

Support online

User experiences of digital platforms in the NDIS market



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2023

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Published by

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Australia

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www.bsl.org.au

Suggested citation: Thies, A, Warr, D & Katsikis, G 2023, *Support online: user experiences of digital platforms in the NDIS market*, Brotherhood of St. Laurence, Fitzroy, Vic.

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Summary

Digital platforms that facilitate the purchase of disability support by a person with disability from a support worker have grown in prevalence and market share over the past few years. This project explored existing research and the experiences of users of digital platforms – both support workers and people with disability – to gain a better understanding of the implications of platform-mediated work for employment conditions and for the quality of support provided to people with disability. It found that while digital platforms can offer increased choice and control to service users, reforms to the regulatory environment and funding for workforce development are needed to achieve the best outcomes for workers and people with disability.

The growth of digital service platforms

Platforms such as Hireup, Mable, Kynd, Like Family and others are disrupting the traditional models of support services for people with disability where provider agencies employed and coordinated teams of support workers to deliver services. Using profiles created and posted on the digital platforms by individual support workers, people with disability can choose support workers to provide a range of services. This digitally mediated market interaction is similar to the way digital platforms operate in other sectors, such as transport (Uber, for example). Emphasising their roles as intermediaries, platforms in the disability space define themselves in a variety of ways, including 'a mobile app, website, community, and marketplace and related systems and processes' (McDonald, Williams & Mayes 2021).

The introduction of the National Disability Insurance Scheme (NDIS) and individual funding for people with disability is driving the growth of digital platforms in the NDIS market. The creation of a market where NDIS participants are able to purchase supports and choose their own provider has meant platforms can capitalise on the opportunity to match supply (of support work) with demand (from people with disability, usually with NDIS funding).

Regulating platforms and the NDIS

Not all platforms that provide disability support are required to register with the NDIS Quality and Safeguards Commission (QSC), which administers standards of services provided under the NDIS as well as hearing complaints about registered providers who do not meet those standards. Platforms not registered with the QSC do not have to comply with the [NDIS Practice Standards](#) relating to 'legislative requirements, participants' and workers' needs'. Further, platforms can classify support workers listed on them as 'independent contractors' or 'sole traders'. This distances the platform from legal liabilities of employers under the *Fair Work Act 2009* and workplace health and safety laws; and support workers classified as independent contractors do not have the same rights and entitlements as employees, such as paid sick leave or superannuation contributions.

This contributes to a diversity of working arrangements across platforms as well as accompanying regulations, depending on how the worker is classified. In particular, when platforms do not classify support workers as employees, people with disability receiving support services may be construed as the employers of support workers and might be personally responsible for the occupational safety of workers.

Insights about digital platforms in practice in the NDIS market

This project explored working arrangements and the support offered by digital platforms through interviews with platform users (support workers, people with disability and their carers) and a desktop scan on the state of knowledge of platform work in the NDIS market and others. Bringing these insights together we found:

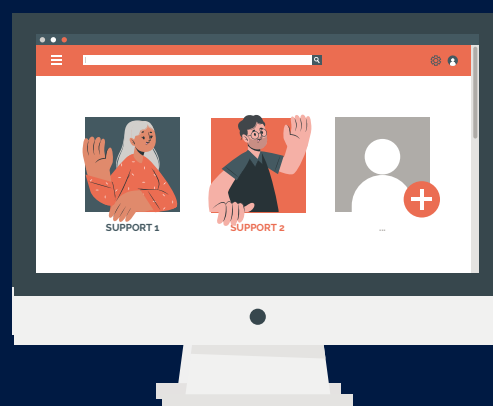
1. Platforms are offering people with disability increased choice and control in how, when and by whom support is delivered.
2. Regulatory frameworks are not sufficiently protecting platform workers and people with disability who engage them.
3. NDIS pricing for support work doesn't cover the full costs of the service, including the provision of worker training. This is contributing to a poorly trained workforce, jeopardising the quality of care. Support workers and people with disability felt more should be done to address these workforce issues.

Recommendations

We offer policy recommendations that seek to clarify employment relationships, strengthen the oversight of digital platforms in the NDIS market, and improve the sustainability of the disability support workforce. The recommendations are:

1. The NDIS Quality and Safeguards Commission should consider regulatory options for unregistered digital platforms.
2. Government should pursue updates to Australia's industrial relations regime to clarify the roles and responsibilities of platforms to workers listed on them.
3. Further investment is needed in development of the support workforce, including employment-based training models.

The introduction of the NDIS and individual funding for people with disability is driving the growth of digital platforms in the NDIS market.



1 About this project

This project involved conducting a desktop scan of the policy and research literature and semi-structured interviews with 14 people using platforms who were either support workers, people with disability or their carers. Insights from the desktop scan are integrated with interview data to inform the policy recommendations relating to platforms in the NDIS market.

Desktop scan method

A search of publicly available policy documents, published research reports and official statistics was conducted to map the current state of knowledge about the effects of platform work on people with disability and support workers. This enabled us to identify and assess emerging issues and evidence gaps. These insights informed issues that were explored in the semi-structured interviews.

Search words such as 'platform work', 'NDIS' gig economy', 'care economy', 'support work' were used to identify documents about relevant aspects of platform work, focusing on the latest evidence. More than 65 documents were identified from the fields of labour law, the NDIS, gig economy research in Australia, general labour market data and insights, and disability research.

State of the evidence

There is scant research in Australia or overseas that explores the experience of people with disability using digital platforms to find support. Some related research has explored why people with disability choose unregistered support providers, some of them support workers engaged via digital platforms (Dickinson, Yates & West 2022).

Evidence on the effects of platform work in the NDIS market on areas such as working conditions and the quality of care is minimal. There have been some studies about platform work in the care economy, but there has been limited attention to the views of people with disability and to the quality of care from a recipient point of view (Macdonald 2021a, 2021b; Baines et al. 2019; Baines, Macdonald & Stanford 2020; Per Capita Consulting 2022; and Trojansky 2020 for an international perspective).

Semi-structured interviews

Interviews were conducted with platform users (support providers, receivers of disability support and a few carers of people with disability) across Australia. Participants were recruited by publicising the project through a range of channels, including organisations providing services to and advocacy for people with disability, Facebook groups for people with disability and support workers, and major disability support platforms. Participants were reimbursed for their time with a \$50 gift card.

The interviews explored users' experiences of platforms, negotiating pay and other conditions, access to training and professional development, and perceptions of choice and control in the services that were provided. Interviews were recorded, transcribed and coded for content and themes.

