



ASU Submission

Senate Select Committee on Job Security

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Organisation: Australian Services Union

Contents

| | | |
|----|--|----|
| 1. | The ASU | 3 |
| 2. | Our submission | 3 |
| 3. | Aviation Industry..... | 4 |
| 4. | Social, Community and Disability Services Sectors | 6 |
| | Part 1: Precarious work in the community and disability sector, an introduction..... | 6 |
| | Part 2: Precarious employment is the government’s choice for essential workers in the community sector (grant funded organisations)..... | 11 |
| | Part 3: The National Disability Insurance Scheme – an important scheme that should not be reliant on wage theft and exploitation. | 14 |
| 5. | Local Government..... | 25 |
| 6. | Call Centre Sector | 26 |
| 7. | Energy Industry (Case Study)..... | 28 |
| 8. | In Summary | 28 |

1. The ASU

The Australian Services Union (ASU) is one of Australia's largest unions, representing approximately 135,000 members.

The ASU was created in 1993. It brought together three large unions – the Federated Clerks Union, the Municipal Officers Association and the Municipal Employees Union, as well as a number of smaller organisations representing social welfare workers, information technology workers and transport employees.

Currently ASU members work in a wide variety of industries and occupations because the Union's rules traditionally and primarily cover workers in the following industries and occupations:

- Social and community services
- Disability support
- Local government
- State government
- Transport, including passenger air and rail transport, road, rail and air freight transport
- Clerical and administrative employees in commerce and industry generally
- Call centres
- Electricity generation, transmission and distribution
- Water industry
- Higher education (Queensland and South Australia)
- Australian Taxation Office

The ASU has members in every State and Territory of Australia, as well as in most regional centres. Around 50% of ASU members are women, the exact percentage varies between industries, e.g. in social and community services around 70% of our members are women.

2. Our submission

The ASU is pleased to provide this submission to the Select Committee on Job Security.

We believe there are too many insecure jobs in Australia. Insecure work describes non-permanent forms of employment, including casual work, fixed-term work, seasonal work, contracting and labour hire. It is also increasingly a problem faced by workers employed part-time and in non-traditional workplaces.

Research shows that insecure work undermines the longer term productivity of Australian workplaces through reduced training and skill development, lower levels of employee commitment, higher labour turnover and lower occupational health and safety standards.

In addition, insecure work can have serious health impacts. Stress, caused by job insecurity and lack of control over working hours, is a major health risk for workers. Studies in Australia and overseas have shown a direct correlation between poor quality, insecure work, stress and workers health. Studies also show that poor work-life balance, and a lack of fit between work hours and preferences, is associated with significantly worse health outcomes.

Insecure work has effects far beyond the individual worker. Many workers in insecure jobs find it difficult to meet outside commitments and the worry that this creates is felt by children, partners and friends.

The ASU recognises there may be occasions when insecure work represents a choice for certain people at certain times. However, it has all too often been the experience of the ASU that insecure employment has become the primary employment contract within an enterprise or an industry when the circumstances do not require it.

A year-end review in December 2020 by the Centre for Future Work found the Covid-19 pandemic economic impacts were felt most by those employed in low-paid and insecure jobs with casuals losing employment at a

rate of 8 times faster than those in permanent positions. Part-time workers also suffered job losses at 3 times the rate of their full-time counterpart.¹

The year-end review also found that since May 2020 over 400,000 casual jobs have been created, which accounts for over 60% of all new positions. As the author notes this is the largest surge in casual employment in Australia's history.²

This growth in casual employment is driven by employers trying to realise short-term savings and higher profits by avoiding the costs associated with permanent employment such as paid leave, workers compensation, long service leave and superannuation.³

We discuss ASU impacted industries below and our members concerns about the steady increase and normalisation of insecure working arrangements.

3. Aviation Industry

In January 2021 the Australian Services Union made a submission to the Senate Standing Committees on Rural and Regional Affairs and Transport in regards to the future of Australia's aviation sector, in the context of COVID-19 and conditions post pandemic⁴.

Our submission provided survey results of our members who work in aviation and demonstrated that ASU members in aviation are incredibly concerned about their job security going forward. In our survey, only 18% of respondents felt that their job was secure, with 82% reporting they felt their job was not secure. When asked what workers were most concerned about at work in 2021, 57% said they were worried about a more casual and insecure workforce being employed.

The recent announcement by the Federal Government to not extend JobKeeper and instead introduce a tourism and aviation package will leave aviation workers to face more insecure work as the new initiative does not require aviation companies, such as Qantas, to protect or guarantee aviation jobs. Even on conservative estimates, we believe thousands of aviation jobs will be lost when JobKeeper ends on 31 March.

RECOMMENDATION:

- 1. Aviation sector government financial assistance must be linked to airline employers committing to decent conditions and secure jobs for their workers.**

Employer behaviour – cutting conditions, sacking workers

During COVID-19, some aviation employers have tried to use the pandemic to reduce conditions, outsource jobs, and implement restructures.

We have seen thousands of job losses at major aviation employers, despite the significant amount of financial assistance these companies have received from taxpayers to keep workers employed.

By way of example:

- Qantas has manipulated the JobKeeper Payment scheme to reduce the take home pay of some employees who work overtime and hours that attract penalty rates – this is now the subject of a High Court case.
- Qantas has made several thousand employees redundant based on their projected need for labour in 2022. This was described by the company as a 'right-sizing process'. These include several hundred ASU-covered employees at airports, lounges and corporate areas. Following

¹ The Australia Institute, Centre for Future Work. 2020 Year-End Labour Market Review: Insecure Work and the Covid-19 Pandemic [online] Accessed at: https://www.futurework.org.au/2020_year_end_labour_market_review_the_pandemic_and_insecure_work

² Ibid.

³ ACTU, Insecure work, anxious lives: the growing crisis of insecure work in Australia report

⁴ ASU Submission [online] Accessed at:

https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Rural_and_Regional_Affairs_and_Transport/CovidAviation

the right-sizing process the company proposes to restructure its airport, lounges and freight operations. This restructure targets better paid, high-skilled staff, shifting the work to centralised call-centres.

- Virgin has made thousands of employees redundant. It has also sought long term wage freezes and drastic permanent cuts to conditions from its workforce. Through months of campaigning and negotiations the ASU was able to prevent these cuts.
- Rex attempted to vary their enterprise agreements covering customer service staff, flight attendants and aircraft engineers to remove pay increases due to employees on 1 July 2020. The company backed-down after employees organised against the proposal.
- Menzies Aviation forced its employees to use their accrued leave while they were stood down and being paid JobKeeper. For many employees, they saw no additional income while their accrued leave balances were run down. This meant that the company reduced its accrued liabilities using taxpayer money without offering any benefit to the affected employees.
- Singapore Airlines also made a significant number of their airport staff redundant, including all employees at Canberra Airport.

Labour hire and outsourcing

The ASU has historically held ongoing concerns in regard to the use of labour hire and contracting arrangements in the aviation industry. Contracting out and competitive tendering have consistently shown to be associated with reductions in terms and conditions of employment and reductions in numbers of employees.

Only recently the Qantas Group has used the pandemic as an excuse to outsource ground operations performed by Qantas Airlines, QGS and Jetstar Services staff working in ramp, baggage handling and fleet presentation at 11 Australian Airports. This work has been awarded to: Menzies, Swissport/ Aerocare, dnata and Oceania to name a few.

Employers such as dnata and Swissport/Aerocare have over the years sought to employ workers in casual and precarious jobs that reduce the wages and conditions of employees and actively avoid their obligations under collective agreements.

Case Study - dnata/ Airport Handling Services Australia

In 2017 the ASU caught international airline service company dnata setting up a side company called Airport Handling Services Australia (AHSA), in a bid to undercut its existing employees.

This new company was established so that labour hire employees could be brought in to do the same work that dnata's existing employees were performing, but for less pay and conditions. AHSA employees were only guaranteed the legal minimum wage.

dnata Australia then commenced using AHSA to directly compete with dnata for contracts, taking work away from existing employees bit by bit and undermining job security.

Following a protracted campaign to defend the rights of the permanent workforce, dnata dropped their plan to put AHSA staff on a separate Agreement. The ASU successfully negotiated a watershed Agreement which covered all dnata and AHSA employees. Job security was increased under the new Agreement, with requirements to move labour hire and casual staff into permanent positions.

The race to the bottom in aviation is being fuelled by the proliferation of labour hire and outsourcing arrangements. This has seen thousands of aviation workers being underpaid and exploited. In addition, the high turnover rates and poor conditions among labour hire firms results in low pay, poor conditions and insecure work and in turn can impact on the safety and security at airports.

We believe the Government needs to urgently intervene and regulate labour hire and supply chain behaviour in the aviation industry.

Case Study - Swissport/Aerocare

In Australia, Swissport (formerly Aerocare) operates at multiple airports as a low-cost ground handler, partnering with all major domestic airlines and many international carriers in the region including Qantas, Jetstar, Virgin and Regional Express to name a few. Aerocare predominately employs staff on a 'permanent part-time' basis or as casuals.

