

**Submission Re: Indirect Employment in Aged Care
Australian Government, Productivity Commission**

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We are grateful for the opportunity to make a submission regarding Indirect Employment in Aged Care. The Productivity Commission's issues paper acknowledges that work in the aged care industry is undervalued, its workers are undertrained, and there is a need to improve the capability and working conditions in this sector (pp. 5-6). Moreover, several recent reviews in addition to the Royal Commission into Aged Care Quality and Safety have highlighted issues around staff and skill shortages; poor working conditions (such as low pay and inconsistent working hours); recruitment as well as staff turnover and retention issues; and lack of skill development and career progression (p. 5).

While it is pleasing to note that the Government has accepted or accepted in principle most of the recommendations from the Royal Commission, it is disappointing that this does not include acceptance of recommendations 84 and 85 (on award wages) and recommendation 78 (on mandatory minimum qualifications). Notably, higher pay has also been called for by key employers and providers in the industry (Consensus Statement 2021).

When aged care workers are engaged as independent contractors, whether via labour hire agencies or digital platforms, they must bear the cost of their own leave, tax and superannuation contributions, and are not entitled to other benefits and protections typically granted under Australian employment regulation, such as workers' compensation. Many workers are unaware of these implications.

Without improvements in the regulation of work in this sector, any shift to greater reliance on independent contractors in aged care is likely to further erode the pay and working conditions in the sector. Crucially, this erosion will further compromise the quality of care provided. Improving quality of work in the sector is, therefore, an important lever for raising the quality and safety of aged care services and accommodation.

While we believe that expansion of direct employment, especially for personal care workers, is the best model to achieve improvements in the quality of the care in the sector, improving conditions for aged care workers who are indirectly employed will help stop a 'race to the bottom' both in terms of working conditions and quality of care provision and better assure the long-term viability of the sector..

In writing this submission, we respond specifically to three information request items outlined in the Issues Paper (Productivity Commission, 2022). We address these items in turn.

Information Request:

-For the purposes of the study, the Commission proposes to focus primarily on the use of independent contractors (including those in labour hire agencies) and platform workers among nursing and personal care workers in residential and home-based care. Should labour hire agency workers who are directly employed by the agency also be a major focus of the analysis? If so, why?

Labour hire can involve the deployment of independent contractors and/or direct employees, who are typically casual workers. Research suggests that both types of workers can endure detrimental experiences and outcomes while engaged in labour hire work (e.g. Knox 2010, 2008, Quinlan et al. 2015). More broadly, there is a growing body of research, that shows that non-standard employment (agency work/gig work) impacts the mental (Balogh et al. 2022) and physical health of workers (Quinlan and Bohle 2015). By implication, employee absence and turnover can be a problem.

In a study examining homecare workers including independent contractors and direct employees engaged by labour hire firms in Australia, Quinlan et al. (2015) reported a range of problems. Workers experienced inadequate risk assessment, unsatisfactory work health and safety policies and procedures, poor training, lack of employment benefits such as annual and sick leave/pay entitlements, superannuation and insurance, problematic working hours, lack of agency support and demanding work. Moreover, labour hire workers are at greater risk of injury, have poorer prospects of returning to work after injury and present a significant challenge to regulatory agencies (Johnstone and Quinlan 2006, Underhill 2008). Workers engaged by employment agencies are exposed to a more complex legislative context because there are two duty holders in addition to the worker (Johnstone and Quinlan 2006). This arrangement typically results in weaker regulatory protection (Knox 2010) and greater risks of disorganisation and regulatory failure (Quinlan et al. 2015) that expose workers to unnecessary hazards.

Findings related to risk-shifting of legal responsibilities and poor job quality are consistent with other research examining labour hire workers in Australia (Knox 2010, 2018, Underhill and Quinlan 2011). Illustratively, research examining the effects of labour hire on room attendants in the Australian hotel industry revealed significant underpayment and work intensification along with poor training and frequent injuries among both independent contractors and direct employees (Knox 2010). Additionally, this research highlighted that rather than agency work acting as a 'stepping stone' into more secure employment it acted more like a shackling device, perpetuating marginal employment in the secondary labour market.