Fourteen online interviews were conducted with people living in four states over a four-month period in 2022. This sample comprised support workers (n=5), people with disability (n=7) and carers for a person with disability (n=4). Some interviewees held dual roles as support providers

and recipients, either as a person with disability or as a carer. Most interviewees identified as female (n=11) and almost all were aged 30 or over (n=13).

All the people with disability in this small study were NDIS participants, using their individual NDIS funding to purchase supports through a platform. Throughout this report we use the term 'people/person with disability' instead of 'NDIS participant' because some people using platforms to access support services may not be NDIS participants.

The project team included people with experience in policy analysis, social research and lived experience of disability as a NDIS participant and a platform user.

Limitations

Given the small sample size, the data collected is not representative of the diversity of experiences and circumstances among all people with disability and support workers. Also the study did not aim to compare users and non-users of digital platforms. Nevertheless, it provides insights into user experiences, challenges and benefits of using platforms either to provide or receive support. Exploring the experiences of people with disability using platforms is notable because the project team was unable to identify any other studies that had directly engaged their perspectives.

There have been some studies about platform work in the care economy, but there has been limited attention to the views of people with disability and to the quality of care from a recipient point of view.

Despite the small sample, most issues emerging from the interviews aligned with key themes from the desktop scan. The exceptions were specific comments made by people with disability about the platforms' lack of accessibility, such as font size and filtering options.

Structure of this report

The report is structured as follows. Chapter 1 explains the methods for conducting the desktop scan and the interviews with support workers and people with disability. Chapter 2 discusses key themes from the desktop scan regarding contexts for platform work in the NDIS market and other sectors. Chapters 3, 4 and 5 discuss findings from the scan and interviews. Chapter 3 shows how platforms offered people with disability increased choice and control in the support services they are able to access. Chapter 4 considers how regulatory frameworks that generally protect people with disability and workers – the NDIS Practice Standards and the *Fair Work Act 2009* – are falling short of covering platform work. Chapter 5 explores how lack of access to training risks undermining the quality of support. Chapter 6 provides policy recommendations in response to the findings.



2 Contexts for platform work

The platform economy is not a new phenomenon. It has existed since 2009 in transport (Uber), skilled labour for home and office tasks (Airtasker) and food delivery (Deliveroo, Menulog). What is relatively new, however, is the growth of platforms in the disability sector that facilitate the purchase of support services. As in other sectors, the workers providing services on digital platforms are frequently described by the platforms as 'independent contractors' or 'sole traders'. Considering the implications of these terms, we provide key definitions on platform work and regulatory frameworks that govern this space, such as the Fair Work Act, workplace health and safety (WHS) legislation, and documents developed by the NDIS Quality and Safeguards Commission (QSC).

Defining the platform economy

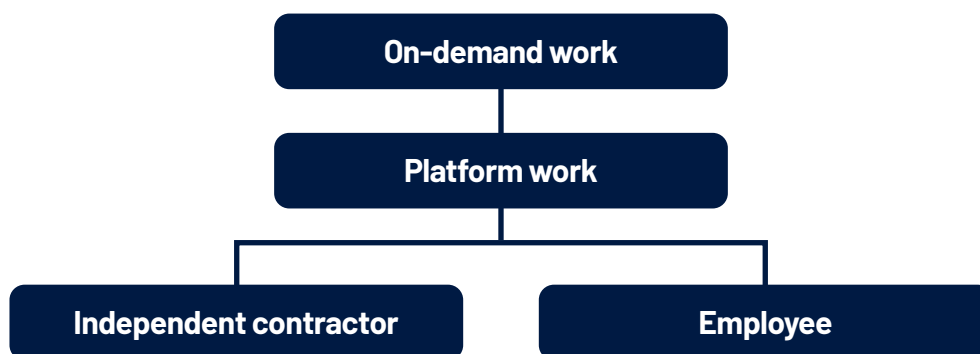
The 'platform economy', 'on-demand work' and 'gig economy' are terms that attempt to describe a shift in the structure and function of jobs in contemporary labour markets. They point to some shared characteristics, such as labour that is procured on demand and as needed (as opposed to permanent employment)(DPC 2020). They also involve irregular schedules, fluctuating demand for services, workers providing their own capital or equipment for the job and, importantly, the

mediation of work through an online platform (Stewart & Stanford 2017).

In this report, we use the term 'platform work' rather than 'gig work' because:

- a) We're focusing on the disability sector, and specifically the NDIS market, where digital platforms are mediating different types of work arrangements
- b) Gig work denotes infrequent or 'one-off' engagements or jobs, whereas support work requires a good relationship between parties, unlike food delivery for example.

Figure 1 On-demand work in the disability sector



Note: This diagram draws on definitions provided by the Senate Select Committee (2021) but adapted for the disability sector, and specifically platform work, which is the aim of this report. It does not portray other forms of work in the disability sector, such as through labour hire agencies or traditional service providers, which fall largely out of this report's scope.

The proportion of the workforce using platforms to offer services remains small compared with standard forms of work. It is difficult to identify platform workers from available labour data sets; however, they are estimated to number as many as 250,000 workers in Australia (Actuaries Institute 2020). To date, no comprehensive study of Australia's on-demand economy has been completed (Senate Select Committee on Job Security 2021).

Nonetheless, the number of workers involved in platform work is expected to continue to grow. Platform work also attracts some of the most vulnerable workers who already experience disadvantage in the labour market: young people entering the workforce, migrants, mature-aged workers and people with disability (DPC 2020). One driver of this composition may be low barriers to entering platform work.

Platforms generally do not claim to be employers of workers using their platform

Most platforms that operate in the disability space do not recognise support workers joining the platform as employees, but instead classify them as independent contractors or sole traders. Typically, people with disability and support workers using platforms must accept terms and conditions when signing up. These terms usually limit the obligations and liabilities of the platform itself for any problems that may occur in the delivery of support, as well as assert the lack of an employee-employer relationship between the worker and the platform. The following extracts come from platform web pages:

All Support Workers on Kynd are self-employed and using their own ABN.

(Kynd support worker qualifications)

Support Workers including any other person engaged or employed by any Support Worker are not employees, contractors, agents or franchisees of Mable. You have entered into this Agreement on the basis that you are an independent contractor.

(Mable terms of use)

As a Member You are not legally affiliated with Five Good Friends and there is no business arrangement intended or created by Your Membership except these Terms and Conditions ... Helpers are not employees or agents of Five Good Friends.

(Five Good Friends terms and conditions)

A study by McDonald, Williams & Mayes (2021) that canvassed how platforms define themselves found multiple terms, including 'intermediary service', 'marketplace', 'comprehensive search facility provider'. One platform that operates in the disability support space describes itself as 'a mobile app, website, community, marketplace and related systems and processes'. It is rare to find platforms that describe themselves as employers; however, there are some exceptions. As employees of those platforms, workers would be entitled to the superannuation guarantee, paid sick leave and other relevant benefits. These workers would likely be registered with the NDIS QSC. They would also have the right to go to the Fair Work Commission to resolve workplace issues or a dispute about an award. As it stands, however, the Commission cannot set minimum standards for platform workers if they are classified as independent contractors.