Since 2012 the ASU along with other Unions has been to the Federal Court or the Fair Work Commission on 9 different occasions in regards to the underpayment of employees at Aerocare or to object to an application to approve an enterprise agreement for reasons such as: rates of pay being less than the modern award, split shifts, poor rostering conditions, unfair payments for working extra shifts and penalty rates being absorbed into ordinary rates of pay.

RECOMMENDATION:

- 2. The Government should urgently implement measures to oversee and regulate labour hire and supply chain behaviour in aviation.**

4. Social, Community and Disability Services Sectors

Part 1: Precarious work in the community and disability sector, an introduction

The ASU is the largest union of workers in the social, community and disability services sectors. Our members predominantly work in non-government, not-for-profit organisations that support people experiencing or at the risk of experiencing crisis, disadvantage, social dislocation, or marginalisation. Of specific relevance to this Inquiry, the ASU represents workers who are employed in the community who are employed in sectors including, but not limited to:

- Disability services, including residential care.
- Community services, including:
 - Aged care services
 - Community transport services
 - First Nation People's services
 - Family support services
 - Health and mental health services
 - Crisis accommodation for women, children, families, young people, and men
 - Sexual assault, domestic and family violence services
 - Youth and child protection services
 - Out of home care for children and young people at risk
 - Homelessness, housing, and tenancy services
 - Alcohol, gambling and other drugs of addiction and rehabilitation services
 - Migrant and settlement services
 - Community legal services
 - Community and neighbourhood services

These ASU members are highly skilled professional practitioners. They hold qualifications in law, psychology, management, social sciences, welfare work, disability work, social work, youth work, child protection, aged care and community work, mental health, drugs and alcohol counselling, financial counselling, and a long list of other specialist qualifications. Our members also include clergy of many faiths. ASU members work to protect

vulnerable babies, children, young people, and families in their own homes, in out-of-home care, in refuges and in after care.

Our members also work to protect those same people when they are homeless, living in cars, on the streets, 'couch surfing', and in other dangerous circumstances. Our members provide case work, crisis intervention, referral, financial and other support for individuals of all ages and families experiencing poverty, isolation and homelessness, gambling, drug and alcohol addictions, disabilities, mental health issues, overwhelming legal and financial problems, very young parents, and those who are refugees or have other settlement issues. They work with children and young people who are experiencing or escaping violence and those who are trying to deal with their cultural or sexual identity.

The nature of funding for the community and disability sectors makes them unique examples of a workforce with a very high degree of precarity. As the single largest union representing those workers nationally, the ASU is well placed to contribute to this Inquiry. We thank you for this opportunity and would be very pleased for an opportunity to appear before you.

Work in the community and disability sectors – designed to be insecure

In a recent survey of ASU members, 'job security' was clearly one of the highest priority concerns, or the highest priority concern across our membership. In the disability sector, insecurity of employment is the signal feature for a significant proportion of our members and their families.

Although these concerns pre-dated the current COVID pandemic, and more than two years of ongoing natural disasters, the very high level of anxiety around job insecurity has clearly increased in importance in the context of the currently weak national economy and labour market associated with the devastating impact of natural disasters and the pandemic. However, it is our submission that these disasters have exacerbated, rather than being the cause of anxiety among our members about insecure employment. Nor can their unease be explained as a fear of technological change. Workers in most industries and occupations worry about the effects of accelerating technological change on their employment security and prospects. It is true that new digital technologies are being applied to an increasingly diverse and complex array of tasks and no worker is excluded from this process.

It is our submission that the major threats to the quality and stability of work in the community and disability sectors should not be understood as being driven primarily by natural disasters or technology. This is in our view a dangerous misdirection of attention away from the real source of problems for workers in precarious employment and their families. Instead, it is changes in the relationships between employers, workers, governments, and regulators, and the evolving balance of power between these groups, that explain the direction of change.

It is not technology that workers in the community and disability sectors fear, but rather, how technology is implemented, managed, and controlled, and whose interests prevail as the process unfolds. We argue that it is systemic issues - laws, institutions, and social expectations, that determine the impact of technology and other changes in the workplace, on working people and on their families.

It is therefore the responsibility of government and its regulators to ensure that whatever the employment relationship, there is protection for wages, workplace rights, safety, training, and accrued entitlements, among other aspects of that relationship.

The Union's submission will focus on these issues as matters of public policy, in relation to the changing nature of employment relationships in the community and disability sector and how these may be addressed. While

we do provide information about the impact upon individual working people and their families of precarious employment, our submission is not focussed on individuals, but rather on the impact of precarious employment on jobs and economic recovery and growth, particularly in regional communities, which are often forgotten in economic discussions which prioritise east coast capital cities.

A changing workforce – even before recent disasters

While the impact of the current pandemic affects us all, it is critical that we acknowledge many regional communities are also dealing with the trauma, social and economic dislocation of an ongoing drought, an extended bush fire season, smoke, hail, the global pandemic and most recently, floods. Tragically, the lesson we have learned from the last bush fires is that the disaster does not end the day the fires go out. The recovery period takes many months of rebuilding fractured lives and communities. There has never been more pressure on those services and professionals relied upon to deliver essential and lifesaving services in communities impacted by drought, fires, pandemic and now floods. Our members have told us that:

- There has never been a higher risk of escalated family and domestic violence.
- There has never been a higher risk of new violence and sexual assault particularly directed at children.
- There has never been a higher risk of unemployment, poverty, homelessness, drug, and alcohol use.
- There has never been less ready access to essential services.
- There has never been a higher level of social and community dislocation⁵

Many of our members have been living and working in their communities through a series of disasters stretching back almost two years, since the commencement of an early bushfire season in 2019. In addition to often dealing their own trauma and loss, they have been working with vulnerable families and particularly with children who have been completely overwhelmed by months of drought, then fires and smoke, then often floods and now a pandemic. Highly vulnerable individuals and families in regional areas have been living with personal trauma, family dislocation, community disruption and economic devastation for nearly twelve months. Our members who work in the community and disability sectors, are supporting many of those highly vulnerable people.

These events have had an impact on all aspects of the economy to varying degrees. More than 10 million hectares burned during the nation's bushfire crisis, about half of that in NSW, Australia's biggest economy. Some of those same areas have been inundated in recent weeks by floods, and the worst-affected communities may never fully recover, especially in areas that have lost major sources of employment and income.⁶ The NSW Premier, Gladys Berejiklian has warned that despite early signs of economic recovery, the state is yet to feel the "severe" (sic) economic consequences of COVID-19, despite the biggest contraction in its economy in 20 years.⁷

Even before the pandemic, the national economy was weakening. However, given their scale, the impact of the bushfires, floods and COVID have seen a devastating impact on the state's economy, and most particularly on the economies of those regional areas directly affected by the ongoing drought, fires, and recent floods, exacerbated by the COVID-related slowdown in growth last year, accompanied by continuing weak wages

⁵ Australian Institute for Disaster Resilience, The hidden disaster: domestic violence in the aftermath of natural disaster [Online]: <https://knowledge.aidr.org.au/resources/ajem-apr-2013-the-hidden-disaster-domestic-violence-in-the-aftermath-of-natural-disaster/>

⁶ C&D Restructure and Taxation Advisory, Ongoing Economic and Socio-Economic Impacts of the Australian Bushfires [Online]: <https://cdrta.com.au/2020/02/05/the-wider-economic-and-socio-economic-impacts-of-the-australian-bushfires/>

⁷ ABC News, NSW economy suffers biggest fall in 20 years but coronavirus impact yet to be seen, Premier warns [Online]: <https://www.abc.net.au/news/2020-06-04/nsw-economy-suffers-but-coronavirus-effects-not-yet-seen/12317346>

growth and high underemployment.⁸ Many people have also lost their usual job or source of income during these disasters.

Industries in regional areas vulnerable to the effects of natural disasters, including farming, manufacturing, transport, tourism, and business generally in the affected areas has also been significantly disrupted, with recovery delayed or curtailed due to the pandemic. Because of the scale of these disasters, vast areas of regional Australia have lost their most lucrative trading seasons and been cut off for long periods, by road, telecommunications and power, first due to the fires, floods, and the impact of COVID on travel and tourism.

The community sector – an insecure workforce in an insecure world

Even before the disasters of the past two years, the workforce has been changing dramatically. In the five years to 2018, available industry employment data indicates that services industries made sustained significant contributions to employment growth in both regional and metropolitan areas, led by the health, community, and disability services sector (up by 306,200 or 22.2 percent).

The latest available industry employment data, released in March 2021 by the Federal Department of Employment indicates that over the five years to November 2025, the Health Care and Social Assistance sector is projected to make the largest contribution to employment growth over the period (increasing by 249,500).⁹ Among regional areas, employment growth over the five years to 2023 is projected to be strongest (in percentage terms) in NSW (74,600 or 5.9 percent).¹⁰ Longer term, the community and disability support services sector is expected to require another 85,000 workers in regions through to 2023.

With long lead times on professionals in these industries it is vital that action starts now to create the skills development pathways required to fill local skill shortages and take advantage of the potential engine of economic and jobs growth that can accrue to this expanding sector. These new areas of job growth require a policy focus on ensuring people are ready and equipped with the right skills, knowledge, and aspiration to successfully engage in and drive these growth areas in their local communities. This is particularly the case in regional communities, where the impact of natural disasters has been particularly severe and where the impact of government policies can have a very significant multiplier effect.

