

National Disability Services

Submission on the Fair Conduct and Accountability Standards for the Victorian On-Demand Workforce

February 2022

Introduction

National Disability Services (NDS) welcomes the opportunity to provide a submission on the proposed Fair Conduct and Accountability Standards for the Victorian On-Demand Workforce. Since the formation of the National Disability Insurance Scheme (NDIS), a number of on-demand platform-based disability support providers have entered the sector. An increasing number of NDIS participants are now utilising websites and mobile apps which allow them to connect with available support workers in their area.

NDS recognises the need for the rapid expansion of the disability workforce, and supports innovative and new approaches to providing support for, and increasing the choice and control of people with disability. On-demand work is an emerging area within the disability sector that offers participants an unprecedented level of choice on how and by whom they wish to be supported. It also offers the possibility to attract and retain more workers to the sector, which is currently facing significant workforce shortages.

While recognising these significant benefits, NDS holds some concerns over the arrangements between platforms and workers, particularly around worker health and safety and protections against risk for workers contracted by such platforms. Very importantly, NDS also holds concerns about whether gig-economy platforms in the disability and broader care sector can appropriately maintain quality and safeguarding for service users, noting that the service user's engagement with the contractor/worker within an on-demand disability service context differs significantly from the one-off and short-term engagement that occurs when a user engages with a delivery person or transport driver.

NDS welcomes the development of the draft Fair Conduct and Accountability Standards for the Victorian On-Demand Workforce. It does note, however, that the provision of disability supports within the on-demand, 'gig-style' format brings about some risks to quality and safety for NDIS participants that should be considered. NDS encourages the Victorian Government to advocate to the Commonwealth for improvements to quality and safeguarding regulations where the on-demand format poses particular risks to people with disabilities.

Quality and Safety in on-demand disability supports

Disability support services differ significantly from the common services delivered by workers using on-demand platforms, such as transport trips and food delivery. Disability work is generally not intended to be a one-time, short engagement between a worker and a service user. Alternatively, disability workers are paid by the hour for their labour rather than specific tasks (like delivering a pizza). Generally, this

work involves building a rapport with the service user, maintaining relationships of support, providing personal care, and promoting personal growth for the service user.

NDS is concerned that the growth in the on-demand disability support workforce poses some risks to the safety and well-being of NDIS participants and others living with disability as a result of the high number of unregistered NDIS providers/sole traders operating on such platforms. While there is an extensive quality and safeguarding framework that applies to workers in NDIS registered disability service organisations, there are currently limited checks and balances on the actions of unregistered independent contractors such as those operating within the on-demand platform space. Currently, sole traders are able to provide NDIS funded supports through an on-demand platform without any formal qualifications or safety checks. This leaves service users particularly vulnerable to abuse, neglect, violence and exploitation.

We encourage the Victorian Government to join NDS in advocating for mandatory safety screening of all workers providing supports to NDIS participants. In particular, we would like to see the NDIS worker screening clearance become a requirement for all workers providing NDIS funded supports.

Standard 1: Consultation about work status and arrangements

NDS is supportive of requirements that platforms consult and negotiate with non-employee on-demand workers on work related matters, including work arrangements and work status. Given the potential for sham contracting within on-demand, 'gig' style platforms, we would like to see a stronger requirement for work status determinations. Clear processes should be in place within all platforms for workers to have their work status reviewed where the worker feels they may be in an employment relationship rather than a contractor relationship.

Eliminating sham contracting and ensuring that worker status is correctly determined for on-demand workers in the disability sector is particularly important given the often-ongoing relationship between the end-user (a person with a disability) and the worker. Without clear work status determinations, NDS is concerned that there is a risk that in legal proceedings, an NDIS participant using an on-demand disability service provider could be determined to be the worker's employer, and by extension, responsible for superannuation, ensuring payment is at the award rate etc. Many people with disability who use these services may be unaware of any of these potential risks.

