Briefing Paper:

Going backwards:
How NDIS workforce arrangements are undermining decent work and gender equality

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Overview[1]

The disability support workforce is central to the effectiveness and sustainability of the National Disability Insurance Scheme (NDIS). Hundreds of thousands of NDIS participants rely on this workforce to provide personal support and care on a daily basis. The NDIS workforce is large and growing, currently employing about a quarter of a million workers, mostly women. Pay, working conditions and career opportunities in the disability support workforce are critical to the future of women's economic equality in Australia.

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[1] Parts of this paper draw heavily on a written witness statement provided by the author to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability in February 2023.

It is a decade since the NDIS was first piloted, yet the promise for workers, that the scheme would translate into 'greater pay, ... better working conditions ... (and) enough resources to do the job properly'[2] has not been fulfilled. Rather, conditions of work in the NDIS are poor and deteriorating. The design of the NDIS, with its market basis and poor and uneven regulatory oversight, has undermined fair pay and working conditions for disability support workers and is threatening workforce stability. This briefing paper reviews this evidence and argues for significant reforms to address urgent problems arising from these design flaws and regulatory failures.

A skilled sustainable NDIS support workforce with fair pay and working conditions requires a comprehensive and co-ordinated approach. A number of significant policy development and review processes should address the problems outlined in this paper. If these initiatives do not fix the conditions of work for support workers in the NDIS the problems will worsen.

Three key policy initiatives are:
- The Commonwealth Government's National Care and Support Economy Strategy 2023, which has three goals: quality care and support, decent jobs and productive and sustainable care systems for aged care, disability care and support, veterans and early childhood education and care.[3]
- The independent NDIS Review, part 2 of which is directed to 'building a more responsive and supportive market and workforce'.[4]
- Proposed national industrial relations reforms that have been introduced into Parliament are designed to close loopholes that are undermining labour standards and protections. These include a proposal to empower the Fair Work Commission to set minimum standards and pay rates for workers in 'employee-like' forms of work – including those working through digital platforms – and other proposals to prevent employment relationships from being treated as contracting relationships.[5]

While these initiatives are welcome and should drive beneficial reforms, there is a risk that policy responses will be fragmented and inadequate. Neither the Draft National Care and Support Economy Strategy nor the interim NDIS review report fully acknowledge or address problems for workers in individualised employment

[2] Productivity Commission (2011) Disability care and support. *Productivity Commission Report no. 54*. Canberra: Productivity Commission, p. 50.
[3] Department of Prime Minister and Cabinet (2023) National Strategy for the Care and Support Economy, https://www.pmc.gov.au/domestic-policy/national-strategy-care-and-support-economy.
[4] NDIS Review (2023b) Terms of Reference: Building a Strong, Effective NDIS, https://www.ndisreview.gov.au/.
[5] Parliament Of Australia (2023) Fair Work Legislation Amendment (Closing Loopholes) Bill 2023, Explanatory Memorandum, https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation.

arrangements or the potential for the informalisation of support worker employment that are discussed in this report.

Many disability support jobs offer only short hours and fragmented working time and about 40 per cent of workers are in casual employment, compared with 23 per cent of all employees. Wages underpayment appears to be a widespread problem. Experienced workers report that fragmentation of working time is strongly linked to reduced quality of support and care.[6]

The support workforce is highly award-dependent and work is undervalued. Large numbers of support workers are not satisfied with their take home pay, 39% according to a 2020 survey.[7] Opportunities to progress to higher levels of pay are limited. Pay levels and overall income, unsustainable working time, feeling poorly valued, too much unpaid work, lack of support and supervision, lack of training, and lack of peer support are commonly experienced by casual and part-time employees (who are the vast majority of support workers). These factors drive high turnover.

There is a growing number of support workers who are either directly employed by NDIS participants or engaged as contractors by participants and by service provider organisations. Digital platforms and other third parties often play an intermediary role in these work relationships.[8] There is a dearth of data on the numbers and characteristics of support workers in these insecure employment arrangements, despite that this is a large publicly-funded workforce in a government-managed market. Nevertheless, along with older and highly-skilled workers, it is clear there are many workers who are young and inexperienced, recent migrants and recently unemployed people.

There is little research on risks to support workers of direct household employment and individual contracting. However, some common problems are identified in international and Australian research. Privately employed workers and contractors are a largely invisible workforce. Workers are isolated from public oversight and from their peers. There are barriers to workers' collective interactions and representation. Access to training is poor. Employment is often informalised, compliance with employment regulation is poor, and pay is often less than the regulated wage. This situation not only perpetuates the undervaluation of essential support work but worsens it.

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[6] Natasha Cortis, Fiona Macdonald, Bob Davidson and Eleanor Bentham (2017) *Reasonable, Necessary and Valued: Pricing Disability Services for Quality Support and Decent Jobs*, Sydney: SPRC UNSW; Fiona Macdonald, Eleanor Bentham and Jenny Malone (2018) Wage theft, underpayment and unpaid work in marketised social care, *Economic and Labour Relations Review*, pp. 80-96.
[7] Natasha Cortis, and Georgia Van Toorn (2020) *Working in New Disability Markets: A Survey of Australia's Disability Workforce.* Sydney: Social Policy Research Centre, UNSW. p. 49.
[8] Fiona Macdonald (2023) *Unacceptable risks: The Dangers of Gig Models of Care and Support Work.* https://futurework.org.au/report/unacceptable-risks/.

This report recommends reforms to:
- Enhance government accountability for the NDIS workforce;
- Build better work standards within the NDIS to ensure *all s*upport workers have a fair wage and fair working conditions;
- Provide all NDIS-funded support workers with access to accredited training, and access to mentoring and support or supervision (outside their individual support relationships with clients);
- Enable all NDIS-funded workers to access and accrue employment benefits and entitlements, including superannuation, annual and sick leave and long-service service leave, including providing portability of entitlements within the sector.
- Prevent NDIS funding and resources that are intended to cover the costs of employment and assist workers to perform their jobs safety and effectively from being diverted to profits or cheaper services.

Specific actions to meet these aims:
- Establish a mandatory requirement within the NDIS pricing arrangements for all NDIS-funded disability support workers to be paid, at a minimum, at Classification level 2.3 of the SACS Schedule B of the SCHADS Award, reflecting NDIS workforce capability and skills requirements.
- Establish a national mandatory worker registration and accreditation scheme for disability support workers. Minimum qualifications requirements should be introduced in a staged approach that does not disadvantage existing workers.
- Require all NDIS providers to be registered, with registration requirements being proportionate to the risks of service provision.
- Explore alternative structures for support workers' employment to ensure all NDIS support workers have access to adequate supervision and support, secure work and employment entitlements, and to collective representation and bargaining.
- Establish portable leave and training entitlements schemes for all disability support workers.
- Review funding and pricing to enable collective bargaining for over-award wages.

Ensuring decent jobs for NDIS workers is critical for a sustainable and productive care and support economy and for quality care and support. Better jobs for this growing workforce are also important if we are to build a more gender-equal society. Now is the time to address the significant problems of insecure work and informalised work in the NDIS. If left unaddressed these problems will only become more entrenched and more difficult to fix.

Context: Disability support workers in the NDIS

The NDIS and person-centred supports

The NDIS provides individualised funding for support for around 585,000 people deemed to have permanent and significant disability. The objects of the National Disability Insurance Scheme Act 2013 (Cth) (NDIS Act) include to 'enable people with disability to exercise choice and control in the pursuit of their goals and the planning and delivery of their supports', and to support their 'independence and social and economic participation'. These objects work to fulfil Australia's obligations under the Convention on the Rights of Persons with Disabilities.

The NDIS is intended to be a person-centred support system. This goal is reflected in requirements and expectations of the disability support worker role, including a strong emphasis on supporting NDIS participants to develop their capabilities and lead their own support. The provision of direct personal support can involve: teaching skills and facilitating independence; supporting self-advocacy and undertaking advocacy; supporting decision-making; and promoting and assisting capability development and community access, engagement and social inclusion. These expectations and requirements of workers are articulated in the NDIS Code of Conduct and the NDIS Workforce Capability Framework.[9]

The NDIS support workforce

The NDIS support workforce is highly feminised. Disability support work is relatively low-paid and most workers are employed part-time, many in casual jobs. Under the NDIS there has been a trend to increased casualisation and to shorter hours jobs.