In its report, *The Future of Regional Jobs*, the Regional Australia Institute found that four of the top ten regions with the greatest projected increase in jobs are in NSW and in each of these, job numbers are expected to be driven mainly by the community and disability sectors. Newcastle and Lake Macquarie are projected to have the highest growth in regional Australia, expected to grow by 13,607 jobs by 2023, driven largely by around 6,584 community and disability support jobs, with Capital Region NSW and Illawarra close behind.¹¹

The community, not-for-profit and disability services sectors have been very much at the heart of the recent crisis response and recovery. Together with other emergency and front-line workers they continued to provide essential services in their communities throughout the fires, pandemic, and floods. As the fires ended and the current pandemic took hold, and now as we plan for recovery, those same workers are now playing a critical role in dealing with traumatised individuals, families and communities and a national vaccination program. However, the role of the community sector goes well beyond their role in disaster survival and healing. As the

⁸ The Guardian, Economic impact of Australia's bushfires set to exceed \$4.4bn cost of Black Saturday [Online]: <https://www.theguardian.com/australia-news/2020/jan/08/economic-impact-of-australias-bushfires-set-to-exceed-44bn-cost-of-black-saturday> and Australian Bureau of Statistics, Measuring natural disasters in the Australian economy [Online] <https://www.abs.gov.au/websitedbs/d3310114.nsf/home/abs+chief+economist+-+measuring+natural+disasters+in+the+australian+economy>

⁹ Australian Government, Labour Market Information Portal, 2020 Industry Employment Outlook [Online]: <https://lmp.gov.au/default.aspx?LMIP/GainInsights/EmploymentProjections>

¹⁰ *ibid*, pp 10-11

¹¹ *ibid* pp 28-30

fastest growing employment sector in the country, workers in the community and disability sectors are now also playing a role in the economic recovery and growth in otherwise devastated regional economies.

Yet as they work to support communities experiencing social and economic insecurity, people who work in the community and disability sectors are themselves among the most insecure workers in the country. The signal feature of the community and disability sector is the precarity of employment. Unique among other sectors of the economy, is that this feature of the community and disability sectors is a deliberate and indeed legislated policy of government.

Most not-for-profit organisations in the disability and community sector rely entirely or almost entirely upon government for their income. This income is paid in regular grant cycles and funds are expended entirely for the employment of staff and the delivery of programmes to the community which are deemed by government to be essential for the safety and wellbeing of individuals, families, and communities. Like other sectors, the community services and disability sectors are undergoing dramatic change.¹²

- It has the highest growth rate in the Australian workforce.
- Approximately 80% of the workforce is female.
- The workforce has doubled between 2015 and 2020 – particularly in the disability services sector.
- More than 60% of the disability support workforce is in part time or precarious employment, without entitlements.
- Around 40% of the community services workforce is in part time or precarious employment, without entitlements.
- A very high majority of the community and disability workforce is Award dependent.
- A very high majority of the workforce is employed in the not-for-profit sector and is entirely or almost entirely dependent upon government for its funding.
- While the immediate ‘employer’ for most of our members is most likely to be a not-for-profit organisation, the effective employer is whichever level of government funds the organisation.

Despite the successful ASU campaign for Equal Pay in 2012, and a high proportion of employees having tertiary qualifications, the largely feminised sector remains marked by Award-dependent, low incomes, with careers interrupted by caring responsibilities. This has meant that upon retirement, people who have worked an entire lifetime in the community and disability sectors are more likely to have no savings, no access to long service leave, very little superannuation, while also being less likely to own their own homes or have secure and affordable rental accommodation. It is noteworthy and not a coincidence that the fastest growing group of homeless people in Australia, notwithstanding COVID, is women over 55 years of age.¹³

Yet the not-for-profit (NFP) social and community sector, in which its workers are so under-valued, is indispensable for its economic contribution. It also has a growing public value in implementing government programs and delivering government services, and for its enormous role, extending far beyond the public funding that it receives, in creating a fairer and more civil society.

Most Not-For-Profits are small to medium sized organisations generally with less than 100 employees. They provide crucial and unique services, developed out of close interagency collaboration, long and deep connections to their communities and a wealth of experience in service delivery. By working collaboratively,

¹² Evidence to the Equal pay case 2012 (Australian Services Union); Department of Human Services, 2017-18 Budget papers; Australian Government Workplace Gender Equality Agency, September 2016; Workforce Issues in the NSW Community Services Sector, University of NSW (2017); Australian Institute of Health and Welfare Working paper: Information relating to the community services workforce Canberra; ABS Job Outlook: <https://joboutlook.gov.au/occupation?search=alpha&code=4231>

¹³ Not So Super, for women. Superannuation and women’s retirement outcomes. David Hetherington and Warwick Smith. Per Capita (2017) and (unpublished data) from HESTA Superannuation

Not-For-Profits can draw on community strengths and bring together government, private and philanthropic resources to solve what are often complex problems that are unable to be solved by one organisation, program, or intervention alone.

Despite a confounding failure to invest in the community sector workforce, the potential benefits of NFPs delivering human services is well recognised by governments. A survey of government agencies by the Productivity Commission¹⁴ found that the top four motivations for engaging NFPs in the delivery of human services were that NFPs:

- provide flexibility in service delivery.
- are better able to package the service with other services for the target client group.
- give value for money.
- are representative of the clients the program is targeting.

The not-for-profit (NFP) social and community services sector brings a history of knowledge, expertise and lessons learnt from the long-term commitment to an issue, client group or local community. They have their own history, values, and identity, and this is often tied to the local community, particularly in regional areas. NFP's have the capacity to not only be closely connected with their local community but to also understand the needs and be flexible in meeting those needs in a responsive and timely manner. Over the years many NFP community services have been responsive and adaptive to unrecognised needs resulting from market or government failure. This is because they often provide services which may be too politically sensitive for governments to directly offer. They also offer specific services and initiatives for those in our community that may face extensive vulnerabilities, for example, First Nations communities, which suffered extensively in the recent disasters.

Part 2: Precarious employment is the government's choice for essential workers in the community sector (grant funded organisations)

In a current survey of employers conducted by the ASU in the community services sector, the overwhelming concern expressed in relation to funding is competitive tendering. Funding for community services has three main sources:

- State funding
- Federal funding
- Federal-State Partnership Agreements

The largest component in all community sector funding grants is always labour costs. For most not-for-profit organisations, this is around 70% - 80% of the total value of the tender. Since the 1990's, funding at all levels of government has been based upon 'competitive tendering'. This has resulted in organisations competing against each other to win government funding. As organisations race to have the lowest cost in this tender race, inevitably, they have tried to cut everything they can out of the labour costs, because this is the costliest part of their tender.

Competitive tendering favours larger, established, and for-profit organisations that have more staff and resources to devote to tender writing. In fact, some larger organisations now employ full time tender writers and even smaller organisations often pay to employ professional tender writers when important tenders are

¹⁴ Productivity Commission, Report on Government Services [Online]: <https://www.pc.gov.au/research/ongoing/report-on-government-services>

due. This squeezes out smaller organizations and 'niche' organisations that respond to specific community needs. For example, a small child protection service in a remote First Nations community is likely to have very different needs and resources to a well-established faith-based child protection organisation in Melbourne's inner west. Neither is more or less important. Neither community is in need of less services and community development. However, both organisations are clearly very different in terms of resources and how they can deal with a competitive 'template' tender process upon which each will rely for essential funding. In addition to the obstacles created for smaller organisations, this approach to competitive tendering also tends to create a one-size-fits-all sector that does not address the needs of communities, especially people and communities that do not 'fit' the template nature of modern tenders.

Impact of the government's business model on essential works in the community

Federal and state governments argue that competitive tendering— encourage 'efficiency', and the 'best' will win tenders, leading to improvement in service quality by providing users with 'choice' about the services they access. The ugly reality is that competitive tendering has led to a downward pressure community sector funding, particularly on labour costs. There has been an increase in the 'on-demand' workforce, employed on insecure and fixed-term employment contracts. Competitive tendering has directly led to:

- A significant proportion of employees in the sector being engaged on a part-time, fixed term contract or casual basis.
- There is almost non-existent access to paid overtime.
- There is a high turnover of employees due to short grants and contracts.
- Short term funding grants and contracts result in very limited access to long service leave (except in states like the ACT, Victoria and Queensland which have implemented portable long service leave schemes for community sector workers)
- Low wages mean limited accumulation of superannuation benefits.
- There are very high levels of unpaid work.
- Little or no training, or employees undertaking unpaid training in the employees own time.
- Little or no professional (clinical) supervision
- Little or no non-work support (training leave, Paid Parental Leave, Family and Domestic Violence Leave, COVID leave etc.)
- Little or no end-of-employment support (redundancy, outplacement etc.)

In response to this deteriorating funding situation arising from competitive tendering, the ASU has proposed that all government tenders should be based upon a floor price below which no tender can be lodged. This would mean that rather than a 'race to the bottom' by community sector organisations, competing for vital funds by cutting back on essential workforce expenses, all tenders would be required to include funding provision for basic standards.