The pressures on support work under the NDIS

This section outlines how the NDIS has shaped critical aspects of the disability sector, from traditional service provider agencies to workforce training. It shows that the marketisation of disability services has left gaps in effective regulation and pricing, which has put financial pressure on the sector and its workforce.

These pressures come at a time when the NDIS has increased the demand for disability services, and the workforce is expected to grow. The care and support workforce is one of Australia's largest, estimated currently at 460,000 workers including workers in aged and veteran care (Department of Education, Skills and Employment 2022). It is also the fastest growing, with around 720,000 care and support workers expected to be needed by 2049-50. There is a projected shortfall of 80,990 workers (head count) by 2025-26, increasing to 285,800 by 2049-50. Shortages are likely to be

concentrated in the 'aged and disabled carers' and 'nursing support and personal care workers' occupations – which is not surprising given that these two key occupations currently make up the majority of the total care and support workforce (National Skills Commission 2021).

The care and support workforce under the NDIS faces a high degree of casualisation

A rapid increase in demand for personalised support services has led many to suggest that the NDIS has created an on-demand workforce. An independent evaluation of the initial implementation of the NDIS by Mavromaras, Moskos and Mahuteau (2016) highlighted that NDIS trial sites experienced rapid expanding demand for services and consequently hired more staff, but providers offered contract or casual positions at lower pay rates and skill levels. Some increased casualisation in the workforce was perceived to be leading to higher turnover and churn in the sector.

Care and support workers (both under and outside the NDIS) are much more likely to be employed on a casual basis (defined as without paid leave entitlements) than other Australian workers. In February 2021, around 28% of the care and support workforce were casual workers, compared with 19% of the total workforce (National Skills Commission 2021). Stakeholders in the National Skills Commission's Care Workforce Labour Market Study pointed to the shift to person-centred care and the interaction with funding and pricing settings as incentivising providers to employ workers on short-hour casual or part-time contracts. This approach aims to ensure sufficient coverage to meet complex and diverse consumer needs, as well as keep operating costs low in a competitive market (National Skills Commission 2021).

The increase in casual employment shows work is being conducted less through traditional service providers where support services are managed and coordinated by an organisation and delegated to employees, and more through non-standard methods of service delivery, such as platforms. It is worth considering how government is placed to regulate the emerging variety of options.

Not all disability service platforms are required to register

Platforms that provide restricted practices such as behaviour support are required to register with the NDIS Quality and Safeguards Commission. As a result, they are subject to the government-created frameworks for promoting minimum standards of safety and quality of services for NDIS participants, drawing on a human rights approach (NDIS Quality and Safeguards Commission 2022). However platforms not providing restricted practices are not required to register with the QSC. This can limit regulatory coverage of these services.

It is important to note that states also have regulatory schemes covering disability workers. For example, in 2018 Victoria established the Victorian Disability Regulation Scheme that includes a code of conduct and a complaints service; however, registration is voluntary (VDWC 2020).

Providers – both organisations and workers – have advanced a number of reasons for choosing not to register with government commissions like the NDIS QSC and the VDWC. These include being sole traders, such as allied health practitioners setting up their own practice; high audit and registration costs; aiming for minimal set-up when starting a business; and wanting a direct relationship with clients (Brevity Care Software blog 2020).

It is worth considering how government is placed to regulate the emerging variety of service options.



While cost and regulatory burden can be a disincentive to registering with the NDIS, there may be an even greater cost borne by people with disability in terms of the lack of safeguarding of support they receive. Costs may also be borne by workers, where being classified as contractors means their platforms do not need to spend money on sick pay, superannuation and complying with WHS and employment standards. Platforms that do employ their workforce (who then have the rights and protections of employees) and do register, incur higher costs. They are competing against unregistered platforms that outsource some costs to support workers engaged as contractors, making the platform landscape – and indeed the general provider landscape – an uneven playing field.

Levelling the playing field can therefore be crucial to the quality of support and workforce sustainability. The NDS 2022 state of the sector report that surveyed disability support provider organisations found a major theme was calls for greater accountability for unregistered providers, and consistency and fairness in the application of regulatory instruments to registered and unregistered providers (NDS 2022). The Senate Committee on Job Security (2021) also recommended:

That the Australian Government considers regulatory options that would ensure support workers engaged to provide services funded through the National Disability Insurance Scheme are provided with fair pay and conditions, including those engaged through on-demand platforms.

NDIS QSC has limited capacity to regulate disability service providers

QSC guidelines and standards are laid out in two documents, the NDIS Code of Conduct and the NDIS Practice Standards. The Code of Conduct, which sets out expectations for the conduct of NDIS providers and workers (NDIS QSC 2022), applies to both registered and unregistered providers. Among other things, it requires all workers and providers to act with respect for individual rights, protect privacy and take steps to avoid violence, abuse and misconduct towards NDIS participants (NDIS QSC 2022).

The NDIS Practice Standards, however, only apply to registered providers and specify the quality of standards to be met and the auditing of services required. Unregistered providers are not required to adhere to the Practice Standards. As of March 2022, there were 115,000 plan-managed NDIS participants who were engaging unregistered providers for services costing \$1.12 billion in payments. This means that unregistered providers accounted for about two-fifths of total spending on plan-managed participants (NDIS 2022).

Many platforms that operate in the disability space are not registered with the QSC. Registering as a provider would mean that the platforms would have to adhere to the NDIS Practice Standards. Standards particularly relevant to this study include those for provider governance and operational management. One of the associated indicators is:

The governing body ensures that strategic and business planning considers legislative requirements, organisational risks, other requirements related to operating under the NDIS (for example Agency requirements and guidance), participants' and workers' needs and the wider organisational environment.

(NDIS Practice Standards 2021, p. 7)

One example of workers' needs and a legislative requirement is the right to a safe workplace. Not only is registration with the QSC voluntary, but some platforms effectively transfer the

responsibility for complying with WHS laws to the individual support worker and distance themselves if an accident were to occur. The terms and conditions focus on limiting the platform's responsibility, as these examples show:

The support worker warrants that: ... they have made themselves aware of and will comply with all laws and regulations relating to the provision of the Care Services, including any workplace laws and any applicable occupational health and safety laws, policies, procedures

(Mable terms of use)

Find A Carer will not be liable for any loss, damage, costs or expense whether direct, indirect, incidental, special, consequential and/or incidental, exemplary or consequential damages, including ... any damages for personal, bodily injury, death or emotional distress

(Find a Carer terms of use)

Not registering with the QSC, and offloading WHS responsibilities to the individual worker, would reinforce the platforms' claim that they should not be considered employers of support workers. However, this creates a risk that there might not be enough oversight of support services for people with disability or of legal protections for support workers.