Data on the disability support workforce is poor. Australian Bureau of Statistics (ABS) estimates do not enable disaggregation of disability support workers from the broader care and support workforce that includes aged care workers. However, data for the broader workforce across aged care, veterans' care and disability support shows that the workforce is highly feminised (79% female). The workforce has an older age profile than most other occupations and a higher representation of people from non-English speaking backgrounds and people born overseas, with around 40% of care and support workers born overseas compared with 32% in the overall workforce. Over 80% of the broader care and support workforce hold a Certificate III or IV qualification or higher (in any field) compared with 66% in the overall labour market.[10]

The NDIS support workforce is large and growing and, in 2020, was estimated to comprise 242,000 workers.[11] The vast majority of workers are community and home-

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[9] NDIS Quality and Safeguards Commission (NDIS Commission) (2022) *NDIS Code of Conduct – Guidance for Workers*, https://www.ndiscommission.gov.au/about/ndis-code-conduct, and *NDIS Workforce Capability Framework* https://workforcecapability.ndiscommission.gov.au/.

[10] Department of Social Services (DSS) (2021) *NDIS National Workforce Plan*. For gender breakdowns see p. 102, For qualifications see p. 15, https://www.dss.gov.au/disability-and-carers-publications-articles/ndis-national-workforce-plan-2021-2025.

[11] National Skills Commission (NSC) (2022) *Care Workforce Labour Market Study Final Report*, pp. 38-39. <https://www.nationalskillscommission.gov.au/reports/care-workforce-labour-market-study>. Note:

based support workers who provide personal support, assistance and care to NDIS participants. Home-based support workers are estimated to make up 66% of the NDIS workforce, community-based support workers 23.7%, and allied health and other workers 10.4%.[12]

Support work includes both direct support and care (such as personal bodily care) and indirect support -- for example, support co-ordination or assistance with cooking. In the NDIS, support for participants is intended to be strengths-focused and emphasise responsiveness, support for self-determination and individual preferences. Thus, support roles vary enormously with individuals' lives and personal goals, needs and preferences.

Most support jobs in the NDIS offer only part-time hours, often short hours. Four in every five workers are employed part-time, compared with fewer than one in three workers in the Australian labour force overall. There has been a trend to shorter hours' part-time jobs. A trend to increased casualisation under the NDIS continues with about 40 per cent of support workers in casual employment, compared with 23 per cent of employees economy-wide. There are high levels of multiple job-holding among disability support workers as well as high levels of underemployment.[13] The minimum pay and conditions of disability support workers are specified in the Social, Community, Home Care and Disability Services Industry Award (SCHADS Award). Historically, a high proportion of employees are paid on or just above the safety net award pay level, even where enterprise agreements are in place.[14]

Support workers and NDIS quality and safeguarding regulation

The NDIS has established standards for quality and safeguarding applying to support workers and their work. These standards vary according to how support workers are employed, as well as to where they are employed. One consequence of differing levels of regulation in the NDIS is that workers with little or no experience or knowledge of disability support work can be employed to provide support to NDIS participants in arrangements with virtually no system oversight or safeguarding of service provision, and without any organisational or system support for workers.

Employers of disability support workers include:

- disability services provider organisations,

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this estimate excludes and ancillary occupations (cleaners and cooks and other 'indirect' care workers who do not also provide personal care or support) and the mental health workforce.

[12] (DSS) (2021) *NDIS National Workforce Plan: 2021–2025*, p. 6.

[13] For casual employment see NDS (2022) *State of the Disability Sector Report* 2022, Sydney: NDS, p. 34 and ABS (2022) *Working Arrangements, August 2022,* https://www.abs.gov.au/statistics/labour/earnings-and-working-conditions/working-arrangements. For underemployment and multiple job-holding see NSC (2022) *Care Workforce Labour Market Study,* pp. 149-151.

[14] See Fiona Macdonald, and Michael Pegg (2018) 'Contracting out community services, marketisation and wages' in Andrew Stewart, Jim Stanford, & Tess Hardy (Eds.), *The Wages Crisis in Australia: What it is and what to do about it,* Adelaide: University of Adelaide Press, pp. 129-142.

- home care services,
- third parties, such as labour hire companies, and
- individual NDIS participants.

Support workers are also engaged by organisations and individual NDIS participants as independent contractors. In some cases, third parties, notably digital labour platforms, are intermediaries in these relationships.

Support workers are employed by NDIS-registered service providers and by unregistered providers. Only registered providers are required to meet quality and competency standards set by the NDIS Quality and Safeguards Commission (the NDIS Commission). Unregistered providers and their employee support workers are required to adhere to the NDIS Code of Conduct but providers do not have to meet the NDIS Practice Standards and workers do not have to undertake NDIS Worker Screening Checks. This is also the case for workers providing support to NDIS participants with 'self-managed' support plans. There are no mandatory minimum qualifications for support workers, regardless of whether they are employees of NDIS-registered or unregistered service providers or work directly with or for NDIS participants.

NDIS data on service providers indicates a significant proportion of NDIS-funded support work is undertaken by workers who are not employed by registered providers and are not themselves registered providers (in the case of independent contractors). In the September 2022 quarter there were 145,514 active providers of NDIS-funded supports and only 19,536 were NDIS-registered providers.[15]

An increasing proportion of NDIS support services are provided by unregistered providers. The proportion of NDIS participants whose supports must be purchased from registered providers (i.e. participants with agency-managed plans) has been declining and, in late 2022, only 13% of participants had an Agency-managed plan. In dollar terms, under half of all 'support with daily activities' and only a quarter of 'support with capacity building' is Agency-managed.[16] Where an NDIS participant's support plan is self-managed (30% of all plans) or managed by a plan manager (57% of all plans),[17] supports can be purchased from registered or unregistered providers. In the September quarter of 2022, 60% of all plan-managed NDIS payments were paid to registered providers and 39% were paid to unregistered providers.[18] Unregistered providers include individual support workers engaged as independent contractors.

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[15] For total providers see NDIA (2022) NDIS Quarterly Report to Disability Ministers, Q1, 2022-2023. NDIA, p. 86. For registered providers, see NDIS Commission (2022) *NDIS Quality and Safeguards Commission activity report ,1 July to 30 September 2022*. https://www.ndiscommission.gov.au/resources/reports-policies-and-frameworks
[16] The bulk of support provided under arrangements in which providers are required to be NDIS-registered is to people in supported independent living arrangements.
[17] Plan managers assist and support NDIS participants to manage their NDIS funds (i.e. budget management and funds administration).
[18] NDIA (2022) Quarterly report Q1 2022-2023, pp. 85–90.

So, a large and growing proportion of NDIS support is provided by workers where there is little to no regulation of service quality and safety and little support or training for workers. Despite concerns about the risks of abuse and neglect of people with disability where there is poor oversight of service provision, unregistered service providers have a competitive advantage in the NDIS market. Unregistered providers can provide services at lower cost or take a greater share of the NDIS-funded service fees as profit. This is because they do not bear the costs of quality assurance required to comply with quality and safeguarding standards that are associated with registration (reinforced by labour cost savings associated with the use of casual and contract labour). While some disability support services for people with complex needs can only be provided by NDIS-registered providers, in other large segments of the NDIS market registered and unregistered providers are in direct competition for the custom of NDIS participants.

Individual NDIS participants and their families can and do seek out services based on price, especially where they desire or need to make their NDIS funds stretch to as many hours of support as possible. They may have little or no other information on which to base their choice, and/or few options in any case.