As we continue to struggle through a pandemic and global recession, this new floor price will act to provide organisations and their employees, who are themselves helping vulnerable people and communities to survive and rebuild, with job security, protection when they are ill, injured or their employment is ended. A floor price for government funding will encourage workers in the sector to develop a career and so support workforce development, sector stability and a better trained and qualified workforce. A floor price below which no organisation can tender will encourage organisations in the sector to collaborate and share resources, working together rather than against each other in an endless competitive spiral downwards. This approach is therefore also in the best interests of vulnerable clients and communities. We propose a model floor price, based upon six elements:

1. Wages for all workers, cannot be lower than Federal Award (SCHADS Award) rates including:
 - ERO increases.
 - correct classification stream and level
 - allowances
 - penalties and loadings

2. Provision will be made in the price for accrual of portable leave entitlements including:
 - Workers' compensation
 - Annual leave including 5 weeks' annual leave for shift workers.
 - Personal leave
 - Long service leave
 - Paid Parental Leave
 - Paid family and domestic violence leave

3. Adequate overhead costs for all workers, regardless of the nature of their employment, including:
 - Provisions for adequate supervision ratio depending on nature of service.
 - Professional (clinical) supervision
 - Provisions for onboarding of staff – induction, buddy shifts
 - Provisions for regular team meetings
 - Provisions for ongoing professional development and training – including covering the cost and time of attaining any qualification requirement of the program (e.g., Diploma qualification for therapeutic care workers in out-of-home care services).
 - Provisions for Workplace Health and Safety Representatives at a reasonable ratio to be trained and perform their work in accordance with legislation.

4. End of contract considerations for all workers, who do not receive a casual loading, including:
 - Redundancy and notice requirements in case of contract not renewed.
 - Outplacement services

5. Continuity of service provisions including:
 - Price should be modelled on maximising permanent employment (Fulltime and Part time) rather than casual or fixed term contracts or rolling contracts.

6. Providers required to comply with industrial law, including:
 - Requirement to consent to arbitration in contract.
 - Capacity for dispute to be raised with the relevant funding body if industrial entitlements are not followed.

It is with genuine alarm that we point to international literature on competitive tendering and the marketization of child protection services, homelessness services, mental health services and disability services in the UK, which include frightening examples of the destruction of services and neglect of the most vulnerable in our community under this regime. There are now increasing reports and examples of exploitation and diminishing wages and conditions for casual workers and so-called 'platform' or 'gig economy' workers.

These reports extend to the community services sector. Some examples have been reported by the current Royal Commissions into Aged Services and the Disability sector.¹⁵ There are also examples of specialist workers in these sectors being paid on zero-hour contracts and billable hours, based upon one-minute increments. We specifically address this issue later in this submission in relation to works in the disability sector. This international evidence provides a very clear warning about the marketization of social and community services, which is of course, competitive tendering taken to its logical and terrible conclusion.¹⁶

Case studies

Jo has worked in the community sector for 37 years across child protection, disability services and as a Local Area Coordinator for disability services. Jo says: portable entitlements would mean financial security to me. I worked in same program for five years with two employers because of [end of grant] re-tendering. I took no sick leave or annual leave with me and do not have any long service leave. When it comes to being able to take time off, if entitlements could roll over, it would alleviate burn out and exhaustion.

Tracey has worked in the community services sector for 36 years. She has never had access to long service leave in that time. Tracey says: Having portable entitlements like long service leave as community service workers would mean that we are valued for the contribution we make to the sector, like teachers or nurses make to their sectors.

RECOMMENDATIONS:

- 3. All tenders in the community services sector, regardless of the government funding source, should be underpinned by a minimum 'floor price'.**
- 4. Funding for all community services sector grants, regardless of the government funding source, should include funding specifically for portable accrued entitlements, including long service leave, annual leave, and end-of-employment entitlements for all employees, regardless of the nature of their engagement.**
- 5. Government procurement & grant policy should be used to promote secure work arrangements in community sector tendering processes.**
- 6. Sustainable funding cycles of at least 5-year service agreements should be introduced for all community sector procurement, regardless of the government funding source.**
- 7. Regardless of the government funding source, there should be agreed and planned indexation and full funding of the Equal Remuneration Order (ERO) across the entire community sector.**

Part 3: The National Disability Insurance Scheme – an important scheme that should not be reliant on wage theft and exploitation.

The National Disability Insurance Scheme (NDIS) is one of the most important social reforms in Australian history, delivering choice and control for people with disability and driving economic improvements by creating new business and employment opportunities. Even before the current pandemic, the NDIS is expected to be one of the largest job creation opportunities in Australian history, with up to an additional 90,000 full time equivalent employees (FTE) needed between 2016 and 2020¹⁷.

¹⁵ Centre for Future Work, Precarity and Job Instability on the Frontlines of NDIS Support Work [Online]: <https://agedcare.royalcommission.gov.au/system/files/2020-08/RCD.9999.0460.0008.pdf> and ABC News, Disability Royal Commission [Online] <https://www.abc.net.au/news/story-streams/disability-royal-commission/>

¹⁶ Social Enterprise UK [Online] http://www.socialenterprise.org.uk/uploads/files/2012/12/the_shadow_state_3_dec1.pdf

¹⁷ The scale of job creation is expected to exceed previous major national projects, including: National Broadband Network required 25,000 FTE 2017–2025; BER School Building Program 22,971 FTE 2009–10; Snowy Hydro Scheme 22,500 FTE 1950-70; China Free Trade Agreement 5,400 FTE 2014-2035.

Through this growth, the NDIS also provides a unique opportunity to build a diverse workforce, which reflects the needs of all NDIS participants. As a result of the reforms to how disability supports are delivered and the increased funding, the NDIS is expected to deliver large economic benefits. The Productivity Commission estimates the disability care workforce will need to approximately double from the 2015 level to meet the demand created by the NDIS.¹⁸ This means that one in five jobs created in Australia over the transition period will need to be disability care jobs.¹⁹ The rapid growth of the NDIS workforce has resulted in rising demand for workers with relevant skills and experience.

Precurity of employment in the disability sector

The NDIS commenced in 2013 following a public inquiry into providing a long-term disability care and support scheme. The inquiry, conducted by the Productivity Commission, found that individuals and families could not adequately prepare for the risk and financial impact of significant disability. It found that the existing system was underfunded, unfair, fragmented, and inefficient and gave people with disability little choice and no certainty of access to support.

The NDIS provides people with a disability the opportunity to directly engage and manage their own disability support services. Workers from a range of professions are drawn upon to provide disability care. These include disability support workers and nursing support, as well as allied health practitioners. As we have said, the need for disability support services is expected to grow as the NDIS is fully rolled out and works to meet the needs of participants and their families.

The system is overseen by the NDIS Quality and Safeguards Commission (NDIS QSC) and the National Disability Insurance Agency (NDIA). Support services are provided by registered NDIS service providers, as well as non-government organisations and other NDIS service providers operating as unregistered providers, mainstream businesses, and individuals.

Under this system, the government provides financial support via Funded Support Packages (FSPs), provided to individual NDIS participants based on their needs. People may directly choose, control, and purchase their support services (self-management), may have an intermediary to manage their budget and find support providers on their behalf (plan management), or have the NDIA pay the service provider directly, in accordance with the participant's NDIS plan (NDIA managed).

Specialist services must be delivered by 'registered' providers able to demonstrate that their workers have the requisite skills and capacities to meet NDIS standards for the services they deliver. Other services, such as meal preparation, dressing and washing, cleaning and home maintenance, may be provided by any person operating as an unregistered provider. For plans managed by the NDIA, only registered service providers can be used. Participants who are self-managing or who are using a registered plan management provider, can choose whether to use a registered provider or an unregistered provider.

Data obtained through the National Disability Services (NDS) – the peak body for disability services - confirm that the disability support workforce is extraordinarily concentrated in casual, part-time, and very insecure positions. Most recent data (NDS 2018) indicates that:

- Less than 10 percent of the disability support workforce are employed on a full-time and permanent basis.

¹⁸ Productivity Commission, *National Disability Insurance Scheme (NDIS) Costs, Study Report*, October 2017, p. 319.

¹⁹ Productivity Commission, *National Disability Insurance Scheme (NDIS) Costs, Study Report*, October 2017, p. 319.

- Many workers work irregular hours in multiple locations²⁰
- Many do not receive minimum legal compensation (including for time spent traveling between locations, and other essential job functions²¹)
- 81 percent of the workforce are in part-time positions.
- 42 percent of workers fill casual jobs.
- Staff turnover is extremely high: around 25 percent per year for the workforce, and over 35 percent per year among casual employees.
- The average number of hours that employees work in a week is low and falling to just over 20 hours per week.
- The workforce reflects a high concentration of women workers, and older workers: 70 percent are women, and 44 percent are 45 years or older.