Standard 2: Consideration of parties' relative ability to change outcomes or bargaining power

NDS strongly supports a standard to ensure that the terms and conditions of the applicable contract are clear and able to be understood by non-employee on-demand workers. NDS considers that it is likely that many workers contracted by on-demand 'gig' style service providers may not fully comprehend the terms and conditions of their relationship with the platform, resulting in workers potentially agreeing to unfair conditions.

Workers in the disability sector experience varying levels of disadvantage, with many coming from lower socio-economic backgrounds, having low levels of English language proficiency, or coming from migrant/refugee backgrounds. Many do not hold any formal qualifications and have low literacy skills. It is essential that platforms provide sufficient and clear information so that workers are empowered to understand their rights as a contractor within a particular platform, and how this differs from employment.

NDS also strongly supports the requirement for platforms to sufficiently inform workers of the risks associated with the work. It is highly probable that some workers and end-users do not fully comprehend the liabilities and risks that they hold in the context of a non-employee platform service within the disability sector. For example, while NDIS providers that employ staff take on liability for the service and compliance with quality and safeguarding standards (such as the [NDIS Code of Conduct](#)), contracting platforms often shift liability and risk onto the individual contractor.

Further work should also be conducted by the Victorian Government to assist workers considering on-demand non-employee work to understand the differences between contracting and employment. A funded campaign, with accessible information in multiple languages, may be worthwhile in order to inform those considering on-demand work of their rights and responsibilities in such work, as well as the risks and liabilities associated with working for gig-style platforms.

Standard 3: Fair Conditions and Pay

NDS is supportive of initiatives to promote the provision of fair and decent remuneration for non-employee workers. It is likely that many workers will enter the disability sector for the first time through engagement with gig-style platforms. As a sector facing widespread workforce shortages, we would like to see retention of these workers within our sector, which can only be achieved through fair conditions and sufficient remuneration. We also support the requirement that non-employee platform algorithms and work practices are reviewed regularly to ensure that they operate in a gender non-discriminatory way. In the disability sector, given much of the support workforce is female, this is significant.

Standard 4: Fair and transparent independent dispute resolution

NDS is supportive of the requirement that platforms ensure procedural fairness for workers who are the subject of a complaint. We believe that platforms should implement procedures to resolve performance management and disputes.

Standard 5: Non-employee on-demand worker representation, including the ability to seek better work arrangements

NDS is supportive of a standard which allows workers to pursue and to advocate collectively for improved terms and conditions relating to their work arrangements.

Standard 6: Safety

NDS very strongly supports the introduction of safety standards to the non-employee sector. In the disability sector, work health and safety is of critical importance given the nature of support work, which involves one-to-one engagement, often in uncontrolled environments such as the end-users home. There is a significant incidence of occupational violence across the sector, arising from a range of factors. Workers may also injure themselves as a result of the physical nature of much of the work, which can include lifting people and equipment.

NDS strongly supports the requirement that platforms provide sufficient training to eliminate or minimize health and safety risks. We also strongly support the requirement that platforms implement clear policies to eliminate or reduce health and safety risks.

NDS also strongly supports the requirement that platforms hold sufficient insurances in order to compensate workers for loss of income if they are unable to work due to a work related injury. In the first instance, it would be preferable if those workforces who are dependent on large platform businesses can access the relevant workers compensation scheme.

For queries in regard to this submission, please contact myself or Clare Hambly, Policy and Projects Officer – Quality and Safeguards, via email at clare.hambly@nds.org.au.

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About National Disability Services

National Disability Services (NDS) is the peak body in Victoria and Australia for non-government disability service providers, with over 270 members in Victoria and 1,100 members nationally. We provide information and networking opportunities to our members and policy advice to State, Territory and Commonwealth governments. NDS has a diverse and vibrant membership, comprised of small, medium and larger service providers that deliver direct and indirect support to people with disability. Our members collectively offer the full range of disability services; from supported independent living and specialist disability accommodation services to respite, therapy, community access and employment. Our platform of National Disability Practitioners has over 15,000 individual members across all aspects of the disability workforce.