More recent research by Knox (2018) highlights that regulatory avoidance within the Australian labour hire industry has intensified and expanded, normalising exploitation and further exacerbating precarious work and its detrimental outcomes. Evidence related to regulatory avoidance and its effects highlighted an overwhelming reliance on casual employment, which created systemic insecurity and left workers with no effective entitlements to paid annual or sick leave. The findings also illustrated the unnecessary and stressful insecurity that this arrangement created for workers, in terms of both finances and employment. These effects lasted for extended periods in some instances, if workers were unable to convert to permanent employment. Additional problems involved inadequate training and career progression opportunities as well as serious health and safety problems. Reports of underpayment were very common, and the penalties associated with wrongdoing were widely condemned as inadequate, further contributing to employers' willingness to underpay. Such research highlights the need for improved regulation and a national licensing scheme in the labour hire industry (Knox 2018). The regulation of labour hire remains largely confined to the award system even though this system is in decline (Knox 2010).

Further problems stem from so-called 'phoenixing' activities within the labour hire industry (Parliament of Australia, 2016). Phoenixing occurs when a labour hire firm dissolves and then recommences operations using a different business name to avoid legal obligations. Such activities are harmful to the industry and its workers (Parliament of Australia, 2016). In the absence of better regulatory protection, we argue that it is critical to examine both independent contractors and direct employees engaged by labour hire firms.

Information Request:

-Available evidence suggests that prevalence of agency workers, independent contractors and platform workers in aged care is small. Is data accurate and what sources are recommended ?

Accurate data related to the prevalence of agency workers, independent contractors and platform workers are notoriously difficult to source, particularly in Australia (Campbell et al. 2019, Knox 2018). The most recent data available in Australia indicate that five per cent of all employed persons (600,800 persons) found their job through an agency, and approximately 132,176 persons were paid by an agency (Australian Bureau of Statistics (ABS), 2016). However, these data underestimate the number of agency workers because independent contractors organised through agencies are not included in ABS figures. Nevertheless, extant data clearly indicate that growth in this industry is strong and ongoing (Knox 2018), including within aged care (Quinlan et al. 2015). The existing, incomplete evidence indicates that indirect work is growing due to structural change in the aged care sector (Mavromaris et al. 2017). Growth is expected to be strong among agency workers, independent contractors and platform workers, with these forms of work gaining in popularity in this sector (McDonald et al. 2021); often due to labour shortages stemming from recruitment and retention problems (Mavromaris et al. 2017). Thus, comprehensive data are needed to understand the prevalence and growth of these specific worker types. Data collection should include surveying aged care employers and workers.

Information Request:

-What are the pros and cons of platform workers in aged care for aged care workers ? How have platforms changed the way workers are sourced ?

Research indicates that platform work can be attractive to workers because of its flexibility in terms of both when and how often to work, and the option to supplement or earn their entire income via such work (McDonald et al. 2020, Wood et al. 2019). In theory, workers self-determine the frequency and extent of participation in digital platform work and they may elect to participate in work across multiple platforms (Pesole et al. 2018). However, recent research conducted in Australia suggests that some care platforms include restrictions on 'multi-apping' and 'lock-in' terms designed to prohibit engagement between a carer and client outside of the

platform, if they met through the platform (McDonald et al. 2021). At the same time, the platforms using these restrictions deem carers as independent contractors. The legality of both the restrictions imposed and the workers' classification remains doubtful.

In addition to these issues, workers are subject to forms of control embedded within the platforms including systems of rating and review along with algorithms that restrict working time flexibility and pay (e.g. Cappelli and Keller 2013, Wood et al. 2019). Control based on monitoring and surveillance may also involve rewarding or punishing worker responsiveness to the platform's app, thereby discouraging workers from engaging in personal activities during unpaid time and blurring the boundaries between work and private domains (McCann and Murray 2010). Platform work has also been associated with other 'time out of life' activities, including unpaid tasks such as creating and updating online profiles, managing on-demand and fragmented work schedules, travelling to clients' homes and developing service agreements (McDonald et al. 2021). Significantly, these indirect costs, including their associated responsibilities and risks, are shifted from the platform to workers.