Case studies

Claire is an experienced disability support worker, who works as a sole trader. She has been working with the NDIS for more than seven years, but has no long service leave, no annual leave or sick leave. Claire says: portable leave entitlements would mean that I could uphold my duty of care for my clients while continuing to support my family, especially during the pandemic. This would make a real difference to me and to so many other workers who are employed [in insecure work] in the NDIS.

Laura has been employed in the disability sector for more than twenty years. She is aged over 70 years. Laura said: I am still paying my mortgage on my very small home. I have no savings and almost no super or long service leave. I cannot see myself ever being able to retire because I just cannot afford it. I love my work. But I think I will be working until I drop. I have no alternative. I do not know what I would do if I got sick or injured.

The highly insecure nature of employment in the disability sector is widely regarded as a major factor supporting the current skills shortages across the sector, particularly in regional areas that are very difficult to fill. In regional areas more likely to have been impacted by recent fires, floods, severe economic downturn and shifting populations, skills shortages have been exacerbated by the closure of TAFE colleges and access to technology for online training has been problematic.

This has meant that despite having a locally skilled workforce, regional areas have been experiencing real difficulty in providing accessible training opportunities that would allow local workers to upskill to take advantage of new job opportunities in the growing disability services sector. Similarly, new workers and those re-entering the jobs market find difficulty accessing appropriate training that would allow them to apply for local jobs or move to another region to apply for jobs in growth areas such as the health, community, and disability services sector, where the most common reasons given for difficulties in filling vacancies was a lack of suitable or qualified candidates.²²

The precarious instability of work in the sector highlights the need for a systematic and comprehensive approach to training. It is impossible to imagine that the NDIS will be able to fulfil its potential in improving the lives of people with disabilities, based on a workforce that is so overwhelmingly employed in casual, part-time, high-turnover roles. Workers need an opportunity to accumulate skills, and that requires some basic assurances of

²⁰ NDS (2018) reports that only 35% of permanent employees (19% of the total workforce) are employed on a full-time basis, implying that just 7% of the workforce fills permanent full-time positions.

²¹ Macdonald F., Bentham E., and Malone J. (2018) Wage Theft, Underpayment and Unpaid Work in Marketised Social Care in Economic and Labour Relations Review 29 (1) pp 80-96

²² Ryan R and Stanford J A Portable Entitlement Training System for the Disability Support Services Sector. The Australia Institute Centre for Future Work 2018 pp 12 - 15

stability and predictability in future employment. The advancing age of the existing disability support workforce only reinforces the need for a comprehensive and ongoing training system for the industry, to replace the skills and experience of those older workers who will be retiring within the next few years.

By providing disability support workers, especially those working for multiple employers or moving to new positions, with a mechanism to accumulate recognised and portable qualifications, the training strategy proposed here could play an important role in stabilising and uplifting the whole sector's employment practices.²³ NDS data confirms that, in the face of increasing demand driven by the NDIS rollout, there is strong growth in employment in the sector of around 11 percent per year (NDS, 2018), making it clear that providing a portable training mechanism for new and existing disability support workers is also a reliable and sustainable way to attract and retain a skilled workforce in those regional areas where traditional employers such as the agricultural sector and tourism have been declining or devastated during recent disasters, while ensuring a sustainable source of income for the community and assisting those most vulnerable to recover.

All these factors reinforce the conclusion that this sector desperately needs a comprehensive training strategy to provide the workforce with all the skills necessary to fulfil the promise of the NDIS and to allow people entering the workforce for the first time, re-entering the workforce, or considering moving within or across regions to develop the skills necessary to take advantage of the exponential increase in jobs and economic growth that is occurring in regional areas.²⁴

The Union therefore strongly supports an approach that would place emphasis on investment for capacity-building; attracting people into the industry by supporting long term development of a skilled workforce through providing opportunities for training to allow workers to deliver high quality services that make a difference in the lives of people with disability, allow them to build a stable career in the sector and coincidentally assist their local community to grow their jobs market and regional economy.²⁵

The new Code of Conduct and NDIS practice standards set the expectations the way supports and services under the NDIS will be delivered. The Code and Practice standards require NDIS providers and support workers to have the skills necessary to deliver the supports that they are providing. Skills can be perceived as a key driver of regional prosperity and to address social and economic change. In such circumstances, regions often face significant skills challenges associated with the impact of natural disasters, an ageing workforce, displaced workers, youth unemployment, disadvantaged communities, and the need to cater for the demands from new and emerging industries.

To take maximum benefit from the potential economic and jobs growth available in regional areas from the roll out of the NDIS, regional and industrial planning should be carried out in conjunction with targeted skills programs. In this context, some form of partnership approach to skills development and implementation is necessary for successful outcomes.²⁶ This partnership strategy must ensure a systematic strategy for training, qualifications, and workforce development.²⁷

²³ Ryan R and Stanford J A Portable Entitlement Training System for the Disability Support Services Sector. The Australia Institute Centre for Future Work 2018 pp 13-14

²⁴ *ibid*

²⁵ Ryan R and Stanford J (2018) *op cit* pp 18-20

²⁶ The Future of Regional Jobs. Regional Australia Institute, April 2019 SIP.2018.2.1.2

²⁷ *ibid*

Case Studies

Terry is an experienced disability support worker in the Far West of NSW. He says: Training is essential. We need a partnership of some sort with TAFE so that we can have proper accredited training that is specialised to the disability sector. We cannot rely upon the providers for this sort of training, and it needs to be provided by TAFE rather than a private company. We need skills that we can take with us no matter where we work and only TAFE can do that and be relied upon to provide the training at the right standard. All employers would respect training that was provided by TAFE. No one really respects so-called training from private companies – you have no idea who they are, whether they will be there in six months' time and what standard they are teaching. No. It *must* be TAFE.

Margaret is a disability support worker in the Hunter Valley. She was an experienced nurse before becoming a disability support worker and has worked in the sector for many years. She is now employed by a large disability support provider and works as an internal trainer. Margaret speaks passionately about her work: 'There is a vicious cycle in this sector. People want to make a career as a disability worker. They know that they need to be trained to do the sort of specialised work that is needed. They want to do that training. But they cannot do it because they are employed only on a casual basis with short contracts and so must work for several organisations just to make ends meet. This means that they cannot refuse a shift because they cannot risk losing that job. If they cannot get time off, they cannot do training. If they do not do training, they cannot get more shifts – because they do not have the specialised training needed for the work. How do they win? I know one young man who is a father of three young children. He is never at home. He is too scared to knock back a shift because he needs the work to pay the rent and feed his kids. How can he plan to do training, or do anything with his kids or even take a day off when he or the kids are sick? This is no way to attract people to this sector. He might just give up and look for work elsewhere – why would he stay in this sector if he has no security, no prospects and is missing out on seeing his kids grow up? That would be a real pity because he is a great disability support worker.'

A Portable Training Entitlement for all workers can change the disability sector.

To maximise the potential of the NDIS as an engine of jobs and economic growth, the system desperately needs a strong and immediate strategy for ongoing investment in workforce development and training. Workers need an opportunity to accumulate skills. The advancing age of the existing disability support workforce only reinforces the need for a comprehensive and ongoing training system for the industry, to replace the skills and experience of those older workers who will be retiring within the next few years. The ASU commissioned the Centre for Future Work at the Australia Institute to develop a NDIS workforce plan that is effective and innovative in responding to this problem.

A summary of the Portable Training Entitlement is outlined below. Underpinning this proposal is a necessary commitment by government to an investment in the workers who deliver the NDIS, which would allow them to become skilled professionals, with a secure career path as necessary prerequisites for job and economic security for themselves, their families, and their communities. This economic security is also the best means by which to ensure a sustainable disability workforce and a sustainable disability sector, which are fundamental to the success of the roll out of the NDIS and delivery of high-quality choice-and-control services for people with disability.

A Portable Training Entitlement for the disability sector²⁸

1. All recognised foundation training for the industry should be based on qualifications registered through the Australian Qualifications Framework.
2. All training should be conducted by public or selected non-profit RTOs, and quality audits undertaken by ASQA to ensure that RTOs have the training infrastructure to deliver educational outcomes that are of the highest possible level of quality. Incremental funding should be prioritised towards TAFES as the highest-quality publicly funded RTOs.
3. Vocational pathways available to workers should be extended through the development of qualifications at Diploma and Advanced Diploma level on the Australian Qualifications Framework.
4. That the content of the new compulsory induction be reviewed (in consultation with all stakeholder organisations, including representatives of people with disabilities) to ensure that it includes a workplace component, and information about the requirements on workers under the proposed new Code of Conduct. Assessment standards should also be introduced to ensure that the learning objectives are achieved by all students completing the induction.
5. That it should be compulsory for employers to support workers to successfully complete the induction programme within 6 months of being newly employed.
6. That an accreditation and registration regime be introduced to support improvements in quality standards in the disability sector. Registration should be based on the achievement of a minimum foundation qualification at Certificate III level; with the proviso that newly employed workers enrolled in a Certificate III could apply for provisional registration for up to 18 months.
7. That an independent Capacity Building Fund be established under the NDIA, jointly endowed by the Commonwealth and State governments, separate from the funding mechanisms associated with the NDIS unit pricing system.
8. The Capacity Building Fund would cover the full costs of compulsory induction and foundation training for newly hired disability support workers (and the cost of completing RPL procedures for existing workers), as a means of quickly boosting the number of skilled workers in the industry.
9. The Capacity Building Fund would also cover the costs of a portable training entitlement system, under which disability support workers accumulate credits for paid training hours and then utilise those credits to enrol in qualifying courses.
10. The Capacity Building Fund would also fund organisation-level investments in training capacity, by both public and qualifying non-profit RTOs, and by disability service providers.
11. That parties to the SCHADS award consider how to develop and implement an extended structure of classifications and pay that will reflect the accumulating advanced vocational qualifications attained by disability support workers under the proposed portable training entitlement.
12. That the SCHADS award explicitly recognise the right of disability support workers to utilise their paid training entitlements in working hours, on course and vocational streams of their choice.
13. That the Quality and Safeguards Commission include an independently constituted Disability Services Training Administration (DSTA), with responsibility for tracking the portable training entitlement for workers across the disability support sector, and regulatory oversight of curriculum, training, and quality assurance (in collaboration with relevant VET authorities).