Many platforms that operate in the disability space are not registered with the QSC. Registering as a provider would mean that the platforms would have to adhere to the NDIS Practice Standards.

Pricing of services does not seem to ensure adequate workforce training

A feature of the increasingly marketised system of disability support that the NDIS introduced is pricing for services. The NDIA publishes *Pricing arrangements and price limits* which, among other things, determines prices to be paid for support work. In a market where agents are buying and selling services, transparency in pricing fosters competition among providers. However, the need to compete for business (from NDIS participants' funding) may also affect workforce development initiatives like training. For example, disability sector workers in one of the early NDIS roll-out regions were of the opinion that NDIS pricing did not sufficiently allow for workforce training (Baines, Macdonald & Stanford 2020). Many disability service providers were reducing the amount of training they were providing to their workers. Consequently, the NDIS was seen as negatively affecting the availability of training within the sector.

In general, several stakeholders in the disability sector have pointed to the early experiences of NDIS not providing sufficient investment in workforce training (Mavromaras et al. 2019; NDS 2021; Baines et al. 2019) in a sector where investment in skills and training was already low (Ryan & Stanford 2018). Most service provider organisations in the recently released NDS State of the Sector survey mentioned worker training as a key issue they still faced last year (NDS 2022).

Platforms have contributed to these issues by opening up the market to support workers while providing little or no training. Platforms that label themselves as 'marketplaces' or other related terms other than an employer are able to devolve the responsibility of training to the worker, who then has to pay for training out of their own pocket or does not participate in training opportunities at all.

Chapter summary

Facing high levels of casualisation, support workers are increasingly turning to platforms to advertise their services. Yet most platforms classify their workers as independent contractors, not employees; and regulatory coverage of platform services is incomplete. This can leave workers without the entitlements of employees and the protection of government-set quality and safety standards from the NDIS QSC.

These issues are complex and not often fully explained in platforms' terms and conditions. Platform support workers – and people with disability – may therefore not know their own rights and responsibilities, and the platform's. First-hand accounts of how platform users perceive these legal grey areas are presented in sections 3, 4 and 5.



3 Key finding:

Choice and control have increased for many but not all people with disability

This chapter and the next two draw on the direct experience of users of digital platforms.¹

One of the stated goals of the NDIS is to increase choice and control for people with disability over the use of their funds ([NDIS Participant Service Charter](#)). In a market-based approach to disability support, individual NDIS participants receive funds to purchase approved types of services from providers or have services purchased on their behalf by third-party brokers. Increasingly, NDIS participants are turning to digital platforms to find available support workers in their area; and they can negotiate the type, quantity and schedule of support they require through the platform. In theory, this system allows greater choice based on individual needs. This also reflects the evolution in service delivery models internationally, where funding is allocated to individuals or families to purchase services to meet personal needs and preferences rather than accessing standardised services provided directly or contracted by government (Macdonald & Charlesworth 2016).

Most interviewees felt that using platforms gave them increased choice and control over the support they accessed and how it was provided. This included specifying times of day and activities, and especially engaging with workers they felt some affinity with.

I love, I do really love the idea of picking your own support workers or finding a match.

(Patricia, person with disability)

When you put a job on the job board [on the app], you get a lot of responses, and each [response] has a profile [of a worker] and you can go through the profile, see how old they are, a photo of them, and what they're interested in, so I quite liked that. So yes, [platforms] are giving you a choice.

(Bridie, person with disability)

¹ Interview quotes in Chapters 3, 4 and 5 are mildly edited to improve clarity and to highlight analytic points. Pseudonyms are used to protect participants' confidentiality. Interviewees referred to 'apps' rather than platforms, partly because this was how they almost exclusively interacted with platforms.

As a first-time parent, and very protective of my child, I wanted an awful lot of control and choice—to use NDIS language—around who I'd engage to do that ... I wouldn't have gone through an agency where it was just, you know, sign up with an agency, and we'll send you whichever staff we have available.

(Penny, carer)

While most participants noted having more choice and control, this wasn't the case for some – particularly those in rural and regional areas or those who need support workers with specific skills and qualifications.

[Platforms] doesn't make it easier because the support workers aren't available ... there's no-one out there.

(Zoe, person with disability)

Living in [name of area] is lovely. But you know, it does have its drawbacks. In terms of there's not a lot of work [to attract specialist support workers] again, ... so generally if I want, like, good neuro support, I will have to travel to [city].

(Bridie, person with disability)

I interviewed [lots of] people on [name of platform] and [had] the same issue. There wasn't anybody there with Auslan skills to be able to work with me.

(Robert, person with disability and support worker)

Recent research exploring why NDIS participants choose unregistered providers aligns with the above findings (Dickinson, Yates & West 2022). This suggested that unregistered providers offered enhanced potential to exercise choice and control, especially compared with the traditional agency model, which is explored below.

Platforms are more flexible than traditional service providers

Interviewees frequently compared the degree of choice on platforms with using agencies where they had little control over when and how support was delivered. Prior to the NDIS, disability support workers in Australia were mostly employed by service provider organisations (Macdonald 2021b), which managed groups of workers in regular shifts and provided supervision and training. Both state and Commonwealth governments would provide block funding to these organisations based largely on specified levels of service. This funding constituted a large share of total income for providers, which spent it according to organisational policies and strategies, including the costs of employing (and training) staff.

Interviewees discussed the inflexibility of traditional service providers and how their situations have changed since using platforms:

I can shop around [for the support I need]. Before [I used platforms] the agencies used to take your money and they would not release it.

(Jane, carer)



[Before using the platform] I didn't have a choice of agency. I didn't have a choice of support workers. And sometimes I didn't even have a choice of what time or what day they were coming. I was basically just told how my life is going to be.

(Elena, person with disability)

[There is] consistency, it's the same worker coming and it's not a different agency worker [that] turns up. I've got friends that [receive support from traditional agencies], and they don't love it because they don't know who's coming from week to week.

(Freya, support worker and carer, sharing experience as a worker)

Most interviewees felt they had more choice and control over their supports while using platforms.

This wasn't the case for some – particularly those in rural and regional areas or those who need support workers with specific skills and qualifications.

Chapter summary

Most interviewees felt they had more choice and control over their supports while using platforms. This was due to the flexible nature of services that platforms offered, which they frequently referred to as positive when compared with traditional service providers.