Quality of work and quality of support in the NDIS

The conditions of work are the conditions for support

Personal support is a social process involving a relationship with another person to provide assistance. Workers' labour is central to support, it is the main cost of support and it is a significant determinant of the quality of support. The relationship between the quality of support provided and support workers' skills and capabilities—as well as workers' access to resources and supports (e.g. time, training, peer support and supervision)—is recognised and articulated in detail in NDIS quality and safeguarding policies, guides and codes, including the NDIS Workforce Capability Framework and the NDIS Code of Conduct.[19]

Evidence from Australian and international studies suggest the well-being of workers and/or the quality of their jobs is strongly connected to the quality of support and care they provide. Over many years, studies of home-based support and care services have found positive perceptions of services and service quality to be associated with better organisation of workers, more training, longer employment tenure and stability of working time. Underpinning findings are that worker capability and support consistency are important for support quality. Both consistency and capability are undermined by low job satisfaction, high turnover, and associated loss of skills and

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[19] For a detailed discussion, see Fiona Macdonald and Karen Douglas (2022) *Disability Support Workers and the Classification of their Work in the Social, Community, Home Care & Disability Services Industry Award*, Melbourne: RMIT University. https://cpow.org.au/wp-content/uploads/2022/02/RMIT-DSW-Classification-Final-Report-Feb-2022.pdf.

experience, especially where pay and/or working conditions are poor and/or there is a lack of supervision and support for workers.[20]

Challenges recruiting and retaining suitably skilled workers have been experienced by NDIS participants and service providers, undermining consistency in service provision over a long period. Under the NDIS, funding pressures, competition on price, and desire to increase profit all act as incentives for service providers to employ lower-skilled workers and reduce worker training and professional development, and supervision. Service providers have also reduced shift handovers, debriefings, and other forms of supervision, coaching, and support. These changes leave employees feeling unsupported, unvalued and sometimes unsafe.[21] One of the main reasons people intend to leave the NDIS workforce is because they have concerns about service quality.[22]

The NDIS pricing model can constrain flexibility and responsiveness in service provision. It also constrains development and training opportunities for staff, as it allows workers very little work time other than face to face time with the service's clients. The Disability Support Worker Cost Model (DSW Cost Model) allows very little time for workers to perform any tasks beyond direct face-to-face support.[23]

Experiences of degradation of work and support under the NDIS

Following the introduction of the NDIS, service providers increased their reliance on casual and short hours part-time employment. Instead of more holistic and person-centred approaches, casualisation was experienced by workers, and reported by some service providers, as contributing to more fragmented, partial and lower quality support due to less time, less planning and collective effort, and less skilled and experienced workers.[24] Workers saw this as contributing to the creation of significant gaps in essential supports for people with disability. They reported that unanticipated variations in support were no longer readily accommodated by their supervisors under NDIS funding, where previously they would have been. Employees reported loss of collective organisational responsibility for the well-being of people being supported. They reported loss of paid work time for the 'linking' work of support necessary to provide continuity; for example, having time to communicate with another support worker about a person's circumstances or needs. Recent research has highlighted the how the lack of engagement with workers in development operationalisation and

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[20] Cortis and Van Toorn (2020) *Working in New Disability Markets.* See also Fiona Macdonald (2021) *Individualising Risk: Paid Care Work in the New Gig Economy*. Cham, Switzerland: Palgrave Macmillan, esp. pp. 9-10, 145, 162-169.

[21] Baines et al. (2019) *Precarity and Job Instability*; Cortis, et al. (2017) *Reasonable, Necessary and Valued*; Macdonald, *Individualising Risk*, p. 165.

[22] Department of Prime Minister and Cabinet (2022) *NDIS Workforce Retention*.

[23] NDIA (2022) *Disability Support Worker Cost Model Assumptions and Methodology 2022-23* https://www.ndis.gov.au/providers/pricing-arrangements. For a discussion of assumptions in the costs model see Cortis et al (2017) *Reasonable, Necessary and Valued,* pp. 22-23.

[24] NDIS workforce survey findings reported by Cortis and Van Toorn (2020) *Working in New Disability Markets* align with research findings reported by Macdonald (2021) *Individualising Risk* and by Cortis et al. (2017) *Reasonable, Necessary and Valued.*

review of quality and safeguarding mechanisms in the NDIS has contributed to the ineffectiveness of these mechanisms.[25]

Increased casualisation and reduced staffing (combined with reduced supervision) that occurred over the period of NDIS implementation was considered by experienced workers to be a clear degradation of both work and support quality. Workers observed new casual employees arriving for shifts without adequate knowledge of procedures for keeping NDIS participants and themselves safe, and without essential information about the needs or preferences of the people they were supporting. Workers also cited worries about organisations not responding when they raised concerns about the well-being of the service's clients. Inability to fill shifts at late notice (meaning people with disability may not be supported at all) was seen by supervisors, coordinators and staff to be more frequent and inevitable in organisations relying on casualised workforces and on workers' ability and readiness to come in for often very short shifts with little notice.[26]

Team leaders, co-ordinators and supervisors reported the adoption of lean management models in disability services organisations under the NDIS funding model. Developed in manufacturing, lean management (or lean production) involves business process 'improvement' achieved via the minimisation of waste including through the adoption of just-in-time inventory management. Under these models, more labour is extracted from employees by devolving greater responsibility to them while reducing any paid labour time in which workers are not considered to be fully 'productive'. Disability services managers and workers reported more employment of casual workers (for shorter shifts) in their organisations, as well as increased support worker to supervisor ratios, leading to less back up for, feedback on, and oversight of service provision. Alone, and in combination, these changes were experienced as reducing service quality through making service provision less flexible and adaptable to individual needs and preferences – in contrast to the stated goals of the NDIS. For example, workers providing support in people's homes reported being unable to contact supervisors when urgently needing advice or support, or when needing to extend a support period, for example, when someone who is ill or unexpectedly requires additional support. Surveys of workers during the COVID pandemic reinforced these findings, showing that many disability support workers are not well supported and do not receive adequate training, posing significant risks for quality and safety for both NDIS participants and workers.[27]

Workers and supervisors experience inadequate time and support in their jobs to do the required work and ensure NDIS participants' well-being and safety. This includes inability to respond flexibly to individual needs, inadequate access to required information, lack of time to complete set tasks, and feeling inadequately skilled. They report high levels of work intensity and unpaid overtime, including as support needs

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[25] Natasha Cortis and Georgia van Toorn (2022) Safeguarding in Australia's new disability markets: Frontline workers' perspectives, *Critical Social Policy*, 42(2): 197-219.
[26] Cortis and Van Toorn (2021) *Working in New Disability Markets*. See also Baines et al. (2019) *Precarity and Job Instability.*
[27] Anne Kavanagh et al. (2020). *Disability Support Workers: The Forgotten Workforce in COVID-19*. Parkville: The University of Melbourne.

vary with changing needs, preferences and circumstances. Unpaid overtime includes responding to unanticipated requests, providing additional supports when a person is ill, and taking time to understand the needs of new/unfamiliar clients. Unpaid overtime also includes many other regular activities and tasks that are not adequately accounted for in workers' time allocations, including communicating with family members, informal carers, and/or other service providers and workers; waiting for family members; seeking advice, reporting and following up issues with supervisors; and writing reports and other administrative tasks. Support workers have reported this to be a major source of frustration and distress, and it is linked to intentions to leave.[28]

Risks to NDIS participants included risks of illness when workers are pressured to come to work when they are ill (and this concern long predates the COVID pandemic). Risks of injury to NDIS participants include, for example, situations in which a single worker was providing support that requires two workers or did not know how to use equipment correctly. Further risks to quality of support arise where inexperienced workers do not have knowledge of people's preferences and needs, and/or are inexperienced in dealing with novel or complex problems or situations.[29]

Insecure work, underpayment and turnover in service provider organisations

Short hours jobs and fragmented working time are significant problems for disability support workers, along with work intensity, as already noted. Underemployment is a problem with many of the mostly part-time and casual workforce wanting more hours of work. Wages underpayment also appears to be a widespread problem in the support workforce. There is a high level of turnover among support workers with almost 46,000 workers leaving the NDIS each year.[30]

Flexible services and fragmented working time

Working time fragmentation entails being engaged for multiple short shifts, having limited certainty of working hours (and therefore income), multiple job-holding and juggling requirements of multiple jobs, and underemployment due to unpredictable variability in working time. Working time arrangements can be highly fragmented for part-time as well as for casual employees.[31] According to a 2022 National Skills Commission (NSC) study, workers in the broader care and support workforce are nearly twice as likely as other workers to hold multiple jobs (11% report being multiple job holders compared with 6% of the overall workforce).[32]

Consequences for workers include insecurity of income and work-life arrangements, which can lead to psychological stress and material hardship. Workers find it difficult to

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[28] Macdonald et al. (2018) Wage theft, pp. 80-96.
[29] Cortis et al. (2017) Reasonable, Necessary and Valued; Macdonald, *Individualising Risk*, pp. 168-184.
[30] Department of Prime Minister and Cabinet (2022) *NDIS Workforce Retention*, p. 1.
[31] Macdonald et al. (2018) *Wage theft*.
[32] NSC (2022) *Care Workforce Labour Market Study*, p. 14

plan, and participation in other life activities can be severely disrupted. Insecure work and incomes underpin people's tolerance of fragmented working time arrangements due to their concerns about losing hours in future, or not having a job at all.