²⁸Ryan R and Stanford J A Portable Entitlement Training System for the Disability Support Services Sector. The Australia Institute Centre for Future Work 2018

Portable Training in the NDIS - A Win for Everyone

Key features of the proposed Portable Training Entitlement that we have outlined:

- Provides access to training to all workers – no matter how they work – over their career.
- Provide a more responsive system to NDIS participants so that their goals and aspirations can be met.
- Harness the jobs and economic growth of the disability sector, particularly in regional areas.
- Enable greater security of employment for workers in the growing disability sector by supporting development of meaningful career paths.
- Address critical skills shortages and job vacancies, particularly in regional areas, by attracting new workers, particularly from declining industry sectors, supported with induction and ongoing development.
- Support the development of accredited professional skills and greater specialisation in the disability sector, enabling the NDIS rollout to be genuinely responsive to the needs and aspirations of NDIS recipients and their families.
- Would encourage local workers and their families to remain in their local communities, especially young people and families who might otherwise be forced to move to capital cities in search of training and employment.
- Would retain innovative local services in regional areas, delivered by local people who understand and are committed to provision of best practice standards of service delivery to vulnerable individuals, families, and communities.
- Would facilitate recruitment and retention, by providing a nationally consistent, portable entitlement while reducing the onus on employers to train and assess potential employees.
- Would build a more mobile, skilled workforce, assisting to address skills shortages and unfilled vacancies from outside the sector.

Precarious employment and the 'gig' economy in the disability sector

Work in all sectors of the economy has been transformed in recent years by the growth of insecure or 'precarious' employment. (Standing, 2011; Lambert and Herod, 2016). Precarious work comes in many forms, including temporary or casual jobs, greater reliance on nominally independent contractors and other forms of self-employment, and the use of digital or on-line 'platforms' to recruit and deploy labour. The very rapid rate of growth across the disability sector, has been accompanied by a concomitant growth in all forms of precarious employment.

In fact, it is a defining feature of the disability sector that workers are employed most often in some form of precarious employment. This growth of precarious work poses fundamental challenges to the traditional model of employment – and to traditional methods for regulating work and ensuring minimum standards for the rapidly growing disability workforce. Traditional labour regulations which have been developed over time and are most familiar to workers in other sectors of the economy often exclude temporary or independent workers. While employment across the disability sector is marked by the highly insecure nature of employment, as we alerted earlier, there has been a recently alarming increase in the number of workers employed as so-called 'platform workers' in the disability sector.

The disability sector is unique in that its foundational purpose and legislative base specifically relies upon a just-in-time workforce as the means to deliver so-called 'client choice-and-control'. It is certainly harder to effectively enforce those traditional labour standards in a sector in which there is heavy reliance upon workers employed in non-traditional employment relationships.

These non-traditional employment relationships are themselves often underpinned by technology and a digital business model. However, it is not necessary for the laudable commitment of the NDIS to choice-and-control by participants to be founded upon insecure employment of workers who deliver those services. This is clearly not a decision or choice by NDIS participants. It is just as clearly a choice and decision by government.

Further, it is our experience that evading traditional regulations and avoiding employment responsibilities have motivated the growth of precarious employment relationships across the economy and certainly in the disability sector, rather than being an unintended consequence. The precarious employment relationships that exist in the disability sector are a legislated feature of the industry by way of the NDIS Act. It is therefore the responsibility of legislators to do what is necessary to protect those workers who are employed in the sector, upon whom governments rely to deliver this important social reform.

The emergence of 'care services platforms' in the disability sector

Findings from the recent Victorian Government Inquiry on the Gig Economy found that 'platform work' is more prevalent than previously thought and is growing, particularly in the disability sector. Independent contracting arrangements are very common and there has been a steady increase in ABN registrations. The Report describes the major characteristics of modern precarious work:²⁹

- Work is performed on an on-demand or as-needed basis. Workers only work when their services are immediately required, and there is no guarantee of ongoing engagement.
- Work is compensated on a 'piece-work' basis.
- Workers are often required to supply their own equipment, including phone, car etc.
- The entity organising work is often distinct from the end-user or final consumer of the output, implying a triangular relationship between the producer, the end-user, and the intermediary (such as a labour hire agency or a digital platform).
- Some form of digital intermediation is often utilised to commission the work, supervise it, deliver it to the final customer, and facilitate payment. (Stanford, 2017).

Several factors have facilitated the expansion of precarious forms of employment, including independent contracting, self-employment, casual or temporary jobs, and digital platform work in the disability sector in recent years. Technology such as smart phones and computers have played a role by allowing employers to tap pools of labour, assign them to tasks, and supervise and compensate them more easily. Broader economic conditions have also been important. In particular, the ongoing existence of a large pool of underutilised labour.

As the Australian economy is changing away from agriculture, manufacturing and other 'traditional' forms of employment, people losing their jobs, are seeking alternate employment in the services industry, particularly in the disability sector. The rapidly changing nature of the workforce and a large, insecure pool of people seeking employment have played a significant role in facilitating insecure staffing strategies on the part of employers. If they were not so confident that labour resources could be quickly and effectively recruited when needed, employers would feel more pressure to offer more secure and permanent jobs.

Importantly for our submission, another key factor facilitating precarious work has been the generally passive, inconsistent application of labour regulations and minimum standards. Regulators have been slow to recognise the risks posed to the quality of work by the expansion of precarious work and the evasion of traditional labour regulations; they have failed to adapt regulatory models to encompass workers in these growing categories of insecure, nominally 'independent' work.

²⁹ Victorian Government, Inquiry into the Labour Hire Industry and Insecure Work [Online] <https://engage.vic.gov.au/inquiry-labour-hire-industry-and-insecure-work>

Specialised platforms have emerged to enable NDIS participants to directly engage providers for a range of services, from domestic support to more specialised services. The Victorian Inquiry heard that support services can also be accessed via platforms such as Airtasker. NDIS participants can use on-demand platforms to negotiate the type, quantity, and scheduling of support services, while the online platforms undertake administrative and payroll services. These are responsibilities that would normally fall upon the participant when engaging support workers directly.

To understand the difference between models of employment relationship, enabling a comparison between platforms deploying similar services via employment-based and non-employee models, we will consider two prominent specialised platforms that operate in the disability sector, Hireup and Mable. Both companies engaged with the recent 2020 Victorian Inquiry.³⁰

Hireup is a registered provider and may offer all services to all NDIS participants. Mable is not a registered provider, so it offers services to self and plan managed NDIS participants and those with home care packages. Hireup began delivering disability support services in 2015. Hireup employs its workforce on a casual basis under the Social Community, Home Care and Disability Services (SCHADS) Award 2010.

Mable began matching workers to NDIS package recipients in 2014. Workers register with Mable as independent contractors and are engaged via the platform by the client. Hireup's onboarding process involves providing two referees; checking qualifications; police, working with children and vulnerable persons checks; and a review of an online application form detailing a worker's experience. Hireup suggested to the Victorian Inquiry that there is an assumption of risk in its use of employment arrangements, that is valued by workers. Mable does not undertake an onboarding process however it safeguards clients by undertaking police checks and reviewing qualifications prior to approving publication of worker profiles on its website.³¹

Mable and Hireup operate similarly to the extent that workers use their websites to post their profile containing experience, qualifications, and other relevant personal information. NDIS participants consider the information to help them select workers to provide services. Platforms offer clients an opportunity to view the work history and personal attributes of prospective support workers. The availability of user profiles enables clients to choose workers based on a range of skills and attributes as well as qualifications. On the Mable platform, clients rate worker performance. These ratings are attached to the worker's profile. Mable says that ratings provide the best quality assurance. Hireup does not use ratings. Hireup and Mable both emphasised to the Victorian Inquiry the importance of relationships between clients and workers on their platforms. The average relationship on the Hireup platform lasts nine months or 52 bookings.³²

Health and safety issues for 'platform workers' workers in the highly precarious disability sector

Health, safety, and workers' compensation arrangements for platform workers depend in part on the status of the worker. In the instance of a workplace accident or injury, Hireup employees have access to state-based workers' compensation schemes. The platform fee paid by Mable workers includes an amount for insurance provided on their behalf, including professional indemnity, public liability, and 'good' personal accident cover.

