

Inquiry into the Victorian on-demand workforce
Submission by Dr Raelene West
Social and Global Studies Centre (SGSC)
RMIT University, Melbourne
Jan 2019

Contact: Submissions can be emailed to: OnDemandInquiry@ecodev.vic.gov.au

This submission consists of 3 parts:

Part A – our published paper on the gig economy operating within the disability services field in Victoria from 2017 – see attached

Part B – my thoughts and discussion points on what I observe is occurring within the gigeconomy and in the intersection between the workforce arrangements, service providers and service users – see below

Part C – not for public release

--

Part A – our published paper on the gig economy operating within the disability services field in Victoria from 2017 – see attached

Reference: David, C. & West R. (2017) NDIS Self-Management Approaches: Opportunities for choice and control or an Uber-style wild west? Australian Journal of Social Issues, 52:4 pp331-346

Abstract: This article examines the emerging challenges and opportunities presented by self-management options in Australia's National Disability Insurance Scheme (NDIS). We examine the three different ways in which NDIS participants can opt to self-manage their funding and services, including direct employment and emerging Uber-style online platforms, and explore the potential implications of these options for NDIS participants, service providers and the disability support workforce. In particular, we focus on these options in relation to the transition to a marketised services landscape being developed alongside the NDIS, and examine both the risks and opportunities for each stakeholder group. Through this analysis, we identify implications for policy and practice, in particular around regulatory mechanisms and the role of government within this emerging market economy and transforming service landscape.

Keywords: disability support workforce, individualised funding, marketisation, NDIS, self-management, Uber

--

Part B of submission:

Thoughts and discussion points:

The use of online service provider platforms by workers and service users is an emerging area in the disability services landscape in Victoria that offers both opportunity and risk for all stakeholders.

Within the disability service landscape, a range of options have emerged for workers and service users to choose from. At one end are the fairly structured online service provider platforms, such as Hireup. They take on significant responsibility for their workforce with fixed pay rates and provision of all administrative responsibilities. In contrast, on the opposing side of the online provider

platforms landscape are organisations such as Mable formerly Better Caring, who provide only a basic matching service and require negotiation of pay-rates between the worker and service user.

Generally with online provider platforms, workers and service user register interest to use the online provider platform through the website. In the case of the model of Hireup, workers, if they pass the employee checks and screening requirements, have the online provider platform take-on all of the responsibilities of an employer as a traditional provider. This includes public liability insurance, workcover, superannuation and payroll for the employees, as well as providing minimal levels of industry training and opportunity to contact the employer to resolve or clarify any worksite issue. Travel that is related to providing support to the service user using the employees own car can also be claimed by the employee (ie kms are claimed). An employee then posts a profile on the online platform (that includes general work history and education details only to protect privacy) and then employees begin the process of negotiating shifts directly with the service users registered to use the platform.

Service users that have registered with Hireup complete a service agreement, online ohs assessment and detailed support plan of what the support tasks specifically involve before Hireup begin providing availability to the online platform. The service user then posts details of support required (location, time etc) on a job-board add, and through the online platform, the worker and service user themselves negotiate shifts to be worked through the online platform (through messaging). A formal shift request is then sent by the service user to the worker through the online platform, which can be accepted or not-accepted by the worker. If accepted, the shift is worked. Following the completion of the shift, travel allowances and confirmation of hours worked (including variations if there are changes from originally agreed shift times) are logged onto the online platform system by the worker, and then the service user confirms these details are correct also the online platform system. The service user is then emailed an invoice every week for payment of shifts provided by Hireup, and Hireup pay the wage to workers based on approved hours on the online platform for that week. Wages are fixed by Hireup and sit at award rates with evening and weekend penalties. This high level of responsibility of an online provider platform is contrasted by the more matching-based only online provider platforms, such as Mable formerly Better Caring.

Mable formerly Better Caring offer a 'matching service'. Again interest is expressed by workers and service users to use the online provider platform through the organisation's online website. Again profiles are posted by the worker and service user, and the shifts are negotiated to determine shift times, type of work and requests to work. However under this system, when you find 'your match', differing rates of pay per hour per shift can be negotiated between the worker and service user, to quote, you 'agree [on] rates, hours and services that work for you both'. Previously as Better Caring, workers were required to obtain an ABN and then work as sub-contractors, with Better Caring taking no responsibility for any payroll, workcover or superannuation, which became the responsibility of the worker, and workers used the online platform simply to 'find' work but received no further support (or responsibility) from the online provider platform. Under the new arrangement with Mable, this has been reigned in somewhat (probably because of the high risk and burden it placed on the worker), and Mable advertise as now taking responsibility for 'admin and payment'. The capacity for new or vulnerable workers (which dominate this workforce) to be able to negotiate their own pay rates and work-conditions however places considerable risk and too high a burden to the potential employee. There is considerable scope that workers could be exploited under these models if they have little or limited knowledge of award wages or industry wage expectations or work condition expectations and what good work is supposed to look like.

An advantage of the use of the online provider platforms are definitely that they give capacity

for service users and support workers to negotiate their own hours between themselves. Once shifts are negotiated between workers and service users, they are placed onto the online platform system, and the system deals with payroll, WorkCover etc. This removes the power of the traditional service provider model where service providers acted as gatekeepers, and only they could decide the hours, where, when and frequency that a support worker could work. Hence the support worker had no choice other than to accept hours provided by service provider and there was issues with getting offside with the house manager/coordinator who was issuing the hours if you refused any shift. In addition, the traditional service provider model acted as gatekeepers to service user, as the traditional service provider could choose themselves which of their support workers they would send to a service user.

Online provider platform organisations thus do away with these gatekeeping elements and give more freedom, choice and control to the worker and service users to choose their shift times and who the worker with them will be. So for the first time, workers and service users get to see a profile of the service user or support worker they may potentially be working with/providing service too. It is not just then the decision of the service provider to place any worker with any service user as suits them. Workers and service users can decide if the person seems to meet their needs and seems to have the right attributes and can easily move them off their program if there is a clash, where as this is often not possible in traditional provider organisation

General issues of disadvantages of casualization and underemployment are significant across the disability service landscape. The workforce providing these disability services is also highly vulnerable. In terms of gender, the workforce is highly gendered with approximately 80% of the workforce women. The workforce is also highly culturally diverse with 1 in 5 support workers born overseas. There are no base level minimum training levels in disability services and often individuals with lower levels of literacy, language and numeracy skills move into the industry because there are few barriers to entering the industry (what this means for the social value placed on disability work is a further and ongoing discussion area). The greater vulnerability of these workforces then utilising online provider platforms and not knowing how to navigate online systems and negotiate hours and work condition places this segment of the disability workforce at risk of exploitation.

Where there is increasing use of online provider platforms, training is a particular issue. Where industry training is undertaken by a registered training organisations (RTOs), there may need to be extra supports for ESL students, newly arrived immigrants and/or low literacy and numeracy individuals completing Cert 3 and 4 support worker courses. This is particularly important if support workers are moving into isolated in-home work-sites (significant in disability services and becoming increasingly common in aged-care now with in-home packages) through use of online provider platform and don't have any support from coworkers and potentially minimal support from the online provider platforms themselves. Further, an external regulator may need to review ongoing RTO training or even provide training themselves if online provider platform organisations take-on only a matching/no responsibility approach for their workers and don't take responsibility for training/work conditions/job quality of their workforce

There may also need to be a review of the extent of mandatory minimum work training levels across industries. Within Victoria in the disability sector, there is no minimum level of training required. If use of online provider platforms increase, possibly mandatory training will be required to reduce risks to service users. For example, an online provider platforms could potentially allow the matching of an untrained worker into an isolated worksite with a high-complex-support needs service user if they are not very familiar with the worker or real needs of the service user. If the worker needs the work/hours, they may tolerate the difficulties and just seek to 'wing-it', putting all at risk. **a lot of these debates were raised in recent establishment of Victorian Disability Registration Scheme and

the Commission has been put on place to monitor quality of workforce. In a landscape with online provider platforms, this would be even more crucial to ensure service user safety and quality of service provision <https://www.vic.gov.au/ndis/registration-and-accreditation-scheme-for-victoria-s-disability-workforce.html> Under the Victorian Disability Registration Scheme, there are 2 distinct regulatory mechanisms:

- Positive licensing (registration): Protecting the use of titles that can only be used by workers who have met certain standards of practice.
- Negative licensing (code of conduct): setting a minimum level of conduct expected of unregistered workers, with the power to prevent workers from delivering services if they present a serious risk to health and safety.