Based on an analysis of the terms and conditions of 17 digital platforms offering either aged/disability care work (eight of the 17 platforms) or graphic design work (nine of the 17 platforms) in Australia, Williams et al. (2021) highlighted how platforms use algorithms to pre-filter jobs and worker profiles. The range of jobs and applicants presented to the worker or client is restricted based on worker profiles, client ratings and even payment for priority positioning. This algorithmic selection can exacerbate existing worker inequalities based on listed skills and review systems (Pelletier and Thomas 2018, Wood et al. 2019) and undermine fairness and equity in selection decisions that should be based on workers' skills, qualifications and experience (Williams et al. 2021). Care platforms encouraged clients to advertise for carers with similar values to their own or select workers based on 'interests', 'personality', 'cultural background' or 'religion'. Thus, the mechanisms of selection on digital platforms place fair access to work at risk, resulting in and facilitating bias and discrimination. Other research suggests that review systems deployed by platforms can also amplify inequalities based on race, ethnicity and income (McDonald et al. 2021, Ticona and Mateescu 2018).

In a similar study, examining the contractual terms and conditions and website content of nine digital platforms dedicated to disability and aged care in Australia, McDonald et al. (2021) reported that rates of pay ranged from \$15 to \$23.50 per hour. While these rates were not

directly set by the platforms, some set a floor on rates. Other research demonstrates that platform work has been associated with driving down wages and exposing workers to increased levels of risk and precarity (Graham et al. 2019). Once established, platform work tends to precipitate strong competition between workers, which can contribute to a 'race to the bottom' (Cook et al. 2018).

Platforms also imposed fees and charges on both workers and clients that were unclear, suggesting that 'carers and clients may be signing up to use care platforms without fully understanding the layers of charges associated with participating.' (McDonald et al. 2021: 880). In some cases, carers had to buy a 'premium member' subscription to view full profiles and contact information for clients and purchase credits to exchange information with clients. These additional costs do not guarantee work and are borne by workers during their efforts to secure work. Further costs would include internet access, mobile phones and plans, data charges, transportation, vehicles and fuel, permits, registrations and licenses (McDonald et al. 2021). These additional costs are particularly significant given uncertainty about how much work can be secured and low hourly rates of pay. Access to the technology required and related know-how also has the potential to discriminate against older workers and minority groups (Lam 2016).

These problems are further compounded when aged care work is conducted outside of institutional settings in private homes (Hayes 2017, Lily 2008). These settings pose particular challenges to work health and safety (WHS) inspectorates because of the number and dispersion of workplaces, insufficient information provision, and inadequate pre-placement risk assessments and WHS management protocols (Quinlan et al. 2009). Independent contractors and home-based work are not conducive to worker input to WHS through trade unions or participatory mechanisms in WHS legislation (Johnstone et al. 2005), and different types of homecare are subject to varying degrees of regulation. Williams et al. (2021:4150) found that while care-based platforms claim that they screen workers, their terms and conditions shifted responsibility and risk to the client by stating that the client is explicitly 'responsible for verifying and satisfying yourself as to the accuracy of any information, content or qualifications provided or listed by a Care Provider ... you engage Care Providers at your own risk'.

Finally, the gendered nature of care work also requires recognition and consideration. Within the care sector, work is predominantly undertaken by women working part time (Charlesworth and Macdonald 2017). Around 77% of aged and disability workers in Australia are female (Department of Employment 2018) and their work is already low-paid (McDonald et al. 2021). Community care workers typically earn less than half of the average full-time adult wage (Martin and King 2007). The proliferation of platform work risks further exacerbating the disadvantages already faced by low-paid female workers (Cook et al. 2018, McDonald et al. 2019). According to McDonald et al. (2021: 887), 'care platforms not only embody but also extend the techniques of power relations used to lower the costs of labour and control and direct freelance and precarious workers in ways which undermine their labour rights and protections'.

By comparison, job quality research demonstrates the importance of improving workers' pay and conditions. Illustratively, improving job quality can heighten employee engagement. Highly engaged employees tend to be more committed and productive than those who are not engaged (Bailey et al., 2017). By implication, raising job quality can boost retention. Indeed, this is what Skills Australia (2012) found.

Improving job quality can also boost productivity. Although the link between employment contract type and individual productivity is inconclusive, pay and productivity are positively linked. Importantly, high pay is not necessary, as just decent pay has the biggest impact (Bosworth and Warhurst, 2020). Raising pay can also make organizations more productive, as measured by Gross Value Added per worker per hour (or the standard definition of labour productivity). Initial modelling by Bosworth (2021) shows that a small rise in pay in the social care sector leads to much larger financial savings for employers in terms of new start recruitment and training costs.

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