In the Victorian Inquiry there was concern and confusion about who was responsible for the health and safety of nonemployee caring platform workers, especially given they may be entering and working in care recipients' homes. The Inquiry asked the NDIS QSC about health and safety and was informed that the health and safety of

³⁰ibid.

³¹ Victorian Government, Inquiry into the Labour Hire Industry and Insecure Work [Online] <https://engage.vic.gov.au/inquiry-labour-hire-industry-and-insecure-work>

³² ibid

on-demand care workers rested with those responsible for administering health and safety laws. For non-employee workers, this means they must take responsibility for their own health and safety; including when they are entering and working in domestic settings. It suggests they may be in a precarious and unsupported situation if something goes wrong. It was not clear to the Victorian Inquiry that this policy issue has been properly considered.³³

The Victorian Inquiry also sought information about the training, health, and safety of workers; particularly platform workers from the NDIA. The NDIA confirmed that when participants engage a provider, be they a sole trader or organisation, it is the provider's responsibility to comply with health and safety laws. However, it indicated it was seeking advice about the responsibilities of participants when they choose to employ a worker to provide supports. The Inquiry requested further detail, including about action taken to provide information about work health and safety responsibilities to workers they engage directly, as employees or otherwise. At the time of writing, the NDIA had not responded.³⁴

Pay and conditions for 'platform workers' in the highly precarious disability sector.

As we have said previously, the labour market has evolved in the disability sector, in response to changes in funding arrangements and the opportunity and expectation of NDIS participants, strongly supported by the ASU, to exercise greater choice and control over their own lives. In so doing, however, concerns have arisen about workers' pay and conditions, their health and safety, training, and professional development.

Hireup told the Victorian Inquiry that it pays award wages, matching the support requested to an Award level. However, Hireup casual workers have told the ASU that they believe they are not paid properly and are classified as home care workers in the Award rather than disability support workers. This is a difference of several dollars per hour, and effectively excludes them from the benefits of the Equal Remuneration Order that the Fair Work Commission applied to the disability sector and which is funded by the NDIA in its pricing assumptions. The ASU takes this matter very seriously and is currently investigating these concerns raised by members.

Mable advised the Victorian Inquiry that it has coded a safety net hourly rate into its platform. Workers using the Mable platform negotiate both scheduling and remuneration.³⁵ However a review of Mable's own website makes it clear that its sample rates that it encourages contractors to charge are dramatically below the accepted industry minimum wage for disability support workers under the SCHADS Award.

All workers in this sector – no matter how they are employed, deployed, or engaged – should be entitled to the same basic safety net of SCHADS Award conditions as all other disability support workers. This includes wages at a rate no lower than Level 2 disability support worker rates in the SCHADS Award (SACS stream) and associated allowances, penalty rates and other work-related expenses. This would set a minimum industrial safety net and standard for all workers in the sector and give NDIS participants the assurance that they were paying their support workers properly and not inadvertently engaging in wage theft. It would level the playing field so that all providers can compete on quality – not exploitation of people – when providing services to participants.

In addition to this, the disability sector is an obvious priority industry for the development of portable entitlement schemes. Not just for training, but for annual leave, sick leave, long service leave. Despite the precarious nature of work, and the combination of permanent, casual, contractor and sole trader employment models, all NDIS support work is funded via Government which has the levers to create portable entitlement system and regulate that all providers – whether 'employers' or 'matching platforms' contribute into this system.

³³ *ibid*

³⁴ Victorian Government, Inquiry into the Labour Hire Industry and Insecure Work [Online] <https://engage.vic.gov.au/inquiry-labour-hire-industry-and-insecure-work>

³⁵ *ibid*

A minimum safety net, together with access to portable entitlements, would help deliver the true promise of the NDIS to people with disability – a secure workforce of skilled professionals who are able to respond effectively to the needs of the people they support without having to worry about living in poverty or being exploited themselves.

Case studies

While there is no doubt that for some, being a ‘platform worker’ is convenient and satisfying, for others it is a matter of no-other-choice and a constant source of anxiety. At a recent meeting of workers who are reliant upon platform employment, there was a series of issues raised including these:

- A worker employed through Mable complained about company communication arrangements. It can take a several hours to reach Mable, and staff taking calls appear to have no training or experience in answering most enquiries. The worker was promised a follow-up call about their concerns multiple times from Mable head office, without any follow up. The same person often must wait over 4 weeks to receive payments for services performed using Mable and told the ASU they were *‘lucky to be able to live on savings, however other workers have had to pay a fee to Mable to access “express pay”*
- A worker employed through HireUp said there was almost no support provided during the pandemic to explain COVID-19 requirements and PPE. The onus was on individual workers to find out about the necessary PPE to work. That person told the ASU they were very uncomfortable about this, as they work with high-risk individuals and were not sure where to access information to ensure they were appropriately protecting themselves and their clients. The ASU found that the same worker is being paid the incorrect rate for their work, being paid as a ‘home care’ worker, despite clearly being a disability support worker and required to have a much higher level of specialised disability support worker skills.
- A person working as a sole trader within a small NDIS Platform Provider had their rate of pay cut by \$5/hr by the company because they dictate the maximum rate that can be charged by a worker but ‘administrative costs were higher than anticipated and therefore [the company] needs to take a larger cut of the rate paid by NDIS Participants’.
- Workers told the ASU that they are regularly in situations where they are booked ‘at the last minute’ to support individuals when another worker is sick or unavailable and had to complete work for which they were not adequately trained. That worker told the ASU: ‘I didn’t like that I didn’t get a briefing and sometime would work with clients I didn’t know and wasn’t adequately trained for.’ Another worker had to manually lift a client and assist him with showering and dressing, despite the worker having no experience or training in performing those tasks. When the work resulted in a back injury, that worker also became highly anxious about continuing to work in the sector.
- Several workers explained that they have been in situations where providers or parents of individual NDIS clients have asked platform workers to complete work that is unsafe and/or not covered by NDIS funding, including performing tasks for other family members. One worker told the ASU that they had to stop working with participants in the past because of the requests of unsafe work, and the lack of support or information they were able to access from the platform provider through which they had been employed.

Recommendations for systemic change in the highly precarious disability sector

We have argued consistently that the insecure and precarious nature of work in the disability sector is not the choice of workers or NDIS participants. Nor are these very flawed employment relationships a matter of coincidence, an unavoidable outcome of technology, choice-and-control by participants, the COVID pandemic or myriad other natural disasters. Insecure work in the disability sector is not a force of nature. It is entirely a matter of choice-and-control by governments who do not amend the NDIS legislation which regulates the NDIS. While ever the NDIS relies upon a business model that supports exploitation of the workers that deliver NDIS services, there can be no fairness for those workers. Our recommendations set out changes that together, would

enhance certainty, choice, and fairness for workers, as well as securing the future of the sector and therefore make the NDIS the best that it can be for NDIS participants. The NDIS must be amended to enable the following

RECOMMENDATIONS:

8. The NDIS Act should be amended so that all workers within the NDIS, regardless of the nature of engagement, are deemed to be covered by the SCHADS Award. This would provide a basic safety net for all gig and platform workers in the NDIS and should ensure that they are paid at minimum Level 2 of the SACS stream of the Award (as determined by the Fair Work Commission in the Equal Pay Case of 2012 as the entry level classification for disability support work).
9. All workers within the NDIS should have access to a Portable Training Entitlement, as set out in this submission and in the proposal by the Australia Institute's Centre for Future Work.
10. The NDIS should be used as a pilot industry for the development of broader portable entitlement schemes so that all workers have access to portable leave entitlements, specifically long service leave, paid family and domestic violence leave and paid pandemic leave. This should be done via cooperation between states and the Commonwealth and could be funded from regular NDIS pricing arrangements.
11. WHS Regulators must be funded appropriately to allow access to workers and enforcement of workplace health and safety legislation for all workers within the NDIS, regardless of the nature of their employment.
12. The NDIS QSC, the Fair Work Commission and Fair Work Ombudsman must be adequately resourced to enable proper access to workers and enforcement of relevant industrial legislation and instruments, for all workers within the NDIS, regardless of the nature of their employment.

5. Local Government

Local government workers form an essential part of community support and deliver a wide range of essential services. The Australian Services Union is the largest local government union in Australia.

The Covid-19 pandemic has highlighted the increased casualisation of what has historically been a secure public sector workforce. Prior to the pandemic in Victoria there were just over 10,000 casuals employed across all 79 councils, 20% of the overall workforce. In Australia approximately 16% of all local government employees are casual.³⁶

In Victoria close to 7,000 of these casuals have now lost their jobs, with only 3,000 remaining. We question how many of those casuals are incorrectly classified and should have been given permanent status, with the security that entails.

The ASU calls for the preparation of an audit of the current use of fixed-term and casual employment in Local Government, with a view to understanding the drivers of the use of fixed-term and casual employment and the impact on secure jobs. Following the audit, the development of a strategy in consultation with workers and councils to maximise the use of ongoing and secure employment, including by consideration of a process for employee conversion to ongoing employment.

Labour Hire Arrangements

The Local Government Workforce and Future Skills Report found that 62.4% of local governments use labour hire arrangements.³⁷

Local government provides a disparate range of services. Because of the breadth of service expected from Council, many maintain sizeable workforces reflective of the service levels expected by the population in their respective municipal districts.

³⁶ Australian Local Government Association, Local Government Workforce and Future Skills Report Australia [online] Accessed at: https://cdn.alga.asn.au/wp-content/uploads/Skills-Plan_ALGA.pdf

³⁷ Australian Local Government Association, Local Government Workforce and Future Skills Report Australia [online] Accessed at: https://cdn.alga.asn.au/wp-content/uploads/Skills-Plan_ALGA.pdf

However not all councils provide services direct to their communities – rather some choose to contract out services to providers, frequently at a cheaper cost due to the lower wages paid to workers at those contactors.

It is this practice of contracting out local government services that is the principal – though by no means only – cause of precarious employment within the local government sector in general.

Precarious employment is inherent in contracting arrangements – after contracts expire, they must be re-tendered and the possibility exists for a new contractor to win the work from the previous contractor, leaving the workforce in limbo. Also, a race to the bottom occurs over time as each contract expires. That is because potential contractors usually lower their bid so as to win the contract. This reduces the profit margin which in turn usually means less paid, less secure jobs.

Employment practices at local government contractors are a further source of precarious employment.

Pay and conditions are of less value than those prevalent among workers employed direct by Councils. Rates of casualization are greater at a contractor than those commonly seen at a Council. Leave entitlements are also fewer. So too are career opportunities. So for workers employed at contractors undertaking services on behalf of local government, inferior pay, conditions and greatly eroded job security coupled with less career opportunities are the norm when compared to the possibilities open to workers employed directly by a Council.

Local government contractors, like Councils themselves, are users of labour hire agencies. While there may be instances where the legitimate use of labour hire is necessary (such as backfilling positions during a period of staff absences), the ASU has seen examples where labour hire employees have been exploited and used in a way intended to supplant the permanent workforce. Not only is this practice an instance of misuse of labour hire employees, but is another iteration of precarious employment.

It is not unknown for local government labour hire workers to be undertaking work for extended periods of time – sometimes for years – without being given the opportunity to move formally into permanent employment at the host employer. This situation has obvious consequences for the employee concerned: they lack any employment security leading to knock-on effects, such as income insecurity and subsequent reduction in living standards.

Yet a further factor at play is the angst caused among the permanent workforce by the use of long-term labour hire employees. Permanent staff are concerned that their position may ‘be next’ for conversion into a role fulfilled by a labour hire worker. In turn this breeds suspicion between the permanent staff and labour hire workers on site. Unnecessary tension and reduced staff morale are the by-products of this outcome.

RECOMMENDATION:

13. Councils who utilise labour hire workers for a job that extends past a period of 12 months to offer that worker the opportunity to convert to a permanent position.

6. Call Centre Sector

For over three decades the ASU has campaigned for the workplace rights and safety of workers in the call centre sector. The call centre sector is a significant user of casual labour, labour hire, temporary contracts and independent contractors. In our view, so called “independent contractor” arrangements in call centres are sham contracting arrangements dressed up as flexibility.

It is not uncommon for a contract call centre to employ 40% or more of its workforce on labour hire or other temporary or casual employment arrangements. More often than not labour hire workers are not covered by the industrial instruments in place at the host employer. This practice effectively creates two classes of workers within the same company.

For casual workers, contracts can be terminated with minimal notice when the contract call centre loses a particular commercial contract, or if part or all of the work is off-shored.

Case Study – Centrelink Melbourne

In 2020, around 420 Victorian Centrelink call centre staff were informed their employment would end. Despite many of these 420 workers having been employed with Centrelink for more than two years, with many working regular full-time hours, they were not entitled to any separation payments or redundancies because they were employed on a casual basis through Serco, a British public service provider that holds many Victorian government contracts.

This demonstrates how insecure workers often bear the responsibility of the employment contract if business circumstances deteriorate.

Over the years the ASU has surveyed its members about their experience with labour hire and/or other insecure forms of work.

Overwhelmingly the feedback we received from ASU members highlighted:

- ASU members experience with labour hire and/or insecure work was, in the vast majority of responses, negative;
- In the experience of ASU members, the use of labour hire was to replace permanent work;
- The majority exposed to labour hire work did not have access to paid leave, shift penalties or overtime pay;
- Respondents strongly supported a licensing regime for labour hire companies and a requirement to comply with minimum employment standards.

When asked to suggest what remedies the Federal government should consider the most common and consistent response was:

- Converting labour hire or temporary workers to a permanent position after a period of time - most common response 12 months.

Other responses and suggestions received included:

- Labour hire workers should be paid the same as direct employees of the host employer;
- The use of short term contracts should not be used by employers to avoid committing to an ongoing permanent role;
- The ATO should keep records of those labour hire operators who have a history of phoenix activity or sham contracting;
- Compliance with minimum employment standards;
- Cap the number of labour hire workers in a particular workplace;
- Protections for casual and temporary workers in the NES;
- Tax incentives for those companies that provide secure jobs.

One of the barriers to effectively stopping instances of sham contracting is the factors used to determine the difference between an employee and an independent contractor are not always clear cut. Even if the common indicators point to a person being an employee the cost of legal action can be beyond the reach of many vulnerable workers.

RECOMMENDATIONS:

- 14. The national adoption of a sector-specific labour hire licensing scheme for labour hire agencies.**
- 15. A strengthening of the laws prohibiting sham contracting are required at the federal level, as well as ensuring that remedies to sham contracting are affordable and accessible to workers and their unions.**

7. Energy Industry (Case Study)

The ASU is the biggest union in the electricity industry. We have members in generation, transmission, distribution and retail and we cover a plethora of classifications in the industry including managerial, supervisory, technical and administrative employees. Due to the efforts of the ASU and other power unions, the industry largely has well paid jobs and very good working conditions with low levels of casualisation.

However, there are casuals in the industry who have insecure type work. One of the most egregious examples is the terrible fate of the meter readers in Western Victoria who as a result of privatisation and contracting out went from having permanent employment with all the normal decent working conditions at the State Electricity Commission Victoria (SECV) to becoming casual employees with no leave benefits and paid on a piece rate basis.

When the Kennett Government privatised the SECV in the mid-1990s it created a distribution company called Powercor which covered the whole of Western Victoria. In the late 1990s Powercor decided to outsource some 80 meter readers to a private contractor. After being employed by a couple of contractors the meter readers ended up being employed by a private contractor called Automated Meter Reading Services (AMRS). At this company the meter readers went from having permanent employment with leave benefits at the SECV/Powercor to being employed as casuals with no leave benefits and paid by the meter read. The result was their wages collapsed, they lost their sick leave and annual leave entitlements and now as casuals could be dismissed with an hour's notice.

The ASU took the matter of the meter readers, who were our members, to the Fair Work Commission and argued that transmission of business applied when Powercor outsourced the meter reads and thus the benefits of the Powercor Enterprise Agreement should apply affording the meter readers permanent employment, payment on an hourly rate plus penalties and leave entitlements. In the first FWC hearing the ASU won this case but it was overturned on appeal by the FWC Full Bench.³⁸ The ASU then took the case on behalf of a member to the Federal Court of Australia³⁹ and it agreed with the FWC Full Bench that there was no transmission of business from Powercor to AMRS and thus the meter readers unfortunately remained employed on a casual basis paid on the number of meters read.

This unsuccessful decade long struggle by the union and its members to regain permanent employment left the meter readers disillusioned, financially disadvantaged and with the indignity of very insecure work with very insecure pay as a result of the piece-rate payment system. Australian workers should not be treated in this callous manner.

8. In Summary

ASU members want quality secure jobs, with protections, fair pay and conditions so they can maintain the high-quality service they provide to our communities.

The ASU has consistently advocated for full-time ongoing employment for our members, but also recognises that in some circumstances, part-time work will genuinely meet the needs of the employer and employee. The ASU also recognises that there may be, in prescribed, limited circumstances, occasion for the use of casual labour.

However, it has all too often been the experience of the ASU that insecure employment has become the primary employment contract within an enterprise or an industry when the circumstances do not require it.

As we have seen in some of our key industries, including aviation, social and community services, local government and energy there are egregious instances of casual labour and insecure work. The ASU has made various recommendations in this submission on how to ameliorate this situation and asks the Senate to carefully consider them.

³⁸ Australian Municipal Administrative, Clerical and Services Union and AMRS (C 2002/1339) PR922053, 3 September 2002.

³⁹ Urquhart vs AMRS (Aust) Pty Ltd (2008) FCA 1447 (23 September 2008).

Australia as a land of secure jobs is becoming a distant memory. There is a whole generation of workers who have had to rely on casual and short-term work just to make ends meet, some of these workers having to work multiple jobs in order to sustain themselves. The ASU along with the great majority of Australians wants secure and well-paid jobs to be the norm again and not be the preserve of a decreasing number of Australian workers. We thank the Senate for looking at this very important issue of job security and rely on the Senators to address the critical issues we raise.