of workers - are simply incompatible with quality care provision and are "inherently corrosive to quality caring relationships that demand an atmosphere of trust and non-instrumentality".[43]

The potential impacts of the digital contractor work model on NDIS participants can be broadly clustered into the below categories:

[42] Aged Care Royal Commission, Summary of the final Report, p131
[43] Flanagan, Frances. 2019. "Theorising the Gig Economy and Home-Based Service Work." Journal of Industrial Relations 61(1): 57–78.

1. Care and support quality
2. Shared management of care and support
3. Liability risks
4. Cost

We will review the evidence for each of these issues in turn.

Care and support Quality

Early Evidence from the NDIS

There is little direct evidence of the effect of digital contractor or employee digital platforms in NDIS on care and support quality, due to the novelty of the scheme, and of these models of work.

However, early indications suggest that there may be a direct and negative relationship between the digital contractor arrangements and care and support quality.

The 2018-2020 Inquiry into the Victorian On-Demand Workforce sought to identify the impacts of digital contracting on a range of workplace and social outcomes and heard evidence pertaining to the care and support quality outcomes for NDIS participants.

The inquiry highlighted that there were 'legitimate concerns' about the impact of digital contractor platforms on the care services sector, particularly in relation to health and safety, insurance, unpaid work, and the training needs of the workforce.

Submissions to this inquiry suggested that digital platform work arrangements in the disability sector may create care and support quality risks for NDIS participants if safeguards are not implemented. Specifically, the lack of any requirement for the NDIS worker Screening Check and ongoing training was seen as a significant factor in creating risks.

There may be a lack of appropriate matching between NDIS participants and care workers via platforms. Some digital platforms facilitate evaluation processes through their employee teams. However, ensuring that there is sound matching and appropriate care and support afforded to clients on contractor digital platforms is likely to be most challenging at the very least. At least anecdotally, it appears that the process of matching is subsidised by DSWs, who meet with clients in unpaid time, and are not guaranteed of any future work. This further leverages costs away from digital contractor platforms and on to workers.

The Senate Select Committee on Job Security First interim report of 2021 also reflects some of these concerns.

These findings are supported by significant international evidence on workplace arrangements, and care outcomes, which we discuss below.

Employment conditions and care and support quality in other contexts

While the effect of digital contractor marketplaces on disability care outcomes is not yet well studied, the relationship between care and support outcomes and employment arrangements have been well researched in a range of contexts adjacent to disability support work.

There is considerable international evidence demonstrating the strong links between employment arrangements for workers and the quality and safety of care and support. The majority of studies indicate a direct and significant relationship between how well workers are treated and the quality of care and support they provide.[44]

Many studies have pointed to the retreat of traditional employment relationships in care work with declining standards of care.[45] For example, non-permanent employment is related to a higher propensity for job dissatisfaction and a higher likelihood to leave, thus increasing turnover.[46]

In aged care, researchers have found that employment practices associated with the "traditional employment model" – secure tenure, high retention, decent wages and staff being valued – are all shown to contribute to higher quality care outcomes. For example, several studies of the Australian aged care sector found that casual contracts were associated with a higher propensity to leave work.[47]

Evidence to the RACQS highlighted the integral relationship between employment type and care quality, with "people report[ing] that continuity of care provided by the same workers enables better care and improves wellbeing"[48]

Skills development and maintenance, which are "significantly predictive of better care quality and this improves further when combined with complementary employment practices",[49] are also associated with traditional employment relationships. With no requirement for individual contractors to maintain and develop their skills, and an emphasis on price competition, this indicates a likely problem for care quality as digital contractor work expands into the sector.

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[44] Linzer M, Manwell LB, Williams ES, et al. Working conditions in primary care: physician reactions and care quality. Ann Intern Med. 2009;151(1):28–36.; Baines, Donna, Fiona Macdonald, Jim Stanford, and Jessie Moore. 2019. "Precarity and Job Instability in NDIS Support Work Precarity and Job Instability on the Frontlines of NDIS Support Work.".

[45] Rubery, Jill, and Peter Urwin. 2011. "Bringing the Employer Back in: Why Social Care Needs a Standard Employment Relationship." Human Resource Management Journal 21(2): 122–37.

[46] King D, Svensson S, Wei Z. Not always a quick fix: The impact of employing temporary agency workers on retention in the Australian aged care workforce. Journal of Industrial Relations. 2017;59(1):85-103.

[47] King, Debra, Zhang Wei, and Anna Howe. 2013. "Work Satisfaction and Intention to Leave Among Direct Care Workers in Community and Residential Aged Care in Australia." Journal of Aging and Social Policy 25(4): 301–19. ; Howe, Anna L. et al. 2012. "Stabilising the Aged Care Workforce: An Analysis of Worker Retention and Intention." Australian Health Review 36(1): 83–91.

[48] Aged Care Royal Commission, Summary of the final Report, p131

[49] Atkinson, Carol, Sarah Crozier, and Rosemary Lucas. 2018. "Public Performance & Management Review Workforce Policy and Care Quality in English Long-Term Elder Care." p877

Studies of homecare services in the UK have found service users' positive perceptions of care and observable care quality to be associated with better organisation of workers, more training, longer employment tenure and stability of working time. For example, a study of agency workers identified that characteristics associated with non-permanent and contractor work, such as high turnover, and unpaid travel time for carers, lead to poorer service user experiences[50]

Consistency of care is commonly named by social care recipients as important for quality of care. For example, greater consistency in nursing personnel decreases the probability of hospitalisation and emergent care, and increases the likelihood of improved functioning in activities of daily living between admission and discharge from home health care.[51] This is undermined where poor working conditions and low pay lead to high turnover of care workers.[52]

More broadly, the literature on nursing care and employment arrangements also points to a very strong relationship between employment quality and care quality. The relationship between clinical nursing outcomes and employment conditions, have been under scrutiny, particularly in the USA, for several decades.

The US Government Agency for Healthcare Research and Quality (AHRQ) conducted a systematic study in 2003 and found that some specific working conditions had a direct and significant effect on patient safety and recovery.[53] Factors that contribute to this relationship include staffing levels, overtime, the use of non-permanent staff, levels of burnout, and intention to quit.

A surprisingly large number of studies omit wages from their variables for assessing the relationship between working conditions and care outcomes. However, where they are studied, they are shown to have significant impacts in a variety of ways, affecting morale, turnover of staff, and total staffing numbers, which in turn have an effect on a range of clinical outcomes for patients.[54]

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[50] Netten, Ann, Karen Jones, and Sima Sandhu. 2008. "Provider and Care Workforce Influences on Quality of Home-Care Services in England."

[51] Russell, David, Robert J Rosati, Peri Rosenfeld, and Joan M Marren. 2011. "Continuity in Home Health Care: Is Consistency in Nursing Personnel Associated with Better Patient Outcomes?" Journal for healthcare quality: official publication of the National Association for Healthcare Quality 33(6): 33–39. Harrington, Charlene, Brian Olney, Helen Carrillo, and Taewoon Kang. 2012. "Nurse Staffing and Deficiencies in the Largest For-Profit Nursing Home Chains and Chains Owned by Private Equity Companies." Health Services Research 47(1 PART 1): 106–28.