This increased potential for choice and control was constrained for some because of the type of services they required or where they lived, highlighting issues of thin markets within the NDIS. Personal care services in particular were hard for some to locate; these interviewees felt that workers were selecting 'easy jobs', such as driving to and from appointments. This points to workers as well exercising more control over what work they choose to do, but there are potentially unintended consequences for people with disability who need more intensive care, since the pool of workers willing to do these tasks is smaller.



4 Key finding:

Regulatory frameworks are not protecting platform workers and people with disability

While platforms have expanded potential choice and control for people with disability in how they receive support, the services conducted are performed largely outside critical regulatory frameworks that safeguard working conditions for workers and set clear responsibilities for workplace health and safety. This chapter discusses two major safeguards of working conditions – the Fair Work Act and workplace health and safety legislation – and links them with issues raised in the interviews.

The employment status of platform workers is unclear

Workers in Australia are generally classified as either employees or independent contractors under workplace laws. Employees are protected by legal provisions such as the Fair Work Act, governing the minimum wage, limits on hours of work, entitlements to paid leave, rules re unfair dismissal and collective bargaining rights where applicable. Many platform workers are categorised by platforms as independent contractors; and independent contractors' entitlements are governed by the *Independent Contractors Act 2006*. This means they must negotiate their own fees and working arrangements. Since they are not employees, they are not protected by minimum wage requirements, nor are they entitled to paid leave or to notice of termination unless negotiated as part of a contract. Independent contractors have to make their own arrangements to report their income, pay tax and meet work expenses:

and they are required to have an Australian Business Number (ABN) (Stewart 2015).

The Fair Work Act enshrines employees' rights. Although the Act does not explicitly define 'employee', to classify workers as 'employees' two common-law principles must apply (Stewart & Stanford 2017):

1. The worker is undertaking to provide services pursuant to a contract with a person/organisation said to be their employer
2. The contract must have the hallmarks of employment (as opposed to a commercial agreement between two businesses), including [the employer's] right to control how work is done, payment method, responsibility for equipment provision, and the ability to delegate or subcontract work.

Applying these principles to platform workers to determine their worker status remains a challenge. The Fair Work Ombudsman (FWO) publishes help guides for workers who think they may be misclassified as independent contractors and outlines contractual indicators of the rights and duties of a worker. One such indicator is

the 'ability to delegate or subcontract work'. Generally, an employee is required to do the work themselves; they cannot ask someone else to go to their workplace and do their work for them (FWO help guide). Independent contractors, however, can delegate or subcontract the services to be performed by another person or business. Applying this principle to disability support conducted via online platforms, it is unlikely that a worker can subcontract another worker to perform agreed tasks with a client. This suggests that the support worker role shows some hallmarks of an employee rather than an independent contractor. Generally, the FWO acknowledges that distinguishing the two types of work – employee and independent contractor – is 'complicated and will come down to the circumstances of each working arrangement' (FWO help guide).

The challenges in resolving whether platform workers are employees or independent contractors, and therefore their associated rights, were brought up in interviews by both workers and people who engaged them. This reflects inadequate legal clarity around worker status, including worker entitlements, the responsibilities of the person with disability receiving services, and the oversight obligations of the platforms. As interviewees commented:

... you don't really know who the boss is, is it you or is it [the platform]?

(Elena, person with disability)

It's left very unclear where you as the NDIS participant or family member engaging [support workers] [stand] and what responsibilities you might ultimately have towards [support workers]... in some circumstances, you may actually be ... employing them, but not aware of what responsibilities you're required to meet. I [would] prefer a model that was all very legally clear.

(Penny, carer)

That feeling of I'm working for myself and not working for somebody is not so clear to me. And I'm still collecting all the information [to work this out].'

(Janja, support worker)

[There is] obviously a lot of misunderstanding about the whole tax [issue] because I just don't think people get enough [information] about [the fact that] they are contractors.

(Freya, support worker)

Support worker interviewees felt they were being left to figure out the implications of being classified as independent contractors by platforms. This poses risks to a workforce that is already marked by a high degree of precarity and by overrepresentation of marginalised groups. Also, the muddling through of an individual work situation without knowing what exactly one is entitled to is troubling in the case of an accident or injury. The next section presents interview data from both workers and people with disability about their expectations and experiences.

The challenges in resolving whether platform workers are employees or independent contractors, and therefore their associated rights, were brought up by both workers and people who engaged them.

Worker classification affects responsibility for workplace health and safety

By classifying workers as independent contractors, platforms devolve responsibility for compliance with workplace health and safety laws to the support worker and, potentially, the person with disability. In Australia, WHS laws apply to all workers regardless of whether they are independent contractors or employees. However, who has a duty of care to platform workers is unclear, since platforms do not generally claim to employ workers.

Under WHS legislation, companies providing workers or workplaces are defined as a 'person conducting a business or undertaking' (PCBU) (Safe Work Australia). This term encompasses forms of work involving non-standard employment relationships such as platform work. The company or organisation has a duty of care for both client and worker. The terms and conditions developed by platforms which support workers and people with disability must accept when signing up clearly show efforts to shift WHS obligations onto users. An example of such terms and conditions reads:

Customers [in this case NDIS participants] warrant that they have 'inspected their premises' and that 'those premises are a safe work environment for the Support Worker to provide the Care Services'; and that they 'have made themselves aware of and will comply with all laws and regulations relating to the engagement of Support Workers, including any applicable workplace laws and any applicable occupational health and safety policies or procedures'.

(Mable terms and conditions)

This wording asks people with disability or their families and carers to familiarise themselves with WHS legislation, policies and procedures and to implement required provisions, as a legal employer might. This is a significant burden for the person with disability. It is also unclear what happens if a worker injures themselves or has an accident while providing support services. A lack of clear understanding of the obligations of people with disability engaging support workers was frequently raised as a concern:

I'm not 100% aware. But I was under the impression that [platform name] has, you know, some sort of policy in place if there was an accident?

(Bridie, person with disability)

And in case anything happened? I don't know. To be honest, it never happened to me [yet] so [I have] no idea.

(Freya, support worker)

I think I would probably have to ask other support workers because most of the time I can't find [the relevant information] on [platform]. Yeah, I'm learning from [other support workers] more than from [the platform].

(Janja, support worker)

She had an accident [and] she hurt herself. She slipped and fell and hurt herself. The floor was wet. This is at a client's house. [Platform] gave her a mobile number for an agent at the insurance company that they work with. This person said, 'I don't work with that [insurance] company anymore, you need to speak with [platform]'. [She] went back to [platform] and they gave her a different number for the insurance and said to her, 'That's not our [insurance company anymore]' and she has been going back and forth for a while [with] no resolution. Then she was told at some point she was not eligible to get sick leave the first seven days [after the accident when] she couldn't work. What was she supposed to do for the first seven days that she couldn't work?

(Elena, person with disability, speaking about a support worker friend)

I've had people come in and cause her [family member with disability] an injury in the first shift. They drop her [physically] thinking they can transfer [her]. I'm not sure who takes responsibility ... if something does happen, where do you go?

(Jane, carer, speaking about family member with disability)

Most participants believed it should be the platform's responsibility to provide greater clarity and support in the event of an incident:

If you design an app now ... are you making sure that people are safe? And well cared for? Yeah, there is something to be questioned around that.

(Jane, carer)

You've got all these newbies coming on [and] they have no clue. You know, [the platform could] could put a bit more information on the website. The information [they're] handing out is wrong.

(Freya, support worker)

All the support workers we spoke with had contributed to insurance as they were mandated to by the platforms. However, they remained concerned that it might not provide sufficient cover to feel safe on the job:

I took out my own insurance because I started reading [platform's] policy and I [wasn't] really sure if I'm covered [for all situations] and then I thought well, I have [to do it as] a work expense. There was a bit of anger about that. I'm [already] paying the [mandatory] 10% insurance.

(Freya, support worker)

Chapter summary

Worker classification as either independent contractor or employee remains unresolved in platforms in the NDIS market. Most workers and people with disability felt they did not understand the implications of having support workers classified as independent contractors. This situation also has implications for workforce sustainability at a time when the NDIS has increased the demand for support workers and platforms have lowered barriers to entry into the market for workers. As platform workers can be vulnerable or disadvantaged workers, the lack of minimum entitlements and clarity around workplace health and safety protection is concerning, as it risks further marginalising those segments of the workforce.

Almost all interviewees were also confused about what their obligations and responsibilities for workplace safety were, and what to do if something went wrong. Most interviewees were not able to resolve this with the platforms and continued to work or access support services hoping nothing would go wrong. The terms and conditions often devolve WHS responsibilities to platform users. As far as we are aware, this uncertainty over worker status and responsibility has not been tested in a legal sense.

The next chapter discusses further implications of worker status, in the case of who is responsible for training if platform support workers have no employer.

5 Key finding:

Support workers can't access sufficient training while conducting platform work

The training of support workers is an important input to ensure participants receive high quality services, delivered safely and tailored to individual needs. Appropriate training also supports the safety, wellbeing and job satisfaction of the support worker. However, current settings around online platforms – particularly related to pricing and career pathways – do not adequately support this training.

The NDIA publishes [NDIS Pricing Arrangements and Price Limits](#), which, among other things, set prices to be paid for support work. Analyses of the costing models for support work show that prices set by the NDIA do not consider true costs associated with the role (Cortis et al. 2017; Ryan & Stanford 2018).

For example, the base hourly rate assumes 95 per cent of a worker's time is spent in direct client contact. This allows just three minutes for every paid hour to cover all activities that need to be completed to provide quality support and comply with industrial awards, including breaks for workers, communication with other team members, meetings, administration, travel, training, supervision and general professional development (Macdonald et al. 2018, cited in Ryan & Stanford 2018).

Many stakeholders also believed the NDIS pricing model does not consider the actual time needed or costs for tasks to be done; and many disability service providers reported reducing the amount of training for their workers (see for example Baines, Macdonald & Stanford 2020). At the same time, disability support provider organisations surveyed for National Disability Services reported having difficulty identifying and recruiting suitably

qualified disability support workers and noted that current award pay rates do not reflect the complexity of the role (NDS 2022).

The pricing model also puts pressure on support workers using platforms. Their role involves considerable unpaid work unless administrative tasks, travel time, and professional development and training can be factored into their advertised rates without jeopardising competitiveness with other workers. There are concerns that support workers are opting to forgo professional development and training. In our interviews the issue of training was discussed by every interviewee: people with disability, carers and support workers. For example:

[What] I feel needs to be addressed with these online platforms is [that] people need to be trained better or [to] have some kind of training from the organisation that's representing them.

(Francesca, carer)

There's a lot of really big gaps around protection [and] education, but [it] doesn't have to [involve] doing a certificate. I think lightweight, small, affordable, possibly subsidised, little education platforms that people could access in a really quick drop-in, drop-out kind of fashion [would be good].

(Jay, support worker)

They all needed training to commence those shifts. I had to show a [support worker] manual handling to get her [person with disability] into the wheelchair and to show [the support worker] how to use a wheelchair. They don't come [on board] with that ability. There's no-one here to train [the support workers]. I'm not sure how [training] works, to tell you the truth. It's quite dangerous otherwise.

(Jane, carer)

Career development opportunities for support workers are limited

The desktop scan also identified concerns that a lack of clear career pathways is a disincentive to viewing disability support as a long-term career option. While transitions to higher skilled occupations, such as from a care and support worker to a registered nurse, do occur, these are not formal career pathways (Department of Education, Skills and Employment 2022). In contrast to other professions like nursing,

with structured career progression and skills development opportunities, interviewees felt support work was undervalued. This mirrored broader workforce issues, which the lack of training contributes to.

Platform users discussed these workforce challenges. All interviewees who discussed broader trends in the disability workforce like pay, burnout and employment precarity, spoke negatively about the state of the sector. For example:

I think there's a lot of gaps in the profession, especially when you're talking about interpreters and support workers.

(Robert, person with disability and support worker)

Generally speaking, I'm sort of not necessarily [in favour of] these Uber style apps, because I don't ... think they have very good impacts on like workforce issues ... I want my workers to be paid well, both for my benefit and theirs.

(Clare, person with disability)

[We all feel there is] undervaluing of the [support worker] role. But it starts from parenting really – any caring or welfare role ... So you know, I just get cross in that whole thing that we [are] highly qualified, but [if] the person with disability isn't valued, their workforce isn't valued.

(Freya, support worker)

The training of support workers is an important input to ensure participants receive high quality services, delivered safely and tailored to individual needs.

Provision of training is patchy

Most participants felt it was the responsibility of the platforms to provide more training. Some platforms do offer some training modules to their workers, but most options provided by platforms require workers to pay for the training themselves. Several workers felt the situation was unsatisfactory:

Because we're all independent contractors with the platform. We have no formal structure around us as such ... and that's problematic in many regards. And so opportunities for training or education are up to you – you've got to pay for it, which is a disincentive.

(Jay, support worker)

Unfortunately some organisations like [platform] are lazy, I guess. They don't insist on [formal] qualifications ... I'd like all support workers to have child safety training, disability training and authorised cards and making sure that they have first aid, because some people don't even have first aid training. They don't even have training in mental health.

(Robert, person with disability and support worker)

I wish there was more training on [platform] ... maybe for more specific things like ... if you have clients with Asperger Syndrome, if there were those type of trainings on [name of platform]. As in how to support a person like that better, you know, there's always new research done.

(Janja, support worker)

Chapter summary

Appropriate, timely training of disability support workers is essential for quality services as well as for individual support workers' skills and career development, and for workforce sustainability.

However, under current arrangements, platforms are not obliged to provide training for support workers classified as independent contractors or sole traders. Most interviewees felt platforms needed to do more to provide training opportunities.

6 Policy recommendations

This section builds on the insights from chapters 3, 4 and 5 and proposes avenues for policy development that government should consider. As both the NDIS and industrial relations – two major themes of this project – fall within the Commonwealth Government’s jurisdiction, the recommendations are targeted at the federal level.

1. Pursue robust regulatory options to apply to unregistered digital platforms

As mentioned in Chapter 2, many platforms in the disability space are not registered providers. This means they can choose not to meet the NDIS Practice Standards administered by the QSC, which safeguard both service quality for NDIS participants and worker protection. Chapter 4 discussed specific worker protections that support workers were unclear about, including minimum working entitlements and workplace health and safety obligations.

The stated goals of the QSC are to ‘improve the quality and safety of NDIS supports and services’ (*What we do*). It is unclear how these goals can be fully achieved while allowing unregistered providers – two-fifths of the total NDIS spend on plan-managed participants (NDIA 2022) – to be outside the QSC’s realm of complaints and standards of safety.

To level the playing field, the QSC should consider requiring unregistered platforms to comply with the NDIS Practice Standards. This would prevent the transfer of workplace health and safety responsibilities to workers and people with disability.

2. Update Australia’s industrial relations regime to clarify the roles and responsibilities of platforms as potential employers

While states such as Victoria and New South Wales have identified the gap in industrial relations laws that allow the platform economy to flourish without adequate worker protection (DPC 2021; Select Committee on the Impact of Technological and Other Change 2022), the relevant IR laws that have been explored in this report lie at the federal level.

Victoria is leading an inquiry into the on-demand economy and has published Fair Conduct and Accountability Standards for platforms that operate in that state. The goal of these standards is ‘to encourage platforms to further improve their practices to ensure work arrangements are fair and transparent’ (DPC 2021); however, they are not binding. The reason they are voluntary is that the Inquiry Report recognised that ‘Victoria’s ability to legislate for non-employee on-demand workers is affected by the comprehensive national regulatory framework’ (DPC 2021).

Our recommendation has two parts: changes to the Fair Work Act and to WHS laws. A national approach would also ensure that the platform economy is regulated consistently across the country and that platforms cannot operate differently in some states from others.

Clarify WHS laws and who is a PCBU in platform work

As explained in Chapter 3, a PCBU owes duty of care to a worker. Safe Work Australia has attempted to clarify platform work arrangements for workplace health and safety reasons, and has published guidelines for PCBUs on how to fulfil their duties of care under WHS laws: (<https://www.safeworkaustralia.gov.au/safety-topic/industry-and-business/gig-economy>). This comes after it testified at the Senate Committee on Job Security that organisations that provide a platform for gig economy work ‘may be regarded as a PCBU’, and ‘the platform will owe a duty to the gig participant, as a worker’. Also, the platform will ‘owe duties to an entity that consumes services from the platform (the client) as another person’ (Senate Select Committee on Job Security 2021).

However, Safe Work Australia also noted that in platform work arrangements, the client (in this case the NDIS participant) may also be considered a PCBU. This is because workplace health and safety legislation allows for sharing of duties and responsibilities, meaning multiple entities – platforms and the NDIS participant – owe duty of care to workers. The Senate Select Committee noted the importance of closing loopholes involving disability support platforms:

[Platform name] takes a significant percentage of the money paid to these workers and, thus, profits from their labour. If there are legal loopholes allowing platform companies to avoid their responsibilities on worker safety—or even more disturbingly, to put those responsibilities onto individual disability care recipients—those loopholes must be closed as a matter of urgency.

(p. 152)

The committee recommended that the government clarify that:

a platform that engages individual workers to provide support work under the NDIS or similar schemes, and makes money from the arrangement, is a PCBU and owes a duty of care to that worker, regardless of that worker’s work status (employee or contractor), or their visa status; and that individual care recipients, such as NDIS participants, are not a PCBU in relation to that worker.

(p. ix)

Safe Work Australia’s current guides are primarily directed to transport platforms and their users, such as Uber and Deliveroo. They need to be extended to platforms operating in the disability space to provide clarity to all parties involved – the platform, the worker and the person with disability.

Expand the Fair Work Act to include platform workers as employees

Discussions both internationally and in Australia around how to ensure platform workers are protected by workplace legislation have centred on defining platform workers. The Fair Work Act does not cover the employment dynamics that exist with platform work. With that in mind, the Commonwealth Government should expand the definition of employee to ensure all workers in the platform economy are covered by minimum standards of protection.

Most interviewees for this project felt there was some type of employment relationship between the platform and the workers. They elaborated on the employment relationship in terms of

Safe Work Australia guidelines need to be extended to platforms operating in the disability space to provide clarity to all parties involved – the platform, the worker and the person with disability.

perceived responsibilities of the platforms to provide training, and effective solutions to complaints about clients and workers. What we heard in interviews aligns with other sources: most submissions from platform workers to the Senate Job Security Committee (2021), regardless of industry they worked in, considered platforms were in some way an employer.

Both the Queensland and Victorian governments and other bodies (Senate Select Committee on Job Security 2021; Per Capita Consulting 2022) have recommended that the Fair Work Act be amended to encompass platform workers. This would ensure platform workers have access to collective bargaining, minimum work standards and superannuation. The current Commonwealth Government has also recognised that institutions charged with overseeing parts of the industrial relations regime need to be updated to include platform work. In the September 2022 Jobs and Skills Summit, the government made a commitment to:

Extend the powers of the Fair Work Commission to include 'employee-like' forms of work, allowing it to make orders for minimum standards for new forms of work, such as gig work.

(Treasury 2022)

3. Further invest in development of the support workforce, including employment-based training models

The NDIS Commission has recently developed an NDIS Workforce Capability Framework, which sets out behaviours that service providers and workers should demonstrate when delivering services to people with disability. These include advice such as 'look after yourself' or 'work within your capabilities', with little guidance for what to do if these are not achievable. The Workforce Capability Framework similarly does not specify how workers will be supported to access training to put advice into practice. Given that training costs for support workers have been inadequately priced by the NDIA, it is difficult to see how workers can be expected to achieve the desired behaviours set out in the framework. This is especially true for platform workers who may not have access to sufficient training from platforms or may face the cost of paying for their own training.

The Commonwealth Government has recognised this issue. Priority 2 of the NDIS National Workforce Plan 2021–2025 is to train and support the NDIS workforce (DSS 2021). To achieve this, the government has committed to invest in accredited micro-credentials to enable workers to upskill, and to develop a skills passport, which will strengthen the recognition of new and existing skills as workers move around the sector (DSS 2021).

The Workforce Capability Framework does not specify how workers will be supported to access training to put advice into practice.

Further, the Commonwealth Government with tertiary and industry partners has established the Care Economy CRC, which is a ten-year collaboration of industry, research and government stakeholders to co-create best solutions to issues relating to the care economy (Care Economy CRC 2022). One of the centre's research programs includes examining new ways to improve training options for care sector workers.

The initiatives under the NDIS National Workforce Plan and the Care Economy CRC are promising, and we would add employment-based training and recognition of prior learning as two models that can be applied specifically to platform workers.

Investing in employment-based training

One worthwhile investment the Commonwealth Government can make in the sector is in employment-based training (EBT) models. EBT is training for paid employees that is integrated with a work setting, related to their role, and provided or supported by employers (O'Dwyer 2021). EBT models are commonly used where new workforce entrants have skills gaps and would be well suited to new support workers using platforms to find work and advertise their services, given the lack of barriers to entry. Further, flexible training modules can be delivered to fit with a worker's schedule.

Given the increased demand induced by individual NDIS funding, government could facilitate mass training of new support workers, as well as workforce development for existing workers. This might involve subsidising worker training, either by providing workers with a training allowance or subsidising employers' training offerings (platforms included), while ensuring the offerings are fit for purpose.

Recognition of prior learning

A promising EBT model that should be of particular interest to government is recognition of prior learning (RPL). This is the process of assessing someone's relevant learning and existing skills to grant formal recognition, without requiring the full traditional training process. Once somebody applies, registered training organisations are able to assess them and grant them competency in subjects, based on recognition of their prior learning. This approach acknowledges that people come with diverse experiences; and it can identify, assess and formally recognise key skills that are transferable to support work.

For both new and existing support workers in the NDIS market, RPL could facilitate large-scale degree completion and certification of workers. This would reduce time spent away from work for those who do not have formal qualifications but have developed skills on the job. It would work well with the flexibility of choosing shifts and hours of work that platforms claim to provide. RPL has also been shown to foster closer links between training providers and industry (Osborne & Serich 2020), which points to a potentially more robust training offer for platform support workers.

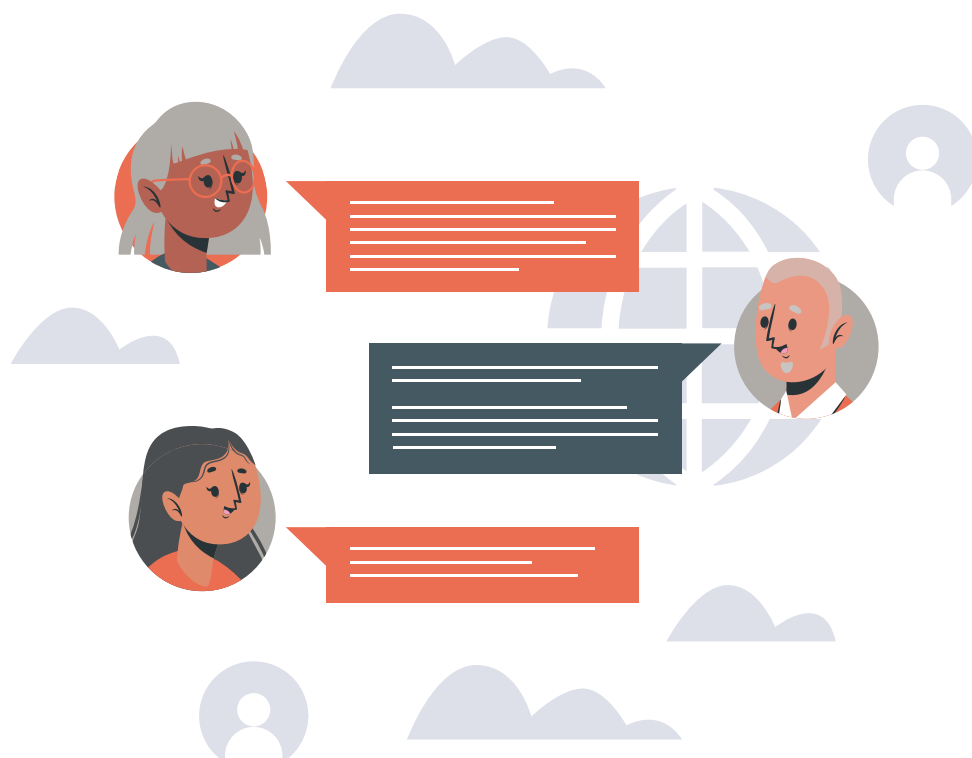
7 Conclusion

There are compelling reasons for the value of digital platforms that match demand and supply of services in the NDIS market. Compared with other models, they offer people with disability increased capacity for choice and control over the kind of support they can access and how it is delivered. Critical issues and risks, however, remain unaddressed. To fully realise the potential of platforms, more needs to be done to address the legal grey areas that are identified in the desktop scan and interviews. These include establishing minimum employment standards, clarifying workplace health and safety obligations, and ensuring responsibility for the provision of training and continuing professional development. Failing to address these critical issues is contributing to significant risks in the workforce that already includes an above-average proportion of undervalued and vulnerable workers, a high level of casualisation and limited training opportunities.

There are other issues impacting on workers and people with disability, such as wage variations and relative bargaining power across platforms. These would require detailed research and are worthy of further study.

In developing this report's recommendations, we stress that any potential changes to legislation about platform work need to involve consultation with all parties. Sustainable improvements

are more likely to be achieved in Australia by embracing a collaborative approach to regulating platform work, where platforms are consulted when government plans or revises legislation. Importantly, support workers, people with disability and their carers need to be leading discussions about how they would like this form of providing and receiving disability support to work for them in the future.



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Support online

User experiences of digital platforms in the NDIS market

Digital platforms that facilitate the purchase of disability support by a person with disability from a support worker have grown in prevalence and market share over the past few years. This project explored existing research and the experiences of users of digital platforms to gain a better understanding of the implications of platform-mediated work for the employment conditions of support workers and for the quality of support provided to people with disability.



Acknowledgement of Country

The Brotherhood of St. Laurence acknowledges the Traditional Custodians of the land and waterways on which our organisation operates. We pay our respects to Aboriginal and Torres Strait Islander Elders past, present and emerging.

