



**Submission to the Productivity Commission
Study on Aged Care Employment**

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About the Centre for Future Work

The Centre for Future Work is a research institute located at the Australia Institute (Australia's leading progressive think tank). We conduct and publish research into a range of labour market, employment, and related issues. We are independent and non-partisan. This submission draws on our research on gig work, the National Disability Insurance Scheme (NDIS), technology and the future of work and insecure work. Research published by the Centre for Future Work can be found on our website at <http://www.futurework.org.au/>.

Introduction

We welcome the opportunity to make this submission to the Productivity Commission Study into Aged Care Employment. In doing so, we take as our starting point the finding of the Royal Commission into Aged Care Quality and Safety that:

The evidence is clear that the quality of care and the quality of jobs in aged care are inextricably linked. This points to the need for policies and practices to drive a 'virtuous circle', where good working conditions, supportive and visionary management, an empowering work culture, collaborative teams, relevant education and training, structured career progression, and job satisfaction among care workers underpin high quality, person-centred care.¹

This focus of this submission is on the use of independent contracting arrangements for personal care workers, particularly where they are providing *home care* services, while our arguments are generally pertinent to the use of indirect employment, especially to platforms and labour hire and the use of independent contractors in aged care generally, including in residential care. We draw on our substantial research over several years into insecure and platform work, and employment arrangements in the NDIS.

The Productivity Commission's Issues paper for this study states there is limited evidence on the prevalence and impacts of indirect employment arrangements, including independent contracting and platform work, in aged care.² However, there is a substantial body of international and Australian evidence on the impacts of platform work and independent contracting on employment conditions and security, including for care workers. There is also evidence of negative impacts and unacceptable risks for care recipients and care quality where workers are in these employment arrangements. As noted in the Productivity Commission's Issues Paper, the factors associated with high quality care are varied and complex. However, there are clear links between problems commonly experienced by workers in indirect

¹ Royal Commission into Aged Care Quality and Safety (2021) *Final Report: Care Dignity and Respect*, Volume 1 Summary and Recommendations, Canberra: Commonwealth of Australia, p. 124.

² Productivity Commission (2022) *Indirect Employment in Aged Care, Issues Paper*, Canberra: Productivity Commission.

employment arrangements—including lack of training, supervision and support—and impacts on the quality of care. These links and the nature of the problems for care workers and care quality were canvassed widely by the Senate Select Committee on Job Security and the Royal Commission into Aged Care Quality and Safety, with the latter concluding: ‘It is clear to us that the quality of care that older people receive has been compromised because, all too often and despite best intentions, those people who work in aged care simply do not have the requisite time, knowledge, skill and support.’³

Indirect employment in aged care

What types of tasks do independent contractors and platform workers in caring roles undertake? Are these different to the tasks undertaken by employees or labour hire agency workers?

The experience of personal care workers engaged through digital platforms is that tasks are determined by the person receiving care. While this practice supports consumer choice and control it can create problems for workers’ conditions and risks for care quality and for worker and care user health and safety. A common theme in platform care workers’ accounts of their home-based care jobs is of lack of clarity concerning their roles and responsibilities and uncertainty about their performance. NDIS care and support workers providing personal care in homes in the consumer-directed or personalised care system frequently report having their work roles and duties changed by clients without consultation or negotiation. It is not uncommon for workers to report being unsure of how to set boundaries in relation to their work roles and duties and about what boundaries they could reasonably set. Examples include where clients insist on work practices that are not safe (e.g. lifting a person in way that risks injury to them and/or the worker); performance of tasks that a worker feels inadequately skilled or trained to undertake (e.g. operating/applying specialised medical equipment); and additional duties that are outside the scope of the role as agreed (e.g. providing services and supports to other adult household members).⁴

Is the use of agency workers, independent contractors and platform workers likely to increase in the future? If so, why?

The choice to use agency workers, independent contractors and platform workers, whether a choice made by an individual or family member requiring care services or by an aged care

³ Royal Commission into Aged Care Quality and Safety (2021) *Final Report: Care Dignity and Respect, Volume 2: The Current System*, Canberra: Commonwealth of Australia, p. 216. See also Senate Select Committee on Job Security (2021a), *Second Interim Report: Insecurity in Publicly-Funded Jobs*, Canberra: Parliament of Australia.

⁴ Macdonald, F (2021) *Individualising risk: Paid care work in the new gig economy*, Singapore: Palgrave Macmillan. (Note: In this study the terms ‘direct employment’ and ‘directly employed’ refer to care workers in who are independent contracting (including platform workers) and employee relationships with individual care users, not with service provider organisations); Williams, P et al (2022) *Gendered Dimensions of Digital Platform Work: Review of the Literature and New Findings*. Brisbane: Queensland University of Technology.

provider, is a choice made in the context of the alternative options available to them. As the experience of the NDIS and of adult social care in England show, there are strong incentives for using indirect employment arrangements where care system funding is inadequate to fully meet the costs of care required and service providers' ability to recruit and retain skilled care workers is limited, and/or where there is opportunity for businesses to maximise profit through avoiding responsibilities and costs of employing workers and ensuring care quality (including worker skills, training and career paths required for building and sustaining a quality workforce).⁵

While platform care jobs provide important income opportunities for workers unable to find better-paying and more secure work, their prevalence is not necessarily a sign of strong preferences for this option over other employment arrangements. Underemployed care workers often seek work on platforms to supplement their incomes from other care jobs. Home care service providers' rostering and staffing practices are key contributors to the high levels of underemployment and multiple job-holding among home care workers.⁶ Fragmentation of working time and underutilisation of labour arises as service providers seek to minimise labour costs and maximise flexibility by fashioning permanent part-time and casual workforces as on-demand workforces.⁷ Implementation of the Royal Commission into Aged Care Quality and Safety Recommendation 87 for preferencing direct employment, in conjunction with the implementation other Royal Commission workforce recommendations, has potential to address some of these problems with staffing practices.

More generally, the market for aged care services is a complex market; it is a quasi- or publicly-managed market in which a variety of government levers influence the composition and nature of suppliers and users, and the nature, scope and delivery of services. As one example, during the COVID pandemic the Commonwealth Government funded some service providers and platforms to provide a surge workforce, facilitating the growth of platform-based employment arrangements in the aged care sector.⁸ Future growth in the use of indirect employment will depend on aged care policy and government funding and regulation of aged care and the aged care market. The Royal Commission's recommendation to restrict indirect employment

⁵ Macdonald, F (2021) *Individualising Risk*, See also Trojansky, A (2020) *Towards the 'Uberisation' of care? Platform work in the sector of long-term home care and its implications for workers' rights*. Brussels: European Economic and Social Committee. <https://www.eesc.europa.eu/>.

⁶ See CEDA (Committee for Economic Development of Australia) 2021, *Duty of Care: Meeting the Aged Care Workforce Challenge*, Melbourne, p. 22; Macdonald F, Bentham E & Malone, J (2018) Wage theft, underpayment and unpaid work in marketised social care, *The Economic and Labour Relations Review* 29(1), 80–96.

⁷ Campbell, I, Macdonald, F & Charlesworth, S (2019), in O'Sullivan, M, et al. (eds.) *Zero-Hours and On-Call Work in Anglo-Saxon Countries*, Berlin: Springer Press; Macdonald F et al (2018) Wage theft, underpayment and unpaid work in marketised social care; Kullmann, M. (2018) Platform work, algorithmic decision-making, and EU gender equality law. *International Journal of Comparative Labour Law and Industrial Relations*, 34(1), 1–21.

⁸ Cheu, S (2020) Inquiry hears about 'eye-watering' surge workforce contracts, *Ageing Agenda*, 7 October. <https://www.australianageingagenda.com.au/covid-19/inquiry-hears-about-eye-watering-surge-workforce-contracts/>.

arrangements in aged care was one of a number of recommendations that, taken together, were seen by the Royal Commission as ‘vital to the success of any future aged care system’.⁹

Regulation of indirect employment in aged care

What are the implications for aged care recipients of using agency workers, independent contractors, or platform workers to provide government-subsidised care? Who is responsible for the quality of care provided in these circumstances? Does the situation differ if the worker is engaged as an independent contractor rather than as an employee of an agency or a platform?

In home care, the private and isolated nature of care makes organisational oversight of care provision particularly difficult. Where independent contractor workers are engaged as home care workers, there is very limited public accountability for care quality and the safety and wellbeing of care recipients. In such arrangements, whether workers are sub-contracted to service providers or engaged by individual service users, many of the responsibilities and risks associated with care provision are effectively devolved to individual care workers and to care users, informal carers and families.

Where care service provider organisations have some formal obligations under care regulation, in practice they may take little responsibility for care quality and safety. As they are not employers, they do not provide direction, oversight or support to workers to develop good practice, implement service improvements, or resolve problems. They may take little responsibility for worker safety and wellbeing.¹⁰

A care worker engaged as an independent contractor by a care recipient through a platform may have no formal or informal relationship with a registered aged care services provider. Platforms using an independent contractor model do not take responsibility for the quality of care provided, as they maintain their organisations are not care service providers. For example, among platforms operating in the disability services sector, many are not NDIS-registered service providers. They do not claim to operate in compliance with the mandatory NDIS Code of Conduct for all NDIS service providers.¹¹ Nor do they take responsibility for ensuring the independent contractor care and support workers who use their platforms comply with the NDIS Code of Conduct.¹² Like other ‘Crowdwork’ platforms, most care platforms claim to be simply operating a marketplace to connect people requiring services with independent service

⁹ Royal Commission into Aged Care Quality and Safety (2021) *Final Report: Care Dignity and Respect, Volume 3A: The New System*, p. 371.

¹⁰ Macdonald, F (2021) *Individualising Risk*, chapters 7-8.

¹¹ See evidence of Peter Scutt, Mable to the Royal Commission into Aged Care Quality and Safety, Transcript of Proceedings, 31 August 2020, pp. 8880-8897, and the Senate Select Committee on Job Security, *Proof Committee Hansard*, 12 April 2021, p. 45.

¹² See Mable Support Worker Guide 2020, stating workers are ‘encouraged’ to ‘become familiar with their obligations under the Code and to complete the [mandatory NDIS induction] training’, p. 11. <https://mable.com.au/wp-content/uploads/2020/10/Support-Worker-guide-2020-1.pdf>.

providers and to have no responsibility for the quality of the service provided or for the terms and conditions of the work.¹³

*Who is currently accountable for lapses in work health and safety or quality of care when care is delivered by agency workers, independent contractors or platform workers?
Is there any evidence that the existing regulatory framework is deficient in scope, implementation or enforcement?*

Home care workers face considerable health and safety risks in private homes and in informal care and work relationships. Isolation, including lack of peer support and poor access to supervisors' support and guidance, have long been identified as problems for home care workers' health and safety. Poorer outcomes have been identified for agency workers.¹⁴

Platform and other home care workers who are independent contractors bear substantial responsibility for their own and their clients' health and safety, including that workers are required to conduct workplace assessments in their clients' homes. Workers with limited or no experience as employees of care service provider organisations often have very little knowledge of work health and safety risks and hazards. Workers frequently report having inadequate information about the requirements of their roles or about the work environment before they commence work (including, for example, other adults living in the household). They report poor access to the means to address risks and problems and reluctance to report incidents to platforms, including incidents of violence and harassment; hazards which some workers assume 'come with the territory'.¹⁵

Are there examples of good practice or effective regulation of employment arrangements for agency workers, independent contractors and platform workers in other sectors or other countries that might be applicable to aged care?

It is beyond the scope of this submission to detail the options for economy-wide regulation of agency work, independent contracting and platform work. Both the urgent need for regulation of these employment arrangements to address problems for workers (including care workers)

¹³ Stanford, J & Pennington, A (2019) *Turning 'Gigs' into Decent Jobs, Submission to Inquiry into the Victorian On-Demand Workforce*. Canberra: Centre for Future Work. https://www.futurework.org.au/gig_economy.

¹⁴ Quinlan, M, Bohle, P, & Rawlings-Way, O (2015) Health and safety of homecare workers engaged by temporary employment agencies, *Journal of Industrial Relations*, 57(1), 94-114; Quinlan, M & Bohle, P (2008) Under pressure, out of control, or home alone? Reviewing research and policy debates on the occupational health and safety effects of outsourcing and home-based work, *International Journal of Health Services*, 38(3), 489-523.

¹⁵ Baines, D, Macdonald, F, Stanford, J & Moore, J (2019) *Precarity and job instability in NDIS support work*, Canberra: The Centre for Future Work, https://www.futurework.org.au/public_sector; Macdonald (2021) *Individualising Risk*. See also Charlesworth, S, Macdonald, F & Clarke, J (2020) *Scoping Study on Gender-Based Violence in Individualised Support & Care Services in Victoria*, CPOW report for WorkSafe Victoria. Melbourne: RMIT University. <https://cpow.org.au/gender-based-violence-in-support-care/>.

and a wide variety of options for regulation, have been canvassed extensively in our research, by labour law and employment experts in Australia and internationally, and in recent government inquiries and policy proposals.¹⁶ While new regulatory initiatives are necessary for addressing the unacceptable risks of employment faced by care workers engaged as independent contractors, they are not sufficient. Sector-specific initiatives are required to prevent care workers' exclusion from the organisational support and supervision that underpins good quality care and care work. They are also required to support the growth and sustainability of a skilled workforce that offers career paths and secure work. Internationally, there are examples of industry-specific regulation, such as in the publicly-funded home care sector in Belgium, where care workers must be employees of registered care provider organisations; locally there are models such as a group training model, that could be applied to aged care.¹⁷

Impacts of indirect employment in aged care

What are the pros and cons of agency workers, independent contractors and platform workers in aged care for: aged care recipients; aged care workers; and aged care providers?

Research has documented the satisfaction of care users who have chosen to engage their care workers directly (including people who contract care workers via platforms) but there has been little systematic evaluation of care quality or outcomes.¹⁸ While consumer ratings may be good indicators of care recipients' satisfaction with their workers they are not necessarily good indicators of the overall quality or safety of care.¹⁹ The opportunity for people requiring care to contract their care workers directly is regarded by some consumer advocates as important for providing people with freedom of choice and flexibility over their care. What this means in practice requires further exploration. In Australia, there is some evidence from the disability sector that, where care users are motivated to use such arrangements to minimise the costs of care, people may seek workers willing to work at below award wages.²⁰

Research on aged care and disability support platform workers in Australia²¹, in line with international studies on platform care workers, has identified significant negative impacts on

¹⁶ See, for example, Stanford, J & Pennington, A (2019) *Turning 'Gigs' into Decent Jobs*; Stewart, A & Stanford, J (2017) *Regulating work in the gig economy: what are the options?* *Economic & Labour Relations Review* 28(3), 420-437; Senate Select Committee on Job Security (2021) *First Interim Report: On-Demand Platform Work in Australia*, Canberra: Parliament of Australia; and *Labor's Secure jobs Plan*, <https://www.alp.org.au/policies/secure-australian-jobs-plan>.

¹⁷ Macdonald, F & Charlesworth, S (2021) *Regulating for gender-equitable decent work in social and community services: Bringing the state back in*, *Journal of Industrial Relations* 63(4), 477-500.

¹⁸ For a detailed discussion of research in the UK where personalised models have been in place for some time see Chapter 2 in Macdonald, F (2021) *Individualising Risk*.

¹⁹ Kullmann, M (2018) *Platform Work, Algorithmic Decision-Making, and EU Gender Equality Law*.

²⁰ Fisher, K et al (2010) *Effectiveness of individual funding approaches for disability support*. Canberra: FACSIA.

²¹ See Chapters 7 and 8, Macdonald, F (2021) *Individualising risk*; McDonald, P et al (2019) *Digital platform work in Australia: Prevalence, nature and impact*, Brisbane: QUT; and Williams, P, et al (2022) *Gendered Dimensions of Digital Platform Work*.

workers' security, pay and employment conditions. Findings include that, while some higher-skilled and experienced workers can command rates of pay above the award wage for an employee, this is not the case for most other platform care workers. Workers set their rates with reference to other workers on the platform and try to gain jobs by offering to work for lower (or lower than average) rates. Workers are not well-informed about the costs of their employment. They spend a lot of time on unpaid work to gain and maintain employment through platforms, including securing work (e.g. attending unpaid selection interviews, liaising with clients regarding changing working time demands, maintaining platform profiles, following up clients to get paid). People seeking care often want to negotiate lower rates than those advertised by workers.

Care clients frequently cancel work, shorten engagements or vary agreed times with little or no notice. Working in individualised and informal care relationships, care workers can feel obliged to agree to lowering their rates, to work longer hours, or work unsocial hours for the same pay. Workers are reluctant to complain to clients or to platforms as they do not want to risk damaging their ratings on the platform. Less experienced workers are very vulnerable to underpayment and exploitation. Some platform workers report platforms as being uninterested in supporting workers in addressing workplace problems. Other workers report that platforms are clear that problem and dispute resolution are not their responsibility at all. Platform work deepens the gendered undervaluation of care work in multiple ways as well as increasing the risks of discrimination. Indirect employment arrangements using independent contractors undermine service provider accountability, as organisations avoid responsibility for most aspects of employment, including pay and conditions, and avoid responsibility for building and maintaining a skilled aged care workforce.

What role can technology play in providing support in aged care? How have digital platforms changed the way aged care workers are sourced? How can technology be used to improve the efficiency and quality of care?

The use of digital platforms for connecting service providers and individuals requiring care with care workers is not confined to platforms using independent contractor models. As noted in the Commission's Issues Paper for this study, HireUp is one example of a digital care platform that directly employs care workers. Other service providers that directly employ care workers are also beginning to adopt technology platforms to source workers and assist match workers to specific care requirements, and they are using digital technologies to roster workers more efficiently.²² The 'innovation' of the crowdwork platform model in publicly-funded care is not in harnessing technology for greater efficiency; rather, it is in adopting a business model that provides competitive advantage by bypassing care and employment regulation. The independent contractor model adopted by most platform firms enables platforms to avoid the

²² See Ageing Agenda, Technology archives <https://www.australianageingagenda.com.au/technology/>.

normal obligations and costs associated with employing workers and taking accountability for care quality and safety.

Preferencing direct employment in aged care

What are the potential impacts of preferencing the use of direct employment of personal carers in aged care?

Given the small proportion of personal care workers currently engaged as independent contractors in the aged care sector, placing restrictions on the use of these indirect employment arrangements is unlikely to have a significant impact on the aged care sector generally. It will, however, remove one form of unfair competition in the aged care services market. It will impact on organisations, including aged care service providers and platforms, that provide aged care services and labour while avoiding the normal costs, risks and responsibilities of these activities.

As argued in the Royal Commission's final report, the intended impact of restricting the use of indirect employment arrangements in the aged care workforce is to establish employment as 'a mode of engagement of the workforce [that] is more compatible with achievement of our broad objectives of developing a well led, skilled, career-based, stable and engaged workforce providing high quality aged care'.²³

Would it be appropriate to regulate indirect employment in aged care using industry-specific regulation vis-à-vis economy-wide regulation?

As already noted, sector-specific initiatives are required to address problems of care quality that arise when workers are outside employment relationships that provide them with access to organisational supervision and support. A requirement for direct employment would also establish some of the conditions required for directly addressing care worker insecurity (including employment, pay, working time, health and safety insecurities).

The recent Senate Select Committee on Job Security inquiry into insecure work considered regulatory options for addressing the problems of insecure work in the aged care sector, and across the wider publicly-funded care sectors. The Committee, in their interim report on insecurity in publicly-funded jobs, addressed these problems in the context of the findings and recommendations of the Royal Commission into Aged Care Quality and Safety, and made a number of recommendations for the Australian Government to restrict indirect employment. These include the development of an aged care provider procurement policy that actively promotes job security. As the Committee noted:

²³ Royal Commission into Aged Care Quality and Safety (2021) Final Report, Vol 3a, p. 431.

(Aged care) service providers may value the flexibility offered by (current workforce) arrangements—they may save a dollar here and there on wages—but this inquiry has demonstrated that ultimately no one is benefitting from the status quo. There are workforce retention issues, inefficiencies in training and human resources, risks for patient safety, and negative impacts on patient care.²⁴

We believe there is little doubt that stable, high-quality work is important to the quality of care for older Australians. Limiting insecure work practices in the aged care sector is a critical step towards achieving the vision of the Royal Commission for high quality, person-centred care. We thank the Productivity Commission for their interest in our submission and are available to provide any further information if it is required.

²⁴ Senate Select Committee on Job Security (2021a), Second Interim Report, p. 130, para 6.143.