An independent regulator will be established to administer the scheme, comprising:

Disability Worker Registration Board of Victoria (responsible for positive licensing, including setting standards or practice) Disability Worker Commissioner (head of Commission, responsible for negative licensing) Disability Worker Commission (receives complaints, provide support to Board and Commissioner)

In terms of attracting career support workers to the industry, at present there are non-existent vertical career pathways for workers employed through online provider platforms. Possibly incentives for 'career' disability support workers to enter support workforce might need to be provided with these low vertical career pathways, as there are currently no pathways to move-up into team-leader or into management roles as there are with some traditional service providers. Further, the expansion of online provider platforms could see even further casualisation of the SW workforce if only short shifts or irregular shifts are being posted by service users on the online job-boards.

In contrast, online provider platforms are often used by service users to bring in informal support provided by friends, family, work-colleagues into the formal, paid service system. These workers usually have no-formal training and are employed by the online provider platforms under the category of 'nominated support worker' and usually only work with that specific service user.

There is also issue in disability services with the changing interface between national and state responsibilities. If funding for disability services is provided for a national NDIS system, but state based disability services are provided for TAC - Transport Accident Commission and VWA - Victorian Workcover Authority service users, what is the extent of state responsibility for training and work conditions for service users using online provider platforms under these two differentials?

In terms of workforce conditions within the disability sector, it often takes 3 to 4 to 5 weeks for a support worker to build up a regular schedule of high numbers of hours over a week. This often acts as a dis-incentive for workers to move into the disability service industry. Although online provider platforms at least allow SWs to take on shifts early that might be further away or not ideal but at least get hem some hours (instead of just waiting for traditional agency to give them shifts when they have openings - even more problematic). This is also in contrast to aged care where worker can start and have chance of two or three shifts up to 38 hours of shifts in the first week. The online provider platforms at the moment often only cater to the casualised hours or are being used as the second or third service provider for workers to find extra work hours (which is very common across the disability sector with workers trying to get adequate hours to pay bills).

In terms of pay-rates, the SCHADS awards have seen six monthly pay increases into the disability sector over the last few years so as to nationalise all of the state pay rates by 2020. So although the

wages in disability services are not great, they are at least not as bad wages as they used to be. In terms of the currently fixed hourly unit pricing of the NDIS, even if it is sharp, this shouldn't impact the base level wage as defined by the award as this is fixed, it should just mean less margin for the provider (unless they have a EBA which may weakens their workers payrates and conditions). As such, the NDIS unit pricing should have little or no scope on wage received by worker as all providers must pay SCHADS award unless under an EBAs from my understanding. However the currently fixed NDIS unit price doesn't currently cover training of support workers. Despite the pricing and training issues, online provider platforms are currently providing their services at a cheaper rate (because they have less overheads), and are still seeming to be gaining some margin while providing worker award rates.

In relation to work conditions, I believe there is a need for industry EBAs. The disability workers industry is very weak in terms of current worker capacity to negotiate pay-rates, work conditions and job quality. There is really no adequate avenue for workers to call in the unions to negotiate with individual service providers if conditions are not right or hours are fragmented because vulnerable workers are usually more concerned about just getting hours, or getting hours cut afterwards if they contact the union. Many workers with differing cultural backgrounds are not confident or have the skills or feel it is their right to contact a union to seek to have an EBA renegotiated. Most vulnerable workers most likely would not even understand the EBA system and just unknowingly accept the organisation wage for what it is. Vulnerable workers expressed just wanting to just get on with their job and somehow work through the poor work conditions because they are 'grateful' they have some employment and challenging a service provider just seems to hard. This is the heightened when the face of the service provider is more obscured when the employer is basically a website and they have no voice or face-to-face interaction with any provider management.

There is also complexity with the multiple number of unions across the disability support industry (3). The unions are also not visible on online provider platforms, and finding the actual union responsible for their specific work area can confusing for new support workers (and even experienced support workers). The worker registration scheme may need to take-on a role here in supporting working conditions (the traditional role of unions) or unions may need to find a way to proactively creating action to improve working conditions (without strikes which leave service users in vulnerable position without support on a day).

This raises questions as to the role of modern unions in relation to regulators/complaint bodies. It seems that modern unions mostly are playing the role of EBA negotiators with 'some' negotiation with service providers where a union member calls the union about a specific issue. Except only approximately 15% of the disability workforce are now union members. If unions aren't supporting the workforce (traditional or online provider platforms), it seems that it is falling to the external regulators to pick-up issues during an audit, or for the worker themselves to make a complaint to a commission or complaints body such as VEOHRC or Fairwork to deal with a workplace issue with the provider. This is thus a significant change occurring across the disability industry and puts a lot of burden/responsibility on the individual worker to make an individual complaint to create workplace change. Given unions and commission and complaints bodies aren't readily visible to workers and often have to be 'found' by a worker, this creates a barrier to reporting. Then gender and multi-cultural status (vulnerable worker) willingness to report is a further barrier (vulnerability about reporting/grateful for work/don't want to rock boat things).

Then this may all be worsened if it is an online provider platform as isolation of work role means workers never know who to raise an issue with (no on-site co-worker to tell them). They don't know who the union or commission or complaints body for their work is. So maybe all online platforms

should be required to have a box on their website or on each payslip with details for referring issues to the commission or complaints body because of the high vulnerabilities of these workers. This note could explain how complaints/queries could be made to commission or complaints body about work-conditions, query pay rates, minimum hours, abuse etc. Also the regulators role in disability may need to be more extensive.

Online provider platforms may need to demonstrate to regulators how they have provided information to their workforce on commission or complaints body consistently, and/or provide examples of a random worker - hours allocated of work/week over 3 months, what workers were paid over this time, what work conditions looked like, what complaints they had received from worker.

I think the model of the subcontractor should be reigned or banned in Victoria in relation to disability services because of worker and service user vulnerabilities. As in the UK über ruling <https://www.abc.net.au/news/2018-12-20/uber-drivers-worker-rights-lawsuit-lossuk-industrial-law/10637316> online provider platforms should view all of their workers as employees with regular employee rights, and the online platform is just used for recruitment and to negotiate the service transaction undertaken between service user and worker.

The disability industry also has some options of direct employment of support workers by the service users themselves, which moves away from subcontracting too. Here the service user effectively becomes the employer and takes on all employee responsibilities of work cover, payroll, insurance and superannuation etc of support worker. <https://www.ndis.gov.au/participant/self-managing-budgets/engaging-your-own-staff> . Of note TAC and Workcover don't allow for direct employment, and an online provider platform at the least must used for transparency and funding accountability. So interestingly, funders here are regulating how service user funds can be used around purchasing of services, favouring online provider platforms over direct employment for transparency/presumed over services provided. Direct employment creates another level of complexity for worker rights and ensuring work conditions when the person they are providing services to and directing services needed is also the employer organising their shifts and wages. There is potential for high levels of flexibility and higher rates of pay for workers, but also for exploitation if there is no external review of the arrangements.

Re PART A of this submission

This submission refers to a published paper on the gig economy operating within the disability services field in Victoria from 2017. This paper is available online: <https://doi.org/10.1002/ajs4.23>

Reference: David, C. & West R. (2017) NDIS Self-Management Approaches: Opportunities for choice and control or an Uber-style wild west? *Australian Journal of Social Issues*, 52:4 pp331-346

Abstract: This article examines the emerging challenges and opportunities presented by self-management options in Australia's National Disability Insurance Scheme (NDIS). We examine the three different ways in which NDIS participants can opt to self-manage their funding and services, including direct employment and emerging Uber-style online platforms, and explore the potential implications of these options for NDIS participants, service providers and the disability support workforce. In particular, we focus on these options in relation to the transition to a marketised services landscape being developed alongside the NDIS, and examine both the risks and opportunities for each stakeholder group. Through this analysis, we identify implications for policy and practice, in particular around regulatory mechanisms and the role of government within this emerging market economy and transforming service landscape.

Keywords: disability support workforce, individualised funding, marketisation, NDIS, self-management, Uber