Workers, especially experienced workers, report that fragmentation of working time is strongly linked to reduced quality of support and care. This is particularly a problem where workers are scheduled to travel between clients' homes on tight schedules.[33]

Underpayment of wages

Large numbers of disability support workers are not satisfied with their take home pay, 39% according to a 2020 survey.[34] Opportunities for support workers to progress to higher levels of pay have become more limited under the NDIS due to direct consumer funding arrangements, workforce casualisation, reduced employer support for training and privatisation of public disability services. In addition, there is growing evidence of wages underpayment. Misclassification and under-classification are common causes. Underpayment also occurs through unpaid overtime as a result of the fragmentation of support work into small 'jobs' or broken shifts, and inadequate time allocation.[35]

The NDIA sets price limits for items in NDIS participants' individual support plans. These limits are the maximum amount the NDIA will pay and, as such, they act as a 'cap' on the fees service providers can charge NDIS participants for supports.[36] Limits on NDIS prices for supports provided by support workers are based on the costs of employing workers in accordance with the SCHADS Award Social and Community Services (SACS) Schedule B at classification level 2.3 or higher. This is based on an assessment by an NDIA and industry working group that the reasonable minimum qualification and experience level of support workers required for the provision of NDIS supports is SCHADS SACS classification level 2.3.[37]

The NDIS cost model used to determine the price limits (and public funding) also takes account of costs of shift loadings, penalties, leave entitlements, superannuation and other allowances. It includes provision for operational costs that include workers compensation, and supervision, including quality and safeguarding, and rostering. A provision for corporate overheads includes human resources, marketing and information technology functions, and there is a margin for profit. Provisions are

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[33] Macdonald et al. (2018) *Wage Theft*.
[34] Cortis and Van Toorn (2020) *Working in New Disability Markets.* p. 49.
[35] Macdonald et al. (2018) *Wage Theft*.
[36] Where an NDIS participant is self-managing their supports there are no caps on support prices. So, a participant with funding for 20 hours of personal support could choose to purchase more expensive support for fewer than 20 hours. However, funding remains capped.
[37] The SCHADS SACS Schedule B describes work characteristics and requirements (e.g. accountability, judgement and decision making, specialist knowledge, features of work) at 8 classification levels. The Schedule specifies a classification of 2.2 (i.e. level 2 pay point 2) as the minimum classification for an entry-level disability support worker with a Certificate IV but no experience. Workers advance to level 2.3 and above with experience. For a detailed explanation of NDIS pricing arrangements and the NDIS cost model as they relate to disability support workers see Macdonald and Douglas (2022) *Disability Support Workers,* pp. 23–26.

calculated from the reported costs of 'efficient providers' (deemed to be the 25% of providers with the lowest costs), according to an annual financial benchmarking study.

However, it appears that a growing number of service providers are not paying support workers in accordance with level 2.3 on the SCHADS Award SACS pay schedule. Instead they are paying workers according to lower pay rates on the SACS schedule or on the Home Care schedule of the Award. This is despite the fact the NDIS price is derived from the NDIS Disability Support Worker Cost Model that is based on the higher SACS rates.[38]

There may be some confusion about the appropriate classification of disability support workers given there are many thousands of new and small services providers in the NDIS and support is increasingly home-based. Nevertheless, there is very little alignment between job and skills requirements for home care workers in the SCHADS award, and the capability and knowledge requirements and expectations of an NDIS support worker articulated in the NDIS Capability Framework and the NDIS Code of Conduct. The NDIS Quality and Safeguards Commission has consulted widely to develop these quality and safeguarding frameworks, and the misclassification of workers has the potential to undermine the effectiveness of these efforts.[39] Where service providers charge fees at the level of NDIS price limits but under-classify support workers, they are likely to be profiting at workers' expense.

This suggests that there is a need for a requirement within the NDIS pricing rules for workers to be paid at least the minimum SCHADS SACS Schedule disability support worker Level 2.3 award rate used to calculate NDIS support prices. This would help to ensure that providers are not competing for consumer business or profiting through lowering wages, undermining quality and safety of support.

Support worker retention

In the first few years of the NDIS, providers and workers reported worsening staff retention. Problems with recruitment and staff churn have worsened with the COVID-19 pandemic and subsequent tight labour market.[40]

Almost half of NDIS workers surveyed (48%) in a 2022 study intended to leave the workforce, with 21% of workers planning to leave their job within the next 12 months,

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[38] For a more detailed discussion of these issues, see Macdonald and Douglas, (2022) *Disability Support Workers*, pp. 22–26. For evidence of payment of below-award wages see Deloitte Access Economics (2021) Financial Benchmarking Survey, NDIA, pp. 51, 131-137.

[39] See Macdonald and Douglas (2022) *Disability Support Workers*, pp.15–23 for explanation of the capability and knowledge requirements of a 'general' support worker in the NDIS quality and safeguarding framework and alignment with the SCHADS Award classifications.

[40] Department of Prime Minister and Cabinet (2022) *NDIS Workforce Retention;* NDS annual 'State of the Disability Sector' reports for 2020, 2021 and 2022, https://www.nds.org.au/about/state-of-the-disability-sector-report; NDS National Disability Services Workforce Retention Project: Factors affecting Disability Support Worker Retention within the Disability Sector, https://www.nds.org.au/images/resources/Workforce_retention_paper.pdf and Cortis et al. (2017) *Reasonable, Necessary and Valued.*

and a further 21% planning to leave in the next one to three years.[41] More than one in four (27.6%) who intended to leave said it was because they could get better pay and conditions doing other work. The difficulty or risk of the work was the main reason for others (13.1%), while others cited limited career development (12.7%).

There are some common problems experienced by workers that contribute to intentions to leave their jobs, or to leave the occupation altogether. A 2022 survey, with a high proportion of full-time worker respondents, identified important factors to be high workload, concerns about service quality under the NDIS, health and safety risks and too much NDIS paperwork or procedures. This survey and other research indicate, that for casual and part-time employees, issues contributing to intentions to leave include pay levels and overall income, unsustainable working time arrangements, feeling poorly valued, too much unpaid work, lack of support and supervision from managers, lack of training, and lack of peer support.[42]

Research suggests that support workers' satisfaction in their jobs is derived from being able to support and assist others to lead the lives they want. The aspects of work with which NDIS workers report highest satisfaction are the job role and content.[43]

On the margins: Employees of NDIS participants, and contractors and platform workers

The NDIS has led to growth in the phenomenon of support workers who do not work as employees of service providers but are either directly employed by NDIS participants or are contractors to NDIS participants or service provider organisations. Where NDIS participants self-manage or have plan-managed supports they can employ or directly engage their support workers through the following arrangements:

- support worker is an employee of NDIS participant or their family;
- support worker is engaged as an independent contractor by NDIS participant; or
- support worker is engaged as an independent contractor by NDIS participant, and there is a digital platform or other third party in an intermediary role.

Self-management of NDIS support funding can have many benefits for NDIS participants including enhancing choice and control, independence and autonomy. Key aspects of choice and control relate to 'how, when, where and by whom support is provided'.[44] The ability to directly employ or engage one's own support workers is often seen as an important aspect of self-management. In the NDIS these employment arrangements are also promoted as providing more flexible and cheaper support.

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[41] Department of Prime Minister and Cabinet (2022) *NDIS Workforce Retention,* p. 4.
[42] Department of Prime Minister and Cabinet (2022) *NDIS Workforce Retention,* p. 4
[43] Cortis et al. (2017) *Reasonable, Necessary and Valued*, p. 11
[44] NDIA (2022) *A Narrative Review of Self-Directed Disability Budget Management*. Canberra: NDIA, p. 63.

Flexibility has been seen as a key benefit of self-management for NDIS participants. However, the flexibility offered by these arrangements is sometimes reliant on workers being available on demand and being prepared to change their working (and other life) arrangements often and with limited notice. This kind of 'flexibility', therefore, is not always mutually beneficial. Some support workers in these arrangements report frequent requests or demands from NDIS participants to change their working hours at short notice. Inexperienced workers are reluctant to challenge these and other demands, even when they believe they are not reasonable, including due to a belief that 'choice and control' requires them to do what it takes to meet NDIS participants' expectations. Pay and conditions can be determined in highly informal employment arrangements with participants and/or families.[45]

Support services can be cheaper where workers are directly employed by participants or engaged by them as independent contractors. Support can be provided more cheaply because of savings on what are often referred to as 'admin' costs. However, some of those cost savings come from not having to pay for workers' training, supervision, and other support. And where workers are engaged as independent contractors, savings can also come from not paying for workers compensation, insurance, and employer superannuation contributions. Some service providers engage workers as independent contractors. Often, the NDIS participant or service provider organisation may have no legal obligation to provide protections or benefits to contracted support workers.

There is relatively little research on risks to care and support workers of direct employment and individual contracting under individualised funding arrangements, and even less research offering a disability support perspective. However, some common issues are found in international and Australian research. Workers, while having generally high levels of job satisfaction, experience problems of role boundaries, can be required to work beyond their skills and role descriptions, and have increased vulnerability due to lack of oversight. Employment is informalised, compliance with employment regulation is poor, and workers are often paid less than the regulated wage.[46]

In addition, a lot is known from Australian and international research about the risks and problems for care and support workers in home and community care where there is limited regulatory or organisational oversight, as is the case in the unregulated part of the NDIS market. In these arrangements there are considerable health and safety risks, worker turnover is high, workers perform their roles in isolation from peers and without organisational support, they have few development opportunities, and are often

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[45] Macdonald (2021) *Individualising Risk,* pp. 161-184; NDIA (2022) *A Narrative Review,* pp 35-38; John Woolham, Caroline Norrie, Kritika Samsi and Jill Manthorpe (2019) *Roles, Responsibilities, and Relationships: Hearing the Voices of Personal Assistants and Directly Employed Care Workers*, The Policy Institute, King's College, London, p. 152; Woolham, Norrie, Samsi and Manthorpe (2019) The employment conditions of social care personal assistants in England. *The Journal of Adult Protection*, 21(6), pp. 296–306

[46] Macdonald (2021) *Individualising Risk;* NDIA (2022) *A Narrative Review,* pp 35-38; Woolham, Norrie, Samsi and Manthorpe (2019) *Roles, Responsibilities, and Relationships*; Woolham, Norrie, Samsi and Manthorpe (2019) The employment conditions of social care personal assistants.

low-paid. [47] Workers compensation claims in the aged care and disability support workforce are much higher than for all occupations and it is widely recognised that there are particular risks in home-based care and support.[48]

The number of NDIS support workers in direct employment with scheme participants is not known. It is likely that more support workers are engaged directly as independent contractors than as employees as the contracting arrangement has been widely promoted within the NDIS and it is also the model used by digital labour platforms in the care and support sectors.[49] A recent government estimate of independent contractors puts 'sole traders' at 28% of the NDIS workforce. However this estimate is likely to include many allied health, and ancillary workers in addition to disability support workers.[50]

There is no good data on characteristics of support workers in these employment arrangements. However, it is clear that there are many younger and inexperienced workers, recent migrants and unemployed people, along with highly-skilled workers with extensive experience and qualifications gained in employment in public sector and not-for-profit service provider organisations.[51]

High levels of worker satisfaction with direct employment and with digital platform work have been cited by some as a benefit of these forms of employment.[52] However, there is a dearth of information about labour turnover in individual direct employment and contractor-client support relationships (whether these are mediated by platforms or other third parties or not) and nothing is known about worker exit behaviour from support relationships and working arrangements.[53] It is perhaps not surprising that workers in these arrangements report satisfaction with their jobs. Individual support relationships are one-to-one relationships in which good relations between a worker and the person being supported are central. Directly engaged workers who are dissatisfied are likely to exit their jobs.

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[47] International Labour Office (2018) *Care Work and Care Jobs for the Future of Decent Work*, Geneva International Labour Organization.
[48] For workers compensation claims see Australian Government (2023) *Building a More Responsive and Supportive Workforce*, p.37, https://www.ndisreview.gov.au/resources/paper/building-more-responsive-and-supportive-workforce, citing unpublished data from Safe Work Australia. For risks see Charlesworth, Sara, Macdonald, Fiona and Clarke, Jane (2020) *Nature and Extent of Gender-Based Violence in Individualised Disability Support and Aged Care Services in Victoria, Scoping Study Report for Worksafe Victoria*, https://cpow.org.au/wp-content/uploads/2020/11/ScopingStudyFinalReport.pdf.
[49] Fiona Macdonald (2023) *Unacceptable risks.*
[50] Department of Prime Minister and Cabinet (2022) *NDIS Workforce Retention,* p. 40 citing Market Analysis Team, Department of Social Services, Qtr. 1 FY 2021-2022.
[51] See Macdonald, *Unacceptable Risks*, p. 25.
[52] In relation to platform work see, for example, Productivity Commission (2022) *Aged Care Employment Study Report*. Canberra: Productivity Commission.
[53] Some overseas studies and surveys do provide some information, but these are not very relevant to the NDIS as they do not distinguish between family and non-family member support workers in systems although data is from systems where employment of family members is not uncommon.

These three insecure forms of employment—workers as employees of NDIS participants, independent contractors, and digital platform workers—are examined in more detail below.

Workers employed directly by NDIS participant

In overseas and Australian studies, support workers employed directly by NDIS participants are reported as having high levels of satisfaction with many aspects of their jobs, They report having close and rewarding relationships with their employers. However, workers also experience isolation, lack of training, uncertainty about boundaries and lack of knowledge and uncertainty about what is acceptable in regard to their own and their employer/client's behaviour, treatment, and their duties.[54]

The virtual absence of proactive system oversight or oversight by a service provider organisation is built into the NDIS as a mechanism for enabling NDIS participants to have choice and control over their supports through self-management of their support funding.[55] There can be little practical oversight where plan managers are used to manage finances. It is widely acknowledged that these arrangements carry additional risks for NDIS participants, especially when they directly engage or employ their own workers. Based on a review of relevant literature, the NDIA identifies numerous risks of self-management, including 'financial exploitation, receiving poor quality services, not receiving the necessary care or support services, or being harmed or neglected'.[56] These risks are generally considered to be balanced by greater empowerment. This is referred to as the 'dignity of risk', whereby a person has 'autonomy and self-determination to make their own choices, including the choice to take some risks in life'.[57]

Risks are also borne by support workers. For example, in qualitative research, support workers relayed many instances of feeling responsible for making decisions without guidance in situations involving significant risks to the safety of their employers/clients and/or themselves. Workers reported often struggling to reconcile their obligations to support participants' choice and control and their obligations in regard to participants' safety. Examples include a young support worker who was very concerned about his responsibility in relation to an NDIS participant's drug-taking behaviour while being supported; and a young woman who was uncertain about her competence to correctly use medical equipment in an emergency without any training. Relatively inexperienced workers in these situations report feeling isolated and out of their depth.[58]

Requirements of support workers in regard to expected behaviours, skills and knowledge are clearly articulated within the NDIS (for detail see discussion of training

[54] Macdonald (2021) *Individualising Risk,* pp. 161-184.

[55] NDIA (2022) Self-Management Policy. <https://www.ndis.gov.au/participants/using-your-plan/self-management/self-management-policy>.

[56] NDIA (2022) *A Narrative Review*.

[57] Department of Social Services (2013) National Standards for Disability Services https://www.dss.gov.au/our-responsibilities/disability-and-carers/standards-and-quality-assurance/national-standards-for-disability-services, p. 7.

[58] Macdonald (2021) *Individualising risk*, pp. 152, 172.

later in this paper). These expectations cannot be met without support workers having access to training and guidance. NDIS quality and safeguarding requirements of workers also highlight that, given the complexity of their roles, support workers require access to guidance and support beyond that which can reasonably be expected that an individual NDIS participant is able to provide. Moreover, there can be inherent conflicts of interest and uncertainty about role boundaries in relationships that are, at the same time, both NDIS participant/support worker and employer/employee relationships.

Research has documented many examples of workers experiencing risks to their health and safety. For example, a young woman who did not know what boundaries she could or should set when her much older male client requested personal services of a sexual nature, and a support worker who did not know whether it was reasonable for her to raise concerns about working in a small unventilated space with her chain-smoking employer. In the absence of guidance and support to help them negotiate the complexities of consumer-directed support in individualised employment and independent contracting support relationships, inexperienced workers feel disillusioned, wary or stressed about their work, and this led to intentions to leave.[59]

Younger and inexperienced workers in particular can find it difficult to balance what they see as their duty to support their employers'/clients' choice and control with their responsibility for support quality and safety. Where NDIS participants' family members are involved in support arrangements, some workers report having better access to guidance. However, these arrangements can also complicate matters, as workers can get caught in the middle of family disagreements about support. Isolated and inexperienced support workers report seeking advice from the internet, from online NDIS community groups (that offered wildly conflicting advice), and from their friends and family.[60]

In these work arrangements, there are other unacceptable risks to workers' employment and safety that are likely to undermine the sustainability of the support workforce and increase worker turnover. Employees report not being paid in accordance with award rates, including not being paid weekend and other loadings and penalties. Workers may not receive any superannuation, including as work can be organised by employers to avoid payment by keeping any single worker's hours under 30 hours a week. This is because workers providing services of a private or domestic nature whose employment is under 30 hours a week are not considered to be employees for the purposes of eligibility for superannuation.[61] Workers may have little knowledge of minimum terms and conditions of employment and rely on their employers, who may also have limited knowledge.

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[59] Macdonald (2021) *Individualising risk*, pp. 171-172.
[60] Macdonald (2021) *Individualising Risk*, PP. 171-182. See also survey findings that sole traders more commonly experienced personally confronting situations than other workers reported in Department of Prime Minister and Cabinet (2022) *NDIS Workforce Retention,* p. 21.
[61] *Superannuation Guarantee (Administration) Act 1992*. See also Australian Taxation Office Superannuation Guarantee Ruling SGR 2005/1.
https://www.ato.gov.au/law/view/document?DocID=SGR/SGR20051/NAT/ATO/00001

Workers in direct employment with NDIS participants report wanting and needing, but not knowing, how to access appropriate training. Some report employers do not want them to access training even those who fear they cannot perform their work safely.[62]

Independent contracting

Independent contracting carries additional risks and problems for workers. Contractors are excluded from most employment standards and benefits that apply to employees. Generally, it is assumed that workers are not in need of protections, since they are not controlled by an employer on whom they are dependent.

In Australia, the statutory minimum standards set out in the National Employment Standards (NES),[63] and most protections that apply to employees under the *Fair Work Act 2009 (Cth),* do not apply to independent contractors — including minimum wages, maximum working hours and leave standards. Other entitlements and protections, including superannuation, workers' compensation coverage and some anti-discrimination laws have limited application or don't apply to contractors.

Independent contractors are variously referred to as sole-trader support workers, small business operators and entrepreneurs. However, many workers contracting in the NDIS are new to contracting and may not consider themselves to be independent business operators. Workers report taking on this work as it is flexible or because jobs are advertised as requiring an ABN. These workers face many of the same risks as direct employees of NDIS participants. Younger and inexperienced workers can go into these arrangements with little understanding of associated risks and responsibilities.[64]

Independent contracting in the NDIS is commonly portrayed as providing support workers with the benefit of higher rates of pay. This is clearly not the case for many workers. Even experienced workers frequently do not account for the costs of foregone employment benefits and entitlements when setting their pay rates, nor for the costs associated with their self-employment. They also commonly do not account for the absence of training or lack of access to development opportunities.[65]

Some experienced workers who have gained their skills, experience and training as employees of registered service provider organisations do take up independent contracting roles to earn higher rates of pay. The continuation of this situation is likely to provide further disincentive for service providers to invest in support workers' training and development.

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[62] Macdonald (2021) *Individualising Risk*, pp. 171-122.

[63] *Fair Work Act 2009* (Cth) Part 2-2; The National Employment Standards. https://www.fairwork.gov.au/employment-conditions/national-employment-standards

[64] Macdonald, (2021) *Individualising Risk*. pp. 146-156, 161-182.

[65] Macdonald (2021) *Individualising Risk*. Penny Williams., Robyn Mayes, Maria Hameed Khan, Patricia and Paula McDonald (2021). *Gendered Dimensions of Digital Platform Work: Review of the Literature and New Findings*, Brisbane: Queensland University of Technology.

Work through digital platforms[66]

Digital labour platforms operating in the NDIS act as intermediaries between NDIS participants and support workers who are mostly treated as independent contractors engaged by participants. Platforms portray their role as 'marketplaces' that connect workers and people seeking care and support services. However, platforms do not limit their functions to facilitating connections and they exert control over various aspects of working arrangements and conditions on an ongoing basis. At the same time they distance themselves from responsibility for support workers and NDIS participants.

ABS labour force statistics do not provide estimates of independent contractors working through platforms. While the numbers are often assumed to be small this is a growing segment of the NDIS support workforce. One high-profile platform claims to have 10,000 to 11,000 workers active on the platform, reporting in 2021, that the number of people signing up to provide care and support on their platform 'per month was consistently more than 1,000 a week [sic]'.[67] This suggests there is either a very high turnover of people working through the platform or that many workers signing up do not gain work (given that the overall number of support workers on platforms appears not to have grown in recent years). As with the broader NDIS support workforce, most workers on platforms are women, although they are more likely to be younger and from non-English speaking backgrounds, including recent migrants and workers on temporary visas.[68]

To attract workers, digital platforms claim to pay higher hourly rates than are earned by employees working for service providers. However, this is not the case for many. Commonly, comparisons of hourly wages for employees with reported pay for platform workers do not take account of the loss of employee entitlements and benefits, nor for business costs incurred by workers, including workers' compensation. In any case, reported average pay rates on platforms may bear little relation to median pay rates. Profiles of workers on platforms show there is a wide range in skills and experience among workers, suggesting there is likely to be considerable diversity in pay rates.[69]

Unlike truly independent self-employed workers, most platform workers are monitored and disciplined by the platform they work through. At the same time, platforms are not accountable to workers for ensuring fairness or accuracy in their processes, and most platforms distance themselves from any liability for the quality of service provision. Most platforms have some control over workers' hourly pay rates, with some platforms directly setting or constraining rates workers can charge.[70]

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[66] This section draws heavily on a Centre for Future Work report on platform work in care and support sectors: Macdonald (2023) *Unacceptable Risks.*
[67] Mable (2022) *Mable Market Insights Report 2022.* Mable Technologies, p. 4. Parliament of New South Wales (2022) *Impact of Technological and Other Change on the Future of Work and Workers in New South Wales, First Report - The Gig Economy.* Select Committee on the Impact of Technological and Other Change on the Future of Work and Workers in New South Wales. Parliament of New South Wales, s 8.11.
[68] Productivity Commission (PC) (2022) *Aged Care Employment. Study Report*, Canberra: PC, p. 77.
[69] For a detailed discussion of these issues see Macdonald (2023) *Unacceptable Risks*, pp. 32-34.
[70] Macdonald (2023) *Unacceptable Risks,* pp. 32-34.

Workers on some newer platforms that are NDIS-registered providers are subject to even greater control and monitoring. These platforms maintain they are accountable for service quality, but they take no responsibility for workers' employment or working conditions. However, they require workers to provide support in accordance with their policies and to take direction from them. So, workers bear responsibilities, costs and risks as service providers in their own right, while they appear to be treated as quasi-employees but without any formal rights or entitlements of an employment relationship (including rights to workplace representation, support and supervision, entitlements such as sick and annual leave and protections such as workers compensation).

Workers on platforms can be at risk of losing future work if a relationship with a person they are supporting turns sour or if the person is even somewhat dissatisfied. Client ratings are shown on platforms and are used in automated ranking systems that determine the visibility of a worker's profile. Poor visibility and poor ratings are understood by workers to be barriers to getting future work. Workers report fear of getting a poor rating – or desire to get a good rating – as leading them to do extra unpaid work, to accept clients' requests to renegotiate lower rates, and to tolerate behaviour and work demands that they feel uncomfortable or uncertain about. In the context of the NDIS in which workers understand their roles as supporting their clients to maximise choice and control, young and inexperienced workers are especially likely to tolerate unsafe or poor working conditions and arrangements, treatment or duties. Workers experiencing these challenges did not see themselves as having a future in disability support work. [71] So, where these problems go unidentified and unaddressed, they are likely to undermine efforts to build a sustainable and skilled support workforce.

Younger workers' lack of knowledge of the nature of contracting and their rights, obligations and risks contributes to their and participants' vulnerability, as does their inexperience as support workers. Some platform providers have recently introduced incident reporting and dispute resolution processes, but there is little transparency associated with these mechanisms. Anecdotal reports suggest that workers do not benefit from raising concerns or complaints with platforms.

A policy blind spot?

As long as some service providers and intermediaries can operate, compete and profit in the NDIS market by devolving the responsibilities, costs and risks of employment – and of service quality and safety– to workers and participants, they will have an unfair advantage over service providers that employ workers directly (and hence take on responsibility for training, supervision, quality assurance and participant and worker safety). There will be a strong incentive for employers to cut labour costs and adopt 'low-road' approaches to employment. Effective workforce strategies for the sector must engage all support workers in the NDIS system.

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[71] Macdonald (2021) *Individualising Risk*; Fiona Macdonald (2020) Personalised risk in paid care work and the impacts of 'gig economy' care platform and other market-based organisations. *International Journal of Care and Caring, 5*(1), 9-25.

Independent contracting and employment by NDIS participants carry significant employment risks for workers, as they do for other care workers in private households. Further, support workers in these arrangements – who may have no external support at all – carry much higher risks in relation to their obligations for quality and safeguarding. Use of these employment arrangements may undermine strategies for ensuring decent work and for building a capable and skilled workforce providing quality support. Current policy directions include attracting more young people (including school leavers), unemployed people and migrant workers to this workforce.[72] Such workers are particularly vulnerable in private household employment, which is often beyond the effective reach of employment regulation. As noted, they face additional disadvantages in these arrangements, such as poorer access to superannuation.

Achieving decent work for NDIS support workers is likely to require more intervention by governments to establish new structures and processes that make this workforce visible and provide frameworks for employment in secure jobs. There is a variety of different approaches that could be taken, for example, a system-wide body that acts as a labour hire employer for support workers, with responsibilities akin to a group training organisation, or incentives for the development of such bodies in local areas. More research and consideration of these types of arrangements is urgently needed.[73]

Lack of good data on the workforce, especially the directly employed, and contractor and platform workforces is hampering understanding of issues. Poor data also disguises workforce diversity, with this workforce sometimes portrayed as comprising only skilled and experienced workers. In relation to workers on platforms, there has been a heavy reliance on data provided by platforms.[74]

Training, development and access to collective bargaining
Access to training and professional development and support

There is growing recognition that there should be a mechanism through which all NDIS support workers are able to access training. However, little attention has been given to workers' access to professional supervision and support. The NDIS places requirements on workers, including those articulated in the NDIS Code of Conduct Guidance for Workers, that assume support workers have access to professional support. Yet, under the current arrangements, workers, including inexperienced young and migrant workers, can be employed in isolation from any peers and without access to any professional support and guidance.[75]

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[72] Australian Government (2023) *Building a More Responsive and Supportive Workforce.*
[73] Fiona Macdonald and Sara Charlesworth (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.
[74] Macdonald (2023) Unacceptable Risk. See also Productivity Commission (2022) *Aged Care Employment.*
[75] NDIS Commission (2022) *NDIS Code of Conduct – Guidance for Workers* and *NDIS Workforce Capability Framework.*

While there are differing views on the need for workers to be able to access formal training and hold qualifications, the NDIS Workforce Capability Framework clearly sets out expectations of workers that would be difficult to meet without training. The Framework sets out in detail the capabilities and knowledge considered essential for all support workers providing NDIS-funded services. According to the NDIS Commission, these capabilities reflect 'the complexity, intensity or specialised nature of the work'. The NDIS National Workforce Plan 2021-2025 states 'it will be crucial for governments and industry to provide support to embed the attitudes, behaviours, skills and knowledge described in the NDIS Workforce Capability Framework in the workforce'.[76]

Examination of the capability and knowledge expectations of NDIS-funded support workers makes clear the necessity and importance of workers having access to training and professional development, regardless of their employment arrangements or the complexity of supports being provided. Along with the NDIS Code of Conduct requirements, these expectations are such that all support workers should also have access to mentoring and professional support. Currently, there is no provision for this for workers employed as contractors, including via platforms, or for workers employed directly by participants. A workforce in which relatively inexperienced support workers are without access to any professional support and guidance to manage the complexities and ambiguities of providing person-centred support is not compatible with NDIS quality and safeguarding regulation or with high quality support and care.[77]

Low earnings, part-time jobs, fragmented and unpredictable working time and insecure work and incomes all militate against workers investing in training, as does the absence of any clear pathways in the NDIS to more secure and better-paid work. Service providers may have limited incentive to provide training where NDIS funding does not earmark adequate funds for training, where there is high staff turnover, and/or where competition in the market is based on price. Some third party intermediaries and providers purporting to provide training only give workers access to online courses (some of dubious quality) that workers must complete in their own time, unpaid.

Responsibility for ensuring disability support workers having appropriate knowledge, skills and capabilities must be shared. The existing NDIS arrangements have seen these responsibilities taken up at the discretion of service providers, workers and individual NDIS participants. Provisions for training, development, support and mentoring in the NDIS pricing model are inadequate, and there is no requirement that any allocation be spent on these activities. A portable training scheme can address some of the current issues[78], but building and maintaining a skilled workforce will require a plan for

[76] For the NDIS Commission statement on capabilities see NDIS Commission statement on requirements to support worker capability development see DSS (2021) *NDIS National Workforce Plan*, p. 12.
[77] See Macdonald and Douglas (2022) *Disability Support Workers*, pp.15–23 for more detail and discussion of the NDIS capability requirements.
[78] Ryan and Stanford (2018) *A Portable Training Entitlement System*,

ensuring all support workers in the NDIS are in employment arrangements that provide access to support and guidance as needed.

There is a growing international literature on self-managed supports emphasising the importance of both support and training for workers to improve service quality and reduce risks for people with disability.[79] Currently, within the NDIS, there is no mechanism for support workers who are independent of a service provider (i.e. who are independent contractors or employees of NDIS participants) to access mentoring, guidance or professional support. There is no mechanism for professional oversight of these workers. There is an urgent need for more consideration of structures required to ensure all support workers are employed in arrangements that provide access to supervision and support to meet service quality and safety expectations and requirements. This requires active consideration of how best to do this while also promoting and supporting NDIS participants' choice and control.

Undervaluation of work and poor access to collective bargaining

There are long-standing problems of undervaluation of the work of disability support and other workers in the highly feminised social and community services workforce. The NSC Care Workforce Labour Market Study found the hourly earnings of personal care and support workers to be higher than the average for occupations classified as having similar skill levels according to the Australian and New Zealand Standard Classification of Occupations (ANZSCO).[80] However, much personal support work remains undervalued in relation to skills and complexity, including on the basis of its gendered character and association with unpaid care work, and arguably also because of the historic and systemic undervaluing by society of the contributions of people with disability.[81]

This undervaluation is reflected in the skills classification structures in the SCHADS Award, including as the award descriptors do not reflect basic NDIS requirements and expectations of disability support workers. Under the NDIS, undervaluation also occurs through misclassification and under-classification, as explained in the preceding discussion of underpayment. A further factor is that NDIS pricing arrangements create barriers to the employment of more experienced support workers, as NDIS funding for the provision of non-'complex' support is based on the costs of employing workers at lower classification levels.[82]

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[79] See NDIA (2022) *A Narrative Review.*
[80] NSC (2022) *Care Workforce Labour Market Study*, p. 165.
[81] Despite a Fair Work Commission Equal Remuneration Order (ERO) in 2012 for significant increases to SCHADS Award rates—based on a finding of gendered undervaluation—by 2018, SCHADS Award rates for disability support workers had fallen behind comparable pay rates in other sectors. For the ERO case see Equal Remuneration Case [2012] FWAFB 5184 (22 June 2012). For wages falling behind see Macdonald and Pegg (2018), *Contracting out community services.*
[82] See Macdonald and Douglas (2022) *Disability Support Workers.*

Community and personal services workers (including support workers) are among the most award-reliant employees in Australia.[83] It has been widely recognised that, to gain meaningful over-award pay and improved working conditions in the care and community services, employees must have better access to collective bargaining.

Some of the barriers to bargaining may be easier to overcome as a result of the Labor Government's industrial relations reforms legislated in late 2022. However, the effectiveness of these reforms is still to be tested. A new 'supported bargaining' option for making multi-employer agreements under the *Fair Work Act* retains some of the shortcomings of the ineffective 'low paid bargaining' option it replaces. Other positive changes are designed to increase the Fair Work Commission's knowledge and expertise in gender pay equity issues and the feminised care and community services industries.[84]

The NDIS market model

In consumer markets for government-funded services, a focus on commercial objectives and profit maximisation can undermine employment conditions and pay of direct service staff, as well as impacting on service quality, and equity of access of services. These problems can be significant where there is ineffective or very light regulation of service provision and employment. Internationally, there is a large and growing body of evidence of the problems created by marketisation of long-term care (i.e. aged care and disability support) systems. In Australia, these problems have become apparent in the market-based early childhood education and care (ECEC) and aged care systems. In the ECEC market, there have been growing inequities in access and affordability of services along socio-economic and geographic lines. In the parts of the ECEC market to which most government money flows, highly financialised national and international chains and publicly-listed for-profit companies dominate. They have been found to offer inferior services relative to not-for-profit and public providers. Understaffing and under-investment are more common in these centres than in not-for-profit centres.[85] Similarly, in aged care, as documented in the findings of the recent Royal Commission into Aged Care Quality and Safety, negative impacts on the quality, equity and accessibility of services have accompanied a greater focus on commercial objectives.[86] Key contributors to reduced quality of care include fewer staff, less qualified and skilled staff, and a greater reliance on casual labour.

[83] Kelvin Yuen and Josh Tomlinson (2023) *Profile of Employee Characteristics across Modern Awards,* Fair Work Commission, https://www.fwc.gov.au/hearings-decisions/major-cases/annual-wage-reviews/annual-wage-review-2022-23/research-annual-wage. Table A4 on page 48 shows 40.5% of employees in the occupational group 'Community and personal services workers' are reliant on a Modern Award. It is likely many more are reliant on state-based awards (see p. 13).

[84] Jim Stanford, Fiona Macdonald and Lily Raynes (2022) *Collective Bargaining and Wage Growth in Australia* https://futurework.org.au/report/collective-bargaining-and-wage-growth-in-australia/.

[85] Matt Grudnoff (2022) *The Economic Benefits of High-Quality Universal Early Child Education.* https://futurework.org.au/report/the-economic-benefits-of-high-quality-universal-early-child-education/; Chifley Research Centre (2020) *Investing in Australia's early childhood infrastructure*, Kingston: Chifley Research Centre.

[86] Royal Commission into Aged Care Quality and Safety (2021) *Final Report: Care, Dignity and Respect, Volume 2*, p 31. https://www.royalcommission.gov.au/system/files/2021-03/final-report-volume-2.pdf.

Australia's experience of market-based provision in these essential social services demonstrates that markets and market mechanisms are not particularly effective in providing good quality services or providing decent jobs for frontline workers. Attracting and retaining a workforce with the capacity to deliver quality care and support requires much more active intervention in the market at the scheme level, including through strong regulation and intervention.

In the case of NDIS, this market-based system is still developing and evolving. State and territory governments have rapidly moved out of service provision. Thousands of private for-profit firms have entered the new market, many of them very small. Mergers and acquisitions have created a few very large providers, and some smaller ones have been wound up. There is reduced collaboration within the sector.[87] Responding to concerns that overcharging and fraud are driving increased NDIS costs, in April 2023 the Minister for Disability Services flagged that addressing unreasonably high charges by providers will be part of addressing these costs. [88]

To date the government and statutory bodies with responsibility for sustainability of the system and for oversight of safeguarding and quality have taken very little action to build a capable workforce that can support a high-quality support system. Without reform to market arrangements, it appears likely that the NDIS workforce will continue to follow the trend of some other social care workforces (such as in England) where poor working conditions and pay underpin very poor quality care.

Service providers have a core responsibility to ensure decent work and a skilled and stable workforce. Staff who feel valued, listened to and supported by their organisations are less likely to express intentions to leave.[89] But NDIS service providers wishing to invest in high quality support through building workforce capability are in competition to provide individual support services with providers who choose not to invest in their workforces or who may not be well-positioned to do so, for example due to size. This may be diminishing the extent to which service providers can choose to provide decent jobs with appropriate supervision and support as the basis of good quality services in the NDIS, while still maintaining viability. Competition on the basis of price will always be present in an individualised consumer market in which NDIS participants seek to maximise the support they can receive with limited funding. However, in the unevenly regulated NDIS market, it appears this is sometimes being achieved at the expense of decent jobs for disability support workers.

Urgent reforms must address all aspects of the NDIS that are driving down wages, casualising and fragmenting work arrangements, informalising employment and

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[87] Macdonald (2021) *Individualising Risk*, pp. 111-134.

[88] In August 2022, the then CEO of the Australian Criminal Intelligence Commission (ACIC) was reported as estimating as much as 15 to 20% of NDIS funds might be being misused. See Nick McKenzie and Amelia Ballinger (2022, 14 August) 'The scumbag scale': How organised crime has infiltrated the NDIS, *Sydney Morning Herald*. Bill Shorten (2023, 18 April) Address to the National Press Club, https://ministers.dss.gov.au/speeches/10911.

[89] Cortis et al (2017), *Reasonable, Necessary and Valued*, Appendix A.

worsening undervaluation of work in this highly feminised workforce and transferring unacceptable risks to workers and NDIS participants.

Building a skilled and stable workforce and good quality jobs

Conditions of work in the NDIS are poor and deteriorating. Building a skilled sustainable workforce and ensuring fair pay and working conditions for disability support workers require a comprehensive and co-ordinated approach.

At the time of writing, a number of significant policy development and review processes are underway that should contain actions to tackle the problems outlined in this paper. If these initiatives do not fix the conditions of work for support workers in the NDIS the problems will worsen.

Three key policy initiatives are:
- The National Care and Support Economy Strategy 2023 with three goals: quality care and support, decent jobs and productive and sustainable care systems for aged care, disability care and support, veterans and early childhood education and care.[90]
- The independent NDIS Review directed to 'building a more responsive and supportive market and workforce'.[91]
- Proposed national industrial relations reforms that have been introduced into Parliament are designed to close loopholes that are undermining labour standards and protections. These include a proposal to empower the Fair Work Commission to set minimum standards and pay rates for workers in 'employee-like' forms of work – including those working through digital platforms – and other proposals to prevent employment relationships from being treated as contracting relationships.[92]

While each of these initiatives has potential to drive beneficial reforms there is a risk that policy responses will be fragmented and inadequate. The first initiative demonstrates an important shift, with the Commonwealth Government committing to taking a much more proactive approach to the care and support system and market and greater responsibility for care and support workers and workforces. However, neither the draft strategy nor the interim NDIS review directly acknowledge the potential for the informalisation of support worker employment discussed in this report.

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[90] Department of Prime Minister and Cabinet (2023) National Strategy for the Care and Support Economy, https://www.pmc.gov.au/domestic-policy/national-strategy-care-and-support-economy.
[91] NDIS Review (2023b) Terms of Reference: Building a Strong, Effective NDIS, https://www.ndisreview.gov.au/.
[92] Parliament Of Australia (2023) Fair Work Legislation Amendment (Closing Loopholes) Bill 2023, Explanatory Memorandum, https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation.

Recommendations:

Reforms should aim to:

- Enhance government accountability for the NDIS workforce;
- Build better work standards within the NDIS to ensure *all s*upport workers have a fair wage and fair working conditions;
- Provide all NDIS-funded support workers with access to accredited training, and access to mentoring and support or supervision (outside their individual support relationships with clients);
- Enable all NDIS-funded workers to access and accrue employment benefits and entitlements, including superannuation, annual and sick leave and long-service service leave, including providing portability of entitlements within the sector.
- Prevent NDIS funding and resources that are intended to cover the costs of employment and assist workers to perform their jobs safety and effectively from being diverted to profits or cheaper services.

Specific actions to meet these aims:

- Establish a mandatory requirement within the NDIS pricing arrangements for all NDIS-funded disability support workers to be paid, at a minimum, at Classification level 2.3 of the SACS Schedule B of the SCHADS Award, reflecting NDIS workforce capability and skills requirements.
- Establish a national mandatory worker registration and accreditation scheme for disability support workers. Minimum qualifications requirements should be introduced in a staged approach that does not disadvantage existing workers.
- Require all NDIS providers to be registered, with registration requirements being proportionate to the risks of service provision.
- Explore alternative structures for NDIS support workers' employment to ensure all workers have access to adequate supervision and support, secure work and employment entitlements, and to collective representation and bargaining.
- Establish portable leave and training entitlements schemes for all disability support workers.
- Review funding and pricing to enable collective bargaining for over-award wages.

Ensuring decent jobs for NDIS workers is critical for a sustainable and productive care and support economy and for quality care and support. Better jobs for this growing workforce are also important if we are to build a more gender-equal society. Now is the time to address the significant problems of insecure work and informalised work in the NDIS. If left unaddressed these problems will only become more entrenched and more difficult to fix.