[52] Netten, Ann, Karen Jones, and Sima Sandhu. 2008. "Provider and Care Workforce Influences on Quality of Home-Care Services in England.".

[53] Hickam DH, Severance S, Feldstein A, et al. Evidence Report/Technology Assessment Number 74. Rockville, MD: Agency for Healthcare Research and Quality; 2003. The effect of health care working conditions on patient safety.

[54] For example, McHugh MD, Ma C. Wage, work environment, and staffing: effects on nurse outcomes. Policy Polit Nurs Pract. 2014;15(3-4):72-80. doi:10.1177/1527154414546868

For example, in the US, hospitals with unionised registered nurses (who enjoy secure tenure and 13% higher wages than nonunionized nurses) have been found to have 5.5% fewer heart attack fatalities.[55]

Perhaps most relevant to the debate over digital contractor work and care outcomes, is the research into the relationship between "contingent" workers (that is, temporary and casual staff) and care quality.

The AHRQ found in 2008 that six out of seven relevant studies identified the use of contingent nurse staff with adverse patient outcomes (see appendix 1 for details).[56]

One study found higher incidents of mortality when the number of permanent nurses were reduced, and replaced with contingent workers. Another identified that the use of temporary nurses was associated with far higher levels of violence on the ward. Mistakes over the administering of medicines to patients was also statistically associated with the use of temporary nurses.

Finally, it is worth noting that the use of digital contractors in the care sector may have exacerbated the risk of COVID19 transmission for NDIS participants. People living with disabilities are at a higher risk of infection and serious illness resulting from COVID19, and workforce arrangements have a direct relationship with the likelihood of infection. With a partially unregistered workforce, identifying workers, training them in infection control, and mobilising supplies to all who need them is far more challenging.

Under more traditional employment systems, "governments had a degree of control over the workforce and levers to mobilise"[57] in order to minimise infection risk.

All of these relationships have important implications for the use of digital contractors in the NDIS. For example, continuity of care and support simply cannot be assured in the same way through independent contractors. Digital contractors, and digital contractor marketplaces have no duty, and limited capacity, to ensure continuity of care and support for their clients. Other providers with client records, and institutional practices designed to ensure ongoing care, are far more equipped to tackle ongoing needs.

Shared management of care and support

The NDIS has been ground breaking in the amount of personal control participants have over services compared to former disability care and support models.

[55] Lovell, Vicky. 2006. Solving the Nursing Shortage through Higher Wages.
[56] Page AEK. (2008), Temporary, Agency, and Other Contingent Workers Chapter 27 in Hughes RG, editor. (2008) Patient Safety and Quality: An Evidence-Based Handbook for Nurses. Agency for Healthcare Research and Quality (US)
[57] Dickinson, Helen, Gemma Carey, and Anne M. Kavanagh. 2020. "Personalisation and Pandemic: An Unforeseen Collision Course?"

In line with the majority of international evidence,[58] early evidence suggests that the NDIS has improved the quality of life, client satisfaction and safety of NDIS participants and their families, on the whole.[59] For NDIS participants increases in wellbeing were related to having better services than previously and increased independence and autonomy.[60]

Ranita has been working with the same girl, Anna, for 4 years. Anna has autism and finds it difficult to form new relationships. After years of experimentation and hard work, Ranita and Anna are really close, and Ranita loves turning up to work every day.

Anna's parents asked if Ranita would like to earn more money by working as a sole trader rather than an employee of the company she works for.

Ranita was initially thrilled to be offered more money. Her previous wage was around $32 per hour plus super, and Anna's parents offered her $43 per hour. However, after deducting for insurance, tax, super and other costs, Ranita is actually taking home less than she did as an employee. Ranita has spoken to the clients' parents, but they won't increase her hourly rate.

Ranita would be devastated to leave Anna, but her relationship with Anna's parents has soured and how she doesn't know if it's realistic to stay.

However, not all experts agree on this point. As Dr Fiona McDonald put it in her submission to the RCACQS, "there remains very little evidence to support a view that self-management provides any clear benefits over shared arrangements while it does carry additional risks, including for care workers."[61] Similarly, Dr Helen Dickenson notes that, as with other "cash for care" type schemes in place around the world, the roll out of the NDIS has the potential to create complexities over "exploitation of PLWD."[62]

Empirical examples of such issues include a 2015 study from England which also showed a mixed picture, when it comes to health outcomes (perceived or measurable) under shared management of care and support. It found that schemes similar to the NDIS may produce a trade-off whereby some participants; often younger, and/or with lower care requirement participants, and/or with a strong support network, experience improvements through personalised self-managed support. Other participants were unable to realise these benefits. The study found that "directly employing support workers might be perceived as

58 Coulter, A., Entwistle, V. A., Eccles, A., Ryan, S., Shepperd, S., & Perera, R. (2015). Personalised care planning for adults with chronic or long-term health conditions.; Fleming, Pádraic et al. 2019. "Individualized Funding Interventions to Improve Health and Social Care Outcomes for People with a Disability: A Mixed-methods Systematic Review." Campbell Systematic Reviews 15(1–2).

[59] NDIS Participant Outcomes (30 June 2018)

60 Mavromaras et al (2016), Evaluation of the NDIS: Intermediate Report

[61] Mcdonald, Fiona. 2020. "Response to the Royal Commission into Aged Care Quality and Safety Home Care Hearing Draft Propositions 7 August 2020."

[62] Helen, Dickinson. 2017. "Individual Funding Systems: What Works?" Evidence Base 2017(3), p 1014; Malbon, Eleanor, and Megan Weier. 2021. "How Personalisation Programs Are Exacerbating Socio- Economic Inequities : Findings from Budget Utilisation in the NDIS." : 1–14.

empowering, whilst for others, it may be stressful".[63]

One of the most relevant studies for understanding the role of platform work in the NDIS is a systematic review of 73 studies of individualised funding for people with disabilities.[64]

The researchers found that success of such programmes is contingent on the extent to which participants can develop "strong, trusting and collaborative relationships in their support network with both paid and unpaid individuals. This facilitates processes such as information sourcing, staff recruitment, network building and support with administrative and management tasks. These relationships are strengthened by financial recognition for family and friends, appropriate rates of pay".

The authors found that "inconsistent approaches to [care and support] delivery as well as unmet information needs are other major concerns, as are difficulties with finding and retaining suitable staff."

There were concerns expressed surrounding the quality of available supports and the impact on the traditional service providers/workforce. Staff also highlight logistical challenges in accommodating a wide range of support needs in an individualized way including, for example, responding to individual expectations and socio-demographic differences.

What this tells us is that the extent to which self-managed care and support can be successful, is to a degree contingent on the quality of the workforce, availability of information, and capacity of the participant to organise their own support. NDIS participants with high cognitive abilities may be able to take advantage of the benefits on offer from platform work, but this may be far more difficult for participants with lower levels of assessment skills and decision-making capability.

For an NDIS participant, knowing that all DSWs abide by the same standards, professional skills upkeep, and regulation, is critical for them to know what they are buying when hiring a DSW. This means that digital contractor platform models have the potential to exacerbate the negative effects of a shared management of care and support model.

As noted above, non-standard employment models are correlated with higher turnover, leading to lower continuity of care, and more challenges in terms of care and support management for families and NDIS participants. Digital contractor work arrangements cannot provide continuity of care, meaning that participants are more likely to have to re-recruit more frequently, increasing the potential for such stress.

63 Daly, Guy, Katrina Ritters, Nicole Steils, and John Woolham. 2015. "The Evolution of Person-Centred Care to Personalised Care, Personal Budgets and Direct Payments in England : Some Implications for Older Users of Social Care Services."

64 Fleming, Pádraic et al. 2019. "Individualized Funding Interventions to Improve Health and Social Care Outcomes for People with a Disability: A Mixed-methods Systematic Review." Campbell Systematic Reviews 15(1–2).

Traditional employment models generally lead to feedback mechanisms between frontline staff and senior staff. For example, DSWs can liaise with team leaders regarding the client needs, and are able to facilitate changes in support workers allocated to specific clients based on their needs.

In a policy environment in which unregistered providers can offer disability care and support, with no ongoing training, at below the NDIS guidance pay rates, and with no duties or capacity to facilitate ongoing support, it is likely that negative experiences of shared management of care and support will increase.

Liability Risks

Many participants using NDIS platforms are completely unaware of the potential legal risks associated with their use. However, there is the potential for the legal recognition of "sham contracting" in such work arrangements.

In employment law "sham contracting" is deemed to have occurred when a business or individual hires somebody as a contractor although they are really operating as an employee. When it comes to online platforms operating in the disability sector, no judgements have yet been passed over whether NDIS participants could be considered employers of DSWs or other workers.

However, as we have seen in judgements in other sectors, future legal proceedings may find that NDIS participants using these platforms could be determined to be employers. This may result in participants being found liable for back pay up to award rates, contributions to superannuation and other expenses incurred such as travel.

In 2019, a Federal Circuit Court found two labour hire companies that provided "independent contractor" DSWs to disability care and support facilities, guilty of sham contracting. The court found that the workers were underpaid, overworked, and not in any way independent in employment terms.[65] This raises the question as to the independence of some independent support providers in the NDIS, particularly those in long-term mutually reliant relationships with their clients.

Such a test case would examine whether an NDIS participant or a platform operator is effectively a person conducting a business or undertaking (PCBU). Under legal definitions, a person owes a duty of care as a PCBU when they:

- direct or influence work carried out by a worker
- engage or cause to engage a worker to carry out work (including through sub-contracting)
- have management or control of a workplace.

Traditional models, and digital platform models employing support workers provide broad-based cover to their employee teams, resulting in adequate insurance coverage for

[65] Fair Work Ombudsman v Care Providers Pty Ltd & Ors [2018] FCCA 3771

employees. Some contractor platforms extend insurance support to contractors utilising their platforms reducing the complexity associated with service delivery for service providers on the platform. This means that contractors are able to deliver services without needing separate coverage.

Cost

The cost implications of digital contractor work in the disability sector are sometimes reduced to a dollar per hour figure. Taken at face value, it does seem that costs can be reduced by the involvement of digital contractors in disability care and support. Service providers on platforms can and do offer rates below the NDIS guidance rates, and below award rates.

Such a cost saving may be a pure benefit to NDIS participants with the very lowest care requirements and highest capacity to manage their support. However, for most participants this is likely not the case - the cost per hour metric does not incorporate broader critical costs to the service user.

The Senate Select Committee on Job Security published their interim report in June 2021. In it they state that "the Uberisation of the disability workforce" may lead to the "NDIS participant [paying] a bit less per hour, and thus may be able to afford more hours of care, but at what cost?" (p172).

Such costs can include a higher likelihood of less qualified and experienced workers on offer, a lower rate of care continuity, and increased potential liabilities for the service user. The report differentiates between what it describes as "transactional versus relationship–based services." The report noted that relationship-based services are "…much more complex and generally involves the development of trust and a relationship between the worker and the client—such as that seen in aged-care, disability care and cleaning services."[66]

What this would indicate is that while digital contractor work in transactional type arrangements, such as in food delivery or transport, may have relatively few implications for the service user, for relationship-based services the costs outweigh the benefits.

At a senate hearing to the committee, QUT Professor of Work and Organisation, Paula McDonald was asked if gig-work was as appropriate model of employment in the disability care and support sector. She responded:

> *"No, I don't think it is. I think there are a range of really fundamental problems there. There's the issue of time and pay, which I just talked about. There's the issue of a lack of regulation around worker health and safety. … That's, of course, around psychological safety as well as physical safety. So it's cowboy territory in my mind. We're talking about the care of the most vulnerable people in our*

[66] P82, Committee on Job Security, Select. 2021. "The Senate Select Committee on Job Security First Interim Report: On-Demand Platform Work in Australia." www.aph.gov.au/select_jobsecurity (March 10, 2022).

society, and that demands a framework of protections for both workers and the people who are being cared for."[67]

The report found that "Platforms are increasingly engaging support workers as individual contractors, charging unregulated rates, and failing to provide basic protections and reasonable conditions for these workers; there is considerable confusion around who is ultimately responsible for occupational health and safety (as discussed in the previous chapter); and workers engaged in this way may have no superannuation or access to workers' compensation if injured and unable to work." (p172)

Ultimately, despite the small per hour cost reduction that digital contractor arrangements may provide, the committee concludes that disability support "work is more suited to an employment model than an independent contractor model." (p172).

Regulating workers for better quality care and support

This section has highlighted the need for proper workforce regulation in order to support the provision of high-quality care and support. For the scheme to ensure all participants are able to access high-quality care and support in a decentralised environment, the market for care services must be closely monitored and carefully regulated.

As the users of disability services are often amongst the most vulnerable in our society, the regulation of care service provision becomes more complex, and necessitates greater oversight to ensure the protection of all platform participants within platform models. The admittance of unregulated unregistered NDIS service providers into the care and support market is the antithesis of such care obligations.

As the regulator, the NDIS Quality and Safeguards Commission plays a crucial role in ensuring adequate protections are in place to ensure that the market functions efficiently and effectively, while ensuring workers and service users aren't exploited by unscrupulous operators. Effective market stewardship of the scheme is critical to its success for workers, participants and service provider companies alike. Without effective regulation, the disability services industry risks a race to the bottom on care quality, as pressure to cut worker costs leads to a reduction in safety protections and reduce the time spent on essential care and support procedures.

[67] P169 Committee on Job Security, Select. 2021. "The Senate Select Committee on Job Security First Interim Report: On-Demand Platform Work in Australia." www.aph.gov.au/select_jobsecurity (March 10, 2022).

Section 3. The implications for NDIS workers of digital contractor marketplaces in the NDIS

In this section we examine the effects of digital contractor marketplaces on disability care and support workers.

The evidence for how digital contractor marketplaces affects work quality outcomes in the NDIS is still very limited. Because of this we examine the trends in the digital contractor economy in general, and trends in comparable industries to glean inferences as to what effects we might see as digital contractor work grows in the disability care and support space. While there is limited evidence to draw on, we are able to estimate the potential loss of superannuation for disability support workers, and find a disturbing shortfall in savings for those workers.

We also examine how other jurisdictions are setting out to protect workers from the negative effects of digital contracting.

The digital contractor economy at large

Over the past decade, the labour market in Australia has become increasingly fragmented. As secure, full-time work has been eroded and risk has been shifted onto workers, there have been a number of worrying trends.

However, the most radical change has come through the growth of digital contractor marketplaces and platform work. Former US Secretary of Labor Robert Reich called the emergence of the digital contractor economy, "the biggest change in the American workforce in over a century", and Australia has been no exception to these fundamental challenges to the relationship between workers and businesses.

While the overall number of people engaged in the digital platform economy is comparatively low, it is growing. Recent analysis shows that the digital platform economy has more than double every year since 2015, covering as many as 250,000 workers.[68]

International economic organisations such as the World Bank and the OECD have shown increasing concern over the potential negative effects of digital contractor work on workers. A 2015 World Bank report argued that digital contractor work was a threat to workers and the economy as a whole; the system effectively allowed some firms to avoid the true social cost of business, by sidestepping their traditional responsibilities for training, "Without changes to regulations, this army of freelancers, subcontractors and piece workers will be left out of the traditional social protection systems such as unemployment benefits, sick pay and pensions."[69]

[68] https://www.actuaries.asn.au/public-policy-and-media/thought-leadership/green-papers/the-rise-of-the-gig-economy-and-its-impact-on-the-australian-workforce

[69] https://www.worldbank.org/en/news/feature/2015/12/22/regulating-the-gig-economy

Digital contractors are also made liable for a range of legal responsibilities which employers typically bear, including registration requirements and public liability.

Alongside the loss of critical social protections, and long-term economic security through superannuation, unions have been quick to point to the loss of worker bargaining power, for atomised workers. This atomisation of workers is leading to significant long-term costs to individual workers and the economy at large. For example, some analysts link the rise in digital contracting, with the decoupling of wages growth from productivity.[70]

The demographics of digital contractors tends to reflect workers with lower bargaining power, higher vulnerability and fewer alternative work options. These include:[71]

1. Young workers aged 18-34
2. Students – 1.3 times more likely to be a current platform worker
3. The "unemployed" - twice as likely
4. Respondents who identified as living with a disability – 16% more likely
5. Temporary residents - three times more likely to be a current platform worker than Citizens.
6. People who speak a language other than English at home - 1.5 times more likely platform workers

[70] https://www.worldbank.org/en/news/feature/2015/12/22/regulating-the-gig-economy

[71] McDonald, Paula et al. 2019. "Digital Platform Work in Australia: Preliminary Findings from a National Survey." (June).

Income

Comparisons of earnings are not simple, since most non-employed people are paid per completed task to make a comparison with minimum wages, an hourly rate must be derived based on time spent working and income earned (also accounting for all other expenses, such as insurance and equipment).

However, the impact of unpaid wait times, or time spent traveling between jobs also needs to be incorporated, further complicating comparisons.[72] Tax treatment differences between sole traders and employees also affects net income, as well as tax contributions to the ATO.

Because of these complicating factors, standard statistical data cannot be used to assess digital contractor work vs standard work remuneration.

In their study of digital platform work in Australia, the Actuaries Institute found that for 25% of people engaging with such work, their affluence increased, while for 12% their income decreased.[73] However, this may be conflating two issues; one of which is that for some workers, digital contractor work is *replacing* other employment, while for others, this work is an opportunity to work *additional* hours.

Jim Stanford, of the Centre for Future Work conducted research into the earnings of UberX drivers in the six capitals, in comparison to minimum wages standards. In this research he factored in the costs of waiting times, Uber fees, vehicle maintenance and so on. This research found that UberX drivers earned on average "well below the national statutory minimum wage, and less than half the level of the weighted-average minimum wage (including casual loading and penalty rates for evening and weekend work) that would apply to waged employees under Australia's Passenger Vehicle Transportation Award."[74]

Jake has worked in the disability sector for 25 years.

As an old timer, he started out working for state services in residential care and has worked in a variety of roles.

Recently he decided to try going on the digital platforms to help him save up some money.

He is a great DSW, but not so good at paperwork. Since joining the platform, he has struggled with the interface, and has found that many of his invoices go unpaid for many weeks.

He is now owed thousands from the platform but has had limited opportunities to speak with people on the phone about his problems.

He has since returned to the work at his previous employer, but now has bills piling and is thinking about going FIFO to clear his debts.

It will mean less time with his grandkids, but he really wants to get some money in the bank.

[72] Natalie James. 2020. Report of the Inquiry into the Victorian On-Demand Workforce. www.communications.gov.au/accesshub (February 21, 2022).
[73] Actuaries Institute. 2020. "The Rise of the Gig Economy and Its Impact on the Australian Workforce." https://actuaries. (February 21, 2022).
[74] https://australiainstitute.org.au/report/subsidising-billionaires-simulating-the-net-incomes-of-uberx-drivers-in-australia/

In the US, similar trends have been observed. Research has been conducted into the effect of digital contractor work on the financial wellbeing of low-income rideshare drivers. This research found that undertaking work as an UberX driver "increases hardship among the low-income population, primarily by decreasing overall take-home pay (i.e. annual income less expenses)."[75]

While there is far more emphasis placed on delivery and taxi services in the academic literature, there is no reason to think that digital contractor care and support workers would not experience the same income effects as in other sectors.

Wealth

Standard employment models ensure that employees enjoy legislated wage and non-wage accruals and employee benefits.

Digital contractor platform providers are not required to provide superannuation contributions, leave or cover relevant insurance payments. Consequently, a widely acknowledged risk is that digital contractor workers will not independently contribute sufficiently to their retirement savings when their renumeration is below the minimum wage.

Given the low-income characteristics of many digital contractors, such planning for the future is difficult, and is often deferred.

Research conducted by the Institute of Actuaries found that within the digital platform economy, workers either save too little or make no contributions to superannuation at all.[76]

They estimate that a mere 1.5 percent of all digital contractors make super contributions. The average contribution made is between $500 and $900. The wealth consequences arising from these differences are alarming, particularly for young workers who remain in this type of work long-term.

Flexibility

The supposed allure of the digital contactor marketplaces model lies in its appeal as a 'flexible' workplace synonymous with a Fourth Industrial Revolution, where workers complete 'tasks' at their direction and are not behest to their boss' or supervisor's demands in contrast to their typical workplace. This 'no shifts, no boss, no limits' sentiment has attracted increased enthusiasm in recent months as the COVID-19 pandemic has relegated most employees to the comforts of a home office space, lending them greater flexibility to manage paid and unpaid responsibilities.[77]

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[75] Daniels, Kaitlin, and Michal Grinstein-Weiss. 2018. "The Impact of the Gig-Economy on Financial Hardship Among Low-Income Families."

[76] GPGIGECONOMYWEBtest.pdf (actuaries.asn.au)

[77] Ibid.

Critically, greater worker flexibility and autonomy has been cited as a leading motivation for disengaged blue- and white-collar workers to participate in the digital platform workforce.[78]

However, various researchers have readily dismantled this frequently illusory assumption that digital contractors attain true flexibility in their work:[79]

The autonomy many workers expected has been usurped by the need to maintain algorithm-approved acceptance and response rates.[80] If workers are largely inactive on the digital platform after securing a round of 'gigs', they can find themselves 'deactivated', completely undermining the much-vaunted freedom espoused by such firms.

In turn, these workers lose control over their desired work schedules and find themselves beholden to increasingly permeable boundaries between their working and non-working hours.

Because so many of the digital contractor platforms operate as monopolies or very close to monopolies, the exclusion of a worker from one platform can severely limit their capacity to earn in their sector.

Digital contractor marketplaces in the care and support sectors

As noted above, digital contractor work relies on a workforce that tends to exhibit weaker bargaining power and higher vulnerability, and so there is a depressingly natural fit between digital contractor work in the care sector due to demographic characteristics.

In 2020, The Health Services Union (HSU) commissioned Dr Natasha Cortis & Dr Georgia van Toorn to conduct a survey of 2341 disability care and support workers polling them on a range of topics. They found that around 5% of these workers had participated with at least one platform.

Platform work tended to be supplementary, rather than primary, with only 18% of respondents saying that platform work accounted for half or more of their work. However, this research interviewed HSU members, indicating that the data relates to employees who use platforms in a supplementary way, which is probably not the experience of all platform workers.

Income and wealth

So far, relatively little is known about the income of digital contractors in the disability care and support sector, and much of the evidence is anecdotal.

[78] Churchill & Craig 2019, p. 743
[79] Churchill & Craig 2019, p. 744; Flanagan 2019, p. 75
[80] Ravenelle, Alexandrea J. Hustle and Gig : Struggling and Surviving in the Sharing Economy.

In the largest survey of platform workers to date, Paula McDonald and her colleagues, found that carers frequently indicated their income category as $20.00-$29.99 per hour, suggesting that income may be well below what an employee would earn in total remuneration, training etc.[81]

Recent research has found that digital contracting results in higher costs to workers. These include unpaid travel time between clients and a lack of any minimum engagement period, meaning that some workers are forced to 'pay for their own travel to work shifts as short as 20 minutes'.[82]

Underpayment of digital contractors is rife across care and support work, with one recent study finding underpayment of direct service workers in 9 out of 10 cases.[83]

One digital contractor platform suggested a minimum pay rate of $25 per hour, more than $2 per hour less that the rate set by the Fair Work Commission for nursing assistants.[84]

Potential long-term effects on income

The emergence of some contractor models in the disability care and support sector creates the potential for job pricing below the Award rate. It has been observed that within many digital contractor models, individuals operating as contractors do not account for superannuation, do not contribute significantly to their superannuation, and consequently may quote socially sub-optimal prices.

This implies that for the disability care and support sector, as the market becomes more competitive with greater provider/contractor participation, price softening is anticipated. This would likely lead to a reduction in wages/income of care and support workers, with the potential for a decline in care quality and a decline in the available number of care and support workers, as they exit to find better remunerated work.

Consideration must be given to the moderating role of the awards within these alternative models, or implementing price floors broadly aligned to the awards are necessary to ensure the sustainability of the market in the long term.

Potential long-term effects on wealth

As noted above the potential wealth impacts through loss of superannuation contributions may have significant long-term consequences for workers.

The Actuaries Institute research reflects the broader digital contractor economy accounting for a number of different types of gig work including care and support-based work. Workers

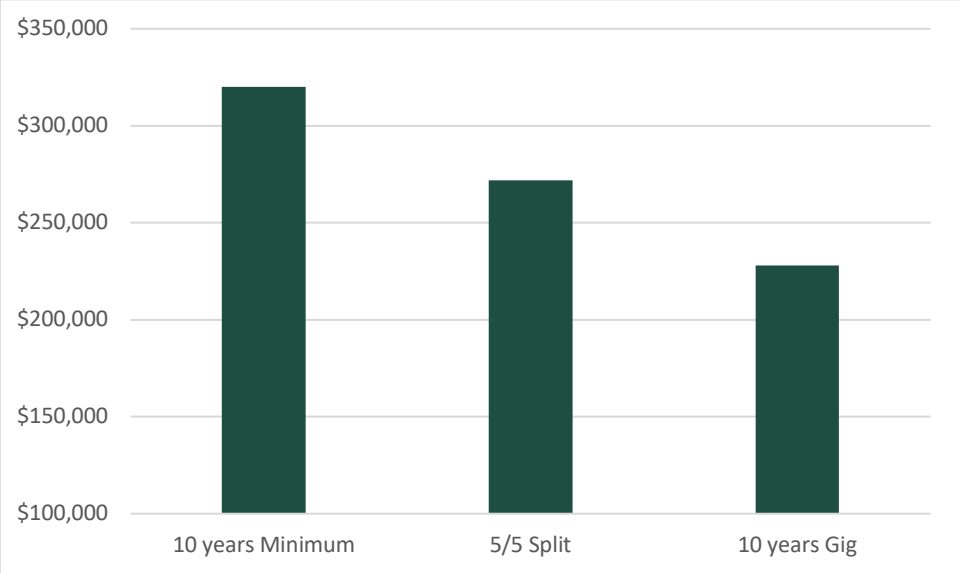
[81] McDonald, Paula et al. 2019. "Digital Platform Work in Australia: Preliminary Findings from a National Survey." (June).
[82] Flanagan 2019, p. 75
[83] Macdonald, Bentham & Malone 2018
[84] NSW Nurses and Midwives' Association. 2021. Response to the NSW Legislative Council Select Committee Inquiry on the Impact of Technological and Other Change on the Future of Work and Workers in NSW.

engaging in this model of work for five out of ten years face a $48,000 lower level of retirement wealth in comparison to the minimum wage level worker while the differential is $92,000 for an individual engaging exclusively in digital contractor work.

Taking this research further, we estimate retirement wealth based on sector specific rates of remuneration for employees and workers in a contractor model - one deriving from the SCHADS Award and the other based on the contractor market mechanism independent of benefits.

We follow the Actuaries Institute in simulating three scenarios;
1. Minimum wage employee from workforce entry until retirement.
2. Digital contractor for five years at workforce entry, then minimum wage employee.
3. Digital contractor for ten years at workforce entry, then minimum wage employee.

Figure 10. Retirement savings forecasts of digital contractors and employees



Source: Actuaries Institute 2018

Based on this calculation, an employee would retire with around $517,000, while a contractor doing the same work would retire with just $123,000, a difference of $393,587.[85]

Table 2– Estimated superannuation at retirement

Employee	$516,623.1
Contractor	$123,034.8
Differential	$393,588.3

[85] Our initial estimates employ conservative assumptions and do not account for superannuation incentives, fees and service expenses.

The consequences of these large differentials are stark. And for a workforce in the hundreds of thousands, the consequences may be significant not just for individuals, but also at a sectoral or even national level. If 10% of the DSW workforce enter retirement without sufficient superannuation savings there will be an additional 24,000 people claiming benefits, 24,000 fewer self-sufficient retirees.

Contractors that are not able or willing to contribute adequate income to superannuation are at greater risk of being in poverty in old age, of working longer than is healthy in what is often physically demanding work, and of eventually costing the state significantly more through benefits like pensions.[86]

The implications for gender equity for older Australians are worrying. With such a large proportion of the disability care workforce being women, this trend will contribute to the existing gulf between the superannuation of men and women.

Regulating the Digital Platform economy for better worker outcomes

As digital contracting has increased, several overseas legislatures are adapting to confront this growing challenge to workplace standards.

In the UK Uber has been experiencing significant regulatory challenges to their model. In 2019, the regulatory body Transport for London withdrew Ubers' license to operate, citing concerns over passenger safety. In 2021, after a lengthy legal challenge, a Supreme Court ruling found that Uber drivers we in fact not self-employed, but dependent workers, entitled to minimum wage regulations, sick leave and holiday pay among other benefits.[87]

However, Australia's regulatory system has not responded as quickly to the rise of digital contracting. The legal category of "worker" does not exist in Australia as it does in the UK. As such, an attempt by a "deactivated" Australian Uber driver to claim unfair dismissal based on a UK precedent was rejected by the Fair Work Commission on the grounds that no employment relationship existed.[88]

A critical difference is that the Fair Work Commission scrutinises the controls Uber exercised over drivers to a much lesser extent than the UK courts, with the Supreme Court agreeing Uber's combination of controls placed workers "in a position of subordination".[89]

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[86] See Dawson, Emma, and Simone Casey. 2020. The "Herstory" of Superannuation: A Discussion Paper by Per Capita for Women in Super.

[87] https://www.bbc.com/news/business-56123668

[88] https://www.workplacelaw.com.au/posts/fwc-finds-uber-driver-not-employee

[89] https://www.sydney.edu.au/news-opinion/news/2021/03/30/deal-for-uber-drivers-in-uk-but-australias-gig-workers-must-wait.html#:~:text=While%20both%20legal%20systems%20are,entitlements%20of%20an%20%E2%80%9Cemployee%E2%80%9D.

However, it may be a matter of time before the Australian courts move to reclassify sole traders working for platforms in order to keep up with international peers. For example:

In the US, the Biden/Harris administration specifically campaigned on the reclassification of digital contracting, under the Biden Plan for Strengthening Worker Organizing, Collective Bargaining, And Unions.[90] Labor Secretary Marty Walsh has since set out to curb the digital contractor economy by reclassifying independent contractors as employees.

A 2018 French Supreme Court ruling found that some delivery riders were in fact employees of the platform, rather than sole traders.[91] A 2017 law was also passed in France, granting rights for people that give services through digital platforms. This includes the obligation of the company to handle expenses related to work accidents, as well as obligations to cover professional training and the right to strike and have a trade union.[92]

This section has highlighted how the existing trends and demographic features of the disability workforce, make it ripe for the sorts of exploitative work relationships that digital contracting has exhibited in other sectors.

While broad evidence is limited in the disability work sector, what evidence there is suggests that digital contractors will experience lower remuneration than their standard employment counterparts. If the trends from digital contracting in other sectors plays out in the disability workforce, workers will likely earn less day to day, save less year to year, while also not reaping the flexibility promises.

Many jurisdictions around the world have set about re-regulating digital contracting to protect workers. Australia can learn much from these regulatory initiatives, and must, in order to ensure disability care and support workers can enjoy safe, rewarding and fairly remunerated work. Without these features, the long-term sustainability of the disability workforce is at significant risk.

[90] https://joebiden.com/empowerworkers/#
[91] https://www.globalworkplaceinsider.com/2018/12/decision-of-the-french-supreme-court-of-28th-november-2018-does-it-spell-the-doom-of-the-gig-economy/
[92] Directorate General for Internal Policies Policy Department A: Economic and Scientific Policy (2017), The Social Protection of Workers in The Platform Economy

Section 4. The risks digital contractor marketplaces pose to the market for care and support

One of the core responsibilities of the NDIS Quality and Safeguards Commission to NDIS participants is the "supporting a strong and viable market for disability supports and services".[93] In this section we assess the potential impact of digital contracting in the disability care market on the creation and maintenance of such a market.

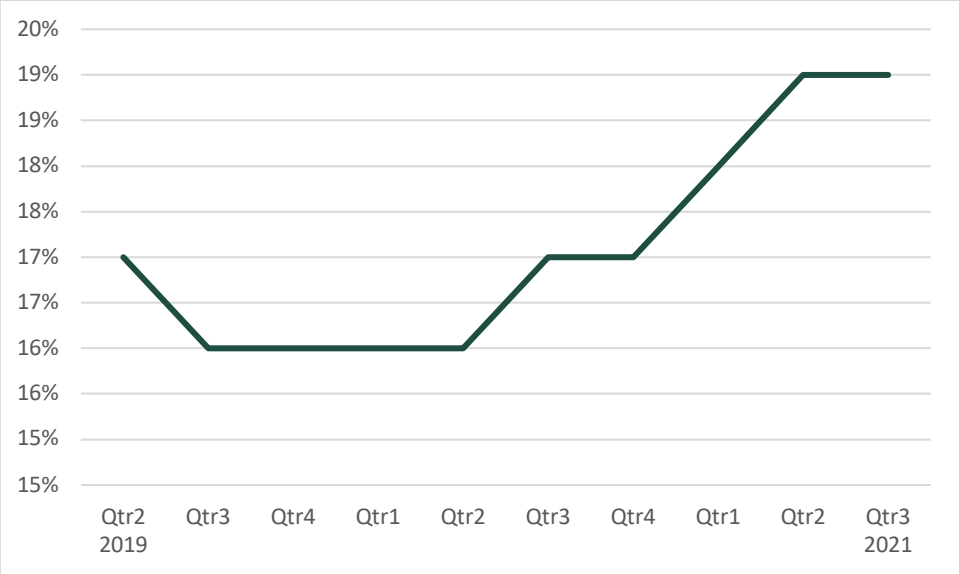
We describe some of the general market trends, then discuss some of the trends in market concentration, information asymmetries, restrictive practices and bundling.

Analysis of market leader share

Market share amongst sector incumbents and first movers has shifted markedly over the term of the scheme's rollout, although these figures may be impacted by the staggered nature of the rollout and the rollout term. Nonetheless they provide useful insight into the underlying trends within the sector.

There is evidence of an increased level of concentration within the market for disability care and support services. The top ten market actors have increased their market share from 16% to 19% between Q3 2019 and Q3 2021.

Figure 11. Provider share % (Top 10)

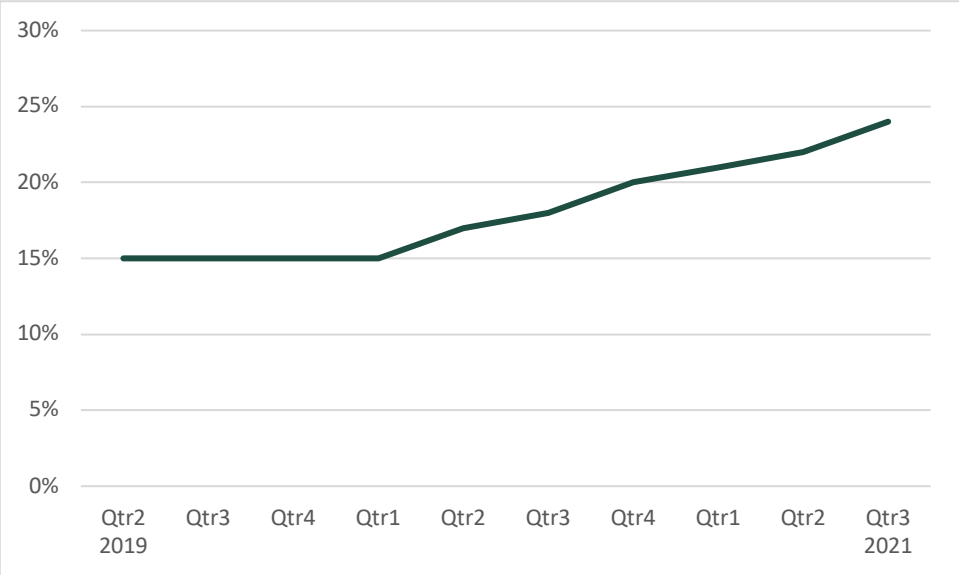


Source: NDIS 2021

[93] https://www.ndiscommission.gov.au/participants/right-participants

While this increase in concentration is nominal at present overall, it is somewhat more significant when considering capacity building services specifically, with greater than $4 billion in payment value carried by the top 10 within the category.

Figure 12. Market share % (Top 10) Capacity building classification



Source: NDIS 2021

What is not captured through the NDIS data is the extent to which services are brokered through each type of service provider. For example, it is difficult to know what market share is held by traditional providers, contractor platforms/intermediaries, or employee-based platform services.

This information should be made publicly available by the NDIA.

Firstly, it would offer insight into contracting and service model preferences, that could be matched with user outcomes data to inform policy development and implementation. Secondly, understanding the extent to which the sector is trending towards or away from contract-based care and support delivery, as opposed to employment-based service delivery, would also inform critical policy decisions. Moreover, it may also offer insight into the impacts of contract type on wages, conditions and workers' rights more broadly.

So far as we can ascertain, data is not disaggregated by registered/unregistered providers, nor is any information gathered on digital contractor platforms. This is a significant oversight on the part of the NDIA, meaning that the agency cannot effectively monitor the extent, quality or cost of different types of providers.

Given the potential risks that digital contractor work arrangements may pose to NDIS participants and workers, gathering this information is critical for both the NDIA's duty of care, and for effective policymaking.

Information asymmetries

Within the market for care and support, as with any market, there is the potential for asymmetries of information to exist, where one party to a transaction doesn't know as much as the other party does.

The classic example, was the sale of second-hand cars, commonly referred to as the 'market for lemons'. In this example, car dealers know more about the faults and issues with specific cars because of their mechanical knowledge and experience. Buyers do not have the same level of knowledge and information to assess the quality of their purchase.

This leads to buyers selecting the cheapest option, without knowing how the car lags in quality behind other models. This means the actual cost that the car will create, in ongoing servicing costs and parts, is hidden. Ultimately this can lead to sellers of higher quality second hand cars being priced out of the market by sellers of inferior products because buyers do not have the information to distinguish between the two.

In the market for care and support, these information asymmetries can be somewhat mitigated to a certain degree. Traditional providers and platform employers are more likely to address information asymmetries better than others, through significant ongoing client engagement and detailed triage processes. Such processes are likely beneficial to all clients and of most benefit to high needs clients.

Traditional providers address information asymmetries through triage and discovery processes, allowing them to develop a detailed understanding of the client and their needs. This in theory, enables better matching between NDIS participant and care and support staff. They are able to reduce search costs for the client by supporting better matching of clients and their employee care providers.

Similarly, employee based digital platforms are able to employ digital triage processes, to reduce the search costs for clients by identifying viable cohorts of care and support workers capable of servicing their needs. Given their ability to evaluate employee propensities and capabilities more directly and offer peer mediation, the model differs from digital contractor marketplace models within other sectors significantly.

Digital contractor platform models have an in-built greater potential for information asymmetries between clients and providers because of the absence of a common triage process, with the platform operating more as a traditional service buyer and seller marketplace. Workers are contractors rather than employees, and consequently there is less collective knowledge pertaining to the worker capabilities, or the clients' specific requirements.

They may also have a conflict of interest between securing work for themselves and the best interests of the NDIS participant.

With unregistered contractors, information asymmetries become even greater, since the support provider may or may not have the skills and knowledge required for registration.

There is the possibility that such a market could appear in the market for care and support, with relatively less well-informed participants not knowing how to gauge service quality and selecting their care provider with too great an emphasis on price. Sole trader providers who do not adhere to the SCHADS Award, particularly unregistered providers who have lower compliance costs, will likely be able to outbid for care and support work if price is one of the key metrics for selection.

This would drive higher quality providers, or providers who cross-subsidise the high costs of high need participants with higher fees to low need participants, out of the market, leading to lower overall workforce quality.

Christos lives in Perth with his parents and has fragile X syndrome.

His behaviour is sometimes self-harming and often violent towards those around him.

His family have been employing unregistered Disability Support Workers on platforms and encourage them to lock Christos in his room for extended periods of time. The family refused to allow Christos to be seen by a psychologist, so no behavioural support plan could be put in place.

Several unregistered DSWs have been injured by Christos and have refused to come back. Their injuries were not covered by workers comp.

With no continuity of care, Christos' behaviour is getting worse.

Bundling

The term "bundling" is used for a variety of pricing and product design practices that involve different goods together as a package. This can lead to an unfair use of market power by a dominant firm, to absorb ancillary markets based on their greater access to customers, information, supply chains and so on. A classic case has been the legal rulings against Microsoft in the European Union, which has attempted to use its near monopoly with Windows in the PC operating system market, to bundle media players, web browsers and other software, and unfairly restrict those markets to other firms.

There are early indications that some contractor platforms are experimenting with bundling type practices. Many firms offer some sort of training tie-ins for professional development. This may be relatively benign, since firms may be able to reduce training costs for independent providers through bulk discounting.

However, some practices appear to be more concerning. One example is that of "supply chain financing" systems within digital platforms. For example, Mable has introduced an internally run financing system called Express Pay, through the financial tech firm PayNow Finance Pty Ltd, which Mable owns in its entirety.

Express Pay offers payment to independent contractors within 3 days of invoice submission for a 1.5% fee. The idea is that some independent contractors may be unwilling or unable to wait for their payment through standard Mable accounting systems. So how much does the Express Pay system cost a worker?

For a worker submitting $1000 invoice, they would pay $15 for payment within 3 days. On top of the 10% Mable fee, this would take the total amount paid to Mable to $115, leaving the worker with $885.

Another way to consider Express Pay is as equivalent to a bridging loan. For people familiar with standard bank loans, they will understand a loan as being based on a loan period; loans are frequently made over the course of 3 months, a year or longer for a mortgage.

The Express Pay system works differently, in that it charges a flat percentage fee, regardless of how long it takes for Mable to receive the equivalent income back from the client. In this sense, the worker is paying for a bridging loan of a relatively unknown duration.

For example, if the worker receives payment 14 days before they would have been paid under the standard Mable payment system, they will effectively be paying an annualised rate of 39%. If the worker saves themselves 3 days of waiting for payment, the effective annualised rate is 183% (see Table 3).

Table 3. how Express Pay compares to annualised loan rates

No. of days between payment to worker, and income from NDIS participant	*3*	*5*	*7*	*10*	*14*	*21*	*28*
Equivalent annual rate (%)	183	110	78	55	39	26	20

The value of such a loan system will of course be different depending on the context of the worker. For some, an increase from Mable's standard 10% rate to 11.5% with guaranteed payment within 3 days may be a price worth paying.

However, such a system also raises questions.

Angela has just started working as a disability support worker in regional South Australia. Her work comes exclusively from using online platforms. After setting up as a sole trader, she's pretty reliant on a handful of NDIS participants in her local area.

One of her regular clients is Steve, who has mental health issues. On her most recent job, Angela was shopping with Steve at a local mall when she saw her client steal cosmetics. When she challenged Steve about this, he threatened her with immediate termination and a bad review on the digital platform. Steve said that their relationship is covered by client confidentiality.

As a sole trader, Angela doesn't know what her legal responsibilities are in this instance. Does she legally have to report Steve? Or does her client have some confidentiality rights that she doesn't know about? And if she does report Steve, and gets a bad review, will she find more work in the future?

Angela doesn't have a manager or HR dept to ask, and the feedback she get from online forums is unclear.

Ultimately, she decides to try to forget about it.

For many low-income workers, any unevenness in income may be extremely difficult to cope with, meaning that they are more likely to take up such a loan despite the cost. If the worker is not told of the number of days that Express Pay reduces their payment delay, they may not know if the service actually provides value. Express Pay is embedded into Mable timesheets, which also increases the likelihood of impulse use of the product.

Public disability resources as a private wealth commodity

It is arguable that for the average person on the street, the money that funds the NDIS should not end up in the profits of multinational private equity firms. However, there are several investors in the new market that leads to potential concern.

For example, in September 2021, US-based private equity firm General Atlantic, secured a $100 million stake in Australia's largest digital contractor marketplace in the disability and aged care markets.[94] This suggests that analysts in private equity firms regard private firms in the NDIS space as vehicles for above average profitability.

General Atlantic uses a "growth capital" model of investment, investing in companies where significant growth is likely after the initial start-up phase. Given the tendency for digital contractor marketplaces to seek monopolistic positions, there are legitimate concerns over the long-term health of the overall disability care and support market.

The increasingly large sums of money being spent in the NDIS, will likely mean that more such disengaged market actors will attempt to identify low-risk profit opportunities, rather than the maximisation of social value from the NDIS budget.

[94] https://mable.com.au/newsroom/mable-secures-100-million-general-atlantic-partnership-to-elevate-platform-offering/

This section has discussed some of the threats that digital contractor marketplaces, and digital contractor marketplaces may present to the broader market for disability care and support. Many of these trends may be theoretical at present but should be of concern for policymakers who aim to ensure a long-term viable and strong market for disability care and support. In order for the market to maintain a thriving, well trained, low turnover workforce, it is critical that steps be taken to minimise threats such as those presented by digital contracting.

There is also a risk that as digital contractor platforms tend to lead toward monopoly or low competition environments, that choice will be reduced in certain areas. For example, in rural areas it may not be feasible for an employer NDIS provider to compete if digital contractor platforms outcompete on price for a significant proportion of NDIS participants.

Absent of a genuine choice for care and support work and care services in all areas, the market for care will have failed the promise of the NDIS.

Conclusions and Recommendations

This report has highlighted three core threats that digital contracting work organisation presents to the NDIS. Participants, workers, and the viability of the care and support market as a whole are at risk from the structure, features and outcomes that such work arrangements tend to exhibit.

It has long been established that quality care and support simply cannot exist absent of decent working conditions. Care and support work cannot be atomised into taskified components; it relies on trust, consistency and relational skills which are difficult to enter in a contract.

Given the already high levels of turnover and relatively low wages of disability workers, any further erosion of conditions, either quantitative (pay, superannuation, training, benefits) or qualitative (peer-to-peer support, professional recognition) will likely reduce the attractiveness of disability support work.

As such we argue that digital contracting is fundamentally unsuited for the requirements of the disability sector.

Our recommendations incorporate some of those made in some of the significant inquiries into digital contractor work of recent years. Specifically:

- The Victorian Inquiry into the Victorian On-Demand Workforce
- The Senate Select Committee on Job Security
- The Royal Commission into Aged Care Quality and Safety

Information and data for evidence-based policy making

The extent of digital contractor work in the NDIS is unclear and data is missing from which to make optimal policy decisions. For these reasons we recommend that:

Recommendation 1. The NDIA should establish data collection and dissemination protocols for digital contractor work in the NDIS. This should include gathering periodic data on:

a. The extent, and location, of digital contractor work in the NDIS
b. Worker demographic data, including gender, age, non-English speaking backgrounds, visa status, and qualifications
c. Total remuneration, total costs and net income.

Recommendation 2. An independent review should be established of the implications of digital contracting in the sector, with a remit of ensuring care quality outcomes and working conditions.

Clarity over workforce status and the regulation of digital platform work

Currently there is a lack of regulatory clarity over worker status, who qualifies as an employee and how gig work relates to existing workplace laws and practices. For this reason:

Recommendation 3. The work status test used to classify workers as employees or independent contractors should be codified into the Fair Work Act, rather than rely on common law precedent.

Recommendation 4. Establish an independent tribunal to oversee work status determinations.

Expanding legal protections of NDIS workers

Recommendation 5. The Federal Government should extend the definitions of 'employment' and 'employee' in the Fair Work Act 2009 to capture new and evolving forms of work.

Recommendation 6. In a quasi-market, where the government can heavily influence the objectives of service providers, competition should be based on quality, at a defined price point, rather than price. The Federal Government should introduce legislation determining minimum income requirements for all workers regardless of their status as an employee or sole trader.

Recommendation 7. The Federal Government should seek to protect the long-term viability of the NDIS workforce by ensuring that all workers in the scheme can access basic workplace entitlements, including superannuation, sick pay and leave.

Security and clarity for NDIS Participants

Given the reliance on individual common law case outcomes to identify workers' statuses as contractors or employees, NDIS participants may be found to be employers. This would lead to significant legal costs and potentially recompensing of their employees' sick pay, superannuation and other entitlements. For this reason, we concur with the Senate Select Committee on Job Security recommendation that:

Recommendation 8. The Federal Government should clarify, by way of regulation, which persons or entities owe a duty of care as a person conducting a business or undertaking (PCBU) under the Model Work Health and Safety laws in relation to individual support workers engaged through on-demand platforms. The law should dictate that:

- a platform that engages individual workers to provide support work under the NDIS or similar schemes, and makes money from the arrangement, is a PCBU and owes a duty of care to that worker, regardless of that worker's work status (employee or contractor), or their visa status.

- individual care recipients, such as NDIS participants, are not a PCBU in relation to that worker.