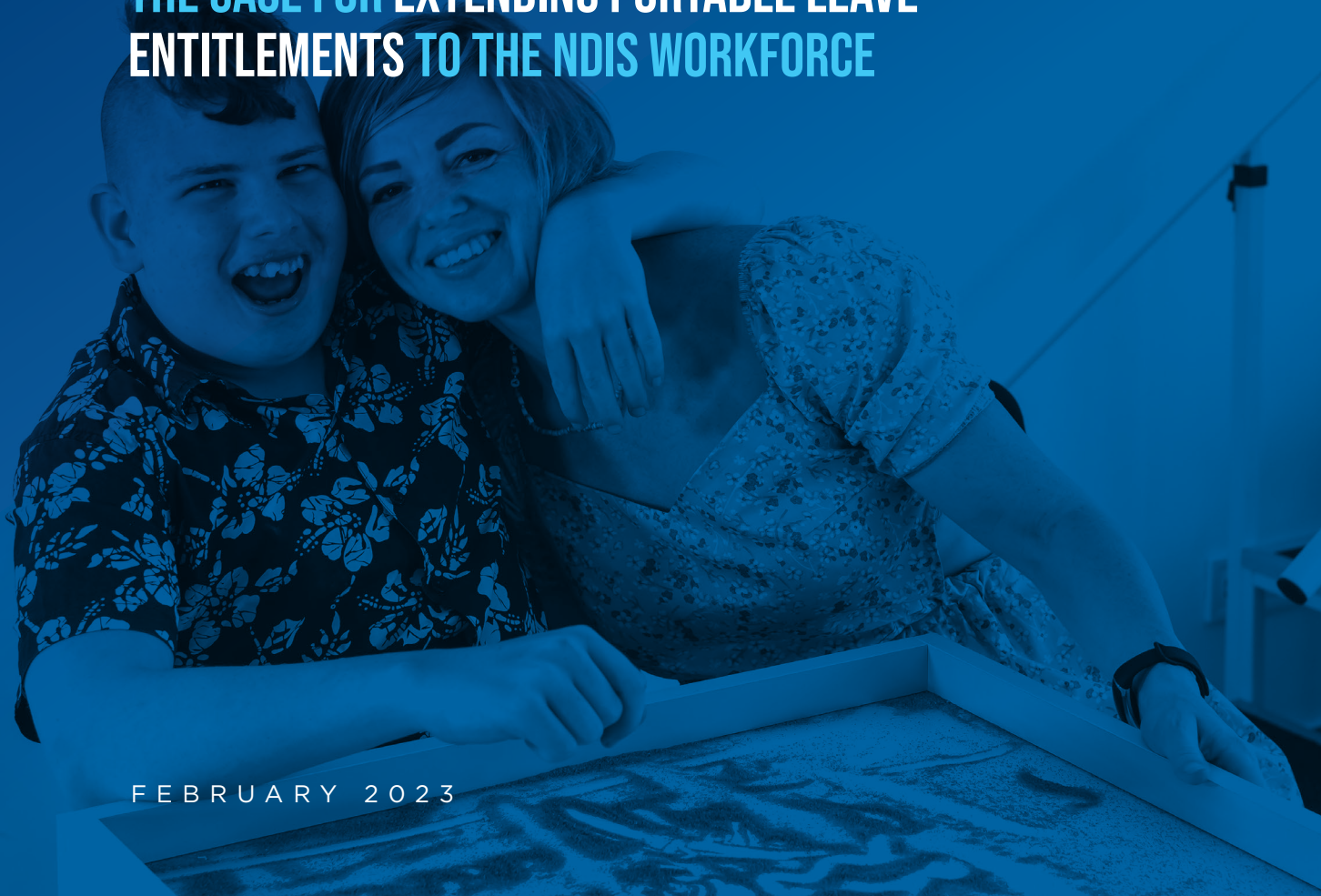




THE MCKELL INSTITUTE

# Flexible But Fair

THE CASE FOR EXTENDING PORTABLE LEAVE  
ENTITLEMENTS TO THE NDIS WORKFORCE



FEBRUARY 2023

# ABOUT THE MCKELL INSTITUTE

The McKell Institute is an independent, not-for-profit research institute dedicated to identifying practical policy solutions to contemporary challenges.

For more information call (02) 9113 0944 or visit [www.mckellinstitute.org.au](http://www.mckellinstitute.org.au)

## ABOUT THE AUTHOR



### Edward Cavanough

Edward is a Director of Policy at the McKell Institute.

## ABOUT THIS REPORT

THIS REPORT HAS BEEN PREPARED BY **THE MCKELL INSTITUTE** FOR THE **AUSTRALIAN SERVICES UNION**.

## ACKNOWLEDGEMENT OF COUNTRY

This report has been authored on [Kaurua Land](#) in January and February 2023. The McKell Institute acknowledges Aboriginal and Torres Strait Islander peoples as the Traditional Owners of Country throughout Australia and their continuing connection to both their land and seas.

The opinions expressed in this report are those of the authors and do not necessarily represent the views of the McKell Institute's members, sponsors, affiliates, individual board members or research committee members.





THE MCKELL INSTITUTE

# Flexible But Fair

THE CASE FOR EXTENDING PORTABLE LEAVE  
ENTITLEMENTS TO THE NDIS WORKFORCE

FEBRUARY 2023





# CONTENTS

<b>EXECUTIVE SUMMARY</b>	<b>6</b>
<b>KEY FINDINGS</b>	<b>8</b>
<b>RECOMMENDATIONS</b>	<b>9</b>
<b>PART ONE: THE NDIS' GROWING PAINS</b>	<b>10</b>
The NDIS is a vital national institution.....	10
Australia is experiencing acute labour shortages in all sectors, which can't be simply addressed through migration.....	12
The NDIS workforce composition is broad, diverse, and growing.....	12
The NDIS sector is reliant upon fragmented work to meet participant needs.....	13
The NDIS will struggle to meet its workforce demand under current trajectories.....	14
The NDIS is populated with many 'non-traditional' service providers utilising digital platforms to attract and distribute labour.....	16
The NDIS workforce sees the highest turnover rates in the Australian economy.....	17
NDIS workers cite numerous problems with their jobs.....	18
<b>PART TWO: UNDERSTANDING PORTABLE ENTITLEMENTS</b>	<b>21</b>
Use of 'independent contractors' is spreading throughout economy—and into the NDIS.....	23
'Portability' of entitlements is a fix to project-based work and job insecurity.....	23
Some NDIS workers have access to leave due to state interventions and schemes.....	24
Existing portable entitlements schemes often bare similarities to the implementation of superannuation.....	24
It is time to extend portability principles to other forms of leave.....	26
Sick leave for NDIS workers will improve the health of NDIS participants.....	27
<b>PART THREE: EXTENDING PORTABLE ENTITLEMENTS TO THE NDIS WORKFORCE</b>	<b>28</b>
NDIS participants must always remain at heart of the scheme.....	30
NDIS participants' interests are served by maximising workforce retention.....	32
Public employers have traditionally recognised service across the sector.....	33
A Government-funded, independently run portable entitlements fund is favoured.....	34
Funding for leave is already allocated, though not always passed on to workers.....	34
A statutory authority should administer the scheme at arms-length from Government.....	35
<b>RECOMMENDATIONS IN DETAIL</b>	<b>36</b>
<b>CONCLUSION</b>	<b>37</b>
<b>REFERENCES</b>	<b>38</b>



# EXECUTIVE SUMMARY

The National Disability Insurance Scheme is among the most important government schemes in Australia. Since its inception in 2013 and full national rollout in 2016, the NDIS has transformed the lives of hundreds of thousands of Australians living with disability, delivering more agency to scheme participants, which now number over half a million Australians.



Most observers—be they government, advocates, participants, or workers—recognise, however, that the scheme remains imperfect, and there is room for improvement. And while NDIS participants' interests must remain at the heart of all decision making regarding reforms and adjustments to how the NDIS operates, the interests of the workers who make the NDIS possible are also vital.

This report examines the challenges facing the NDIS workforce, and why a novel Portable Entitlements Scheme for NDIS workers is a necessary policy intervention that will help deliver better care for NDIS participants, better employment conditions for NDIS workers, and better value for money for taxpayers that fund the NDIS.

As the NDIS has grown, so too has its workforce: it is expected that, by 2025, the scheme will require more than 370,000 workers spanning dozens of often niche skillsets to meet the demand of the 500,000-plus participants the scheme supports.<sup>1</sup> This rapidly increasing demand for NDIS labour comes at a time where all employers in Australia are finding it challenging to attract and retain labour.

Given these labour market headwinds, the NDIS needs to consider how it can improve the quality of work for those supporting the scheme in order to retain and attract as many workers to the NDIS as it requires. This report argues that the establishment of a Portable Entitlements Scheme for NDIS workers is key to achieving this end.

**PART 1** of this report begins by explaining the challenges facing the NDIS as demand on the scheme expands. It details the growing workforce needs, and the various barriers to addressing those needs, including the high attrition rate of NDIS workers; the acute labour market shortages creating more choice for Australian workers; the tightness in international

labour markets restricting the capacity to attract migrant labour; and the various issues current NDIS workers have with their employment, including a lack of security and workplace entitlements.

**PART 2** of this report then describes the concept of Portable Entitlements Schemes. It articulates how, typically, workplace entitlements have been 'pinned' to a specific occupation with a specific employer: when this occupation ends, certain leave entitlements expire, or are paid out to the employer. In contrast, Portable Entitlements are pinned to an employee, who can accrue entitlements while working with several different employers within the same industry. Often, this is funded by employers within high-turnover, project-based industries, such as construction, paying into a collective leave pool, managed by a third party, that distributes and manages entitlements for that sector's workers. Portability concepts have gradually expanded from focusing on long service leave to considering other forms of entitlements, such as paid sick and annual leave, as a greater proportion of the Australian workforce find employment in 'insecure' roles, as casual employees or independent contractors—forms of employment that are particularly prevalent within the NDIS sector.

**PART 3** of this report then considers how and why a Portable Entitlements Scheme should be established for the NDIS. It argues that such a scheme should be administered through a statutory body at arms-length from the day to day politicking of government, reporting to the NDIS minister. It stresses that such an intervention should not impact individual participants' packages.

# KEY FINDINGS

**1** The NDIS has growing workforce needs: it is expected that a further 83,000 workers will be required to meet the needs of NDIS participants within the next three years.

**2** This growing need for workers comes at a time of acute labour market shortages, exacerbating the challenge for the NDIS to attract workers into the sector.

**3** NDIS workers often enjoy the flexibility of NDIS work, but also cite poor pay and conditions as barriers towards sustaining a career in the sector.

**4** The NDIS sector has the highest rate of attrition in the Australian economy, with up to one quarter of all NDIS workers leaving the sector, and over half wishing to within five years.

**5** In order to retain and grow the NDIS workforce, this report argues for the establishment of a Portable Entitlements Scheme for NDIS workers.

**6** A Portable Entitlements Scheme for NDIS workers would allow registered NDIS workers to accrue entitlements while working within the NDIS sector, even if they are casual workers or 'independent contractors'.



## RECOMMENDATIONS

**7** The Scheme should be funded by Government and administered by a statutory body at arms-length from Government, comparable to various state-based Portable Long Service Leave schemes. Any additional costs associated with such an intervention would likely be minimal, given leave is already factored into NDIS pricing, but often withheld by scheme employers.

**8** Any changes to the NDIS must ensure that the NDIS participants' interests are maintained and advanced. Improving the retention of the NDIS workforce by establishing a Portable Entitlements Scheme for the NDIS workforce will benefit NDIS participants, ensuring participants receive consistent care and support from a more stable cohort of NDIS workers.

**1** The Commonwealth Government should consider commencing a legislative process during this term of parliament designed to extend portable entitlements to registered NDIS workers, with an intention to have a scheme operational by FY2025/26.

**2** The Commonwealth Government should establish an independent, statutory authority responsible for overseeing, implementing and managing a portable entitlements scheme for registered NDIS workers

**3** The Commonwealth Government should consider ways to maximise the registration of NDIS workers, which would then ensure more NDIS workers have access to portable entitlements under the proposed scheme.

# PART ONE: THE NDIS' GROWING PAINS

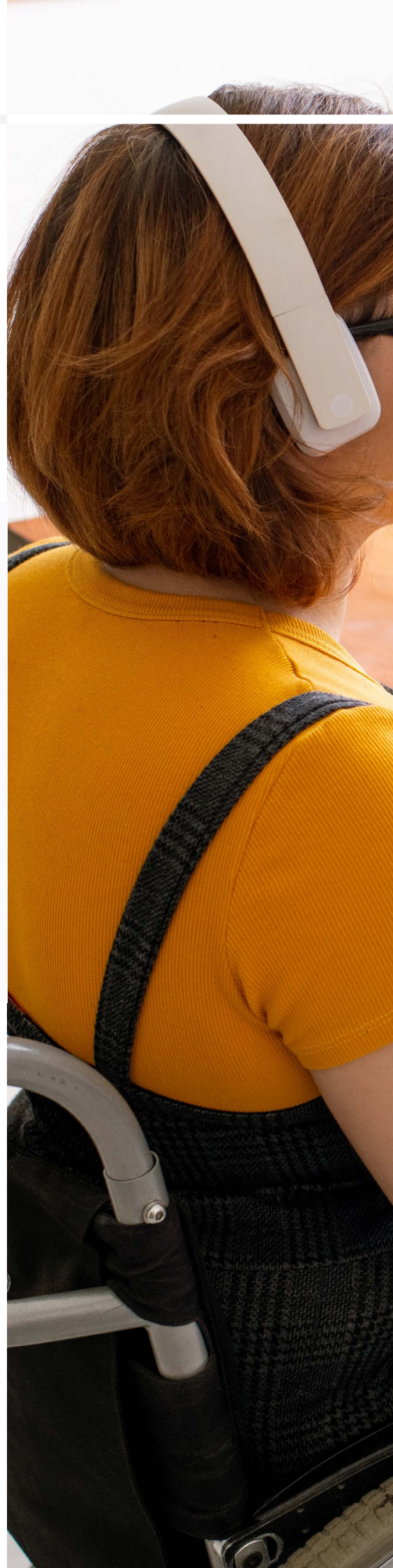
## KEY POINTS

- 1 The NDIS workforce demand is growing: 83,000 workers are expected to be required to meet forecast demand.
- 2 This growth comes at a time of acute labour and skills shortages, which will exacerbate the NDIS' challenge in attracting suitable workers to the sector.
- 3 The nature of NDIS work requires a degree of flexibility, but is leading to a large number of employees working without access to basic entitlements, dissuading some workers from pursuing a career in the sector.

### The NDIS is a vital national institution

The National Disability Insurance Scheme (NDIS) is among the most important institutions in Australia. On 1 July this year, the NDIS will mark its tenth year in operation, having commenced in a limited capacity in July of 2013. Since then, it has expanded to allow hundreds of thousands of Australians living with disability to participate more fully in life, with more agency over their own care and support. Despite its growing importance however, most observers agree there are several challenges facing the NDIS, including its inability to attract and retain a skilled workforce.

By 2025, it is expected that over 500,000 Australians will be participating in the NDIS, with the NDIS itself believing this will require over 370,000 workers of various types to extend the necessary support to NDIS participants. This means that over 80,000 additional workers will need to be attracted into the sector to meet this objective.







NDIS workers span a broad array of skills, attributes, and services catering for the diversity requirements of NDIS participants. They may range from specialised support workers for individuals with highly specialised care needs, through to support workers providing assistance with day to day living and assisting with participation in the community. A core principle of the NDIS is that its participants are granted a great deal of agency over who they choose to support them and the type of support this requires.<sup>2</sup> This means that a broad range of workers are required to support NDIS participants.

The need for an expanded pool of NDIS workers comes at a challenging economic time. The Australian economy is facing a tight labour market, which, while benefiting workers in the form of a lower unemployment rate, can make attracting labour challenging for employers. As a result of the economic disruptions caused by COVID-19, this phenomenon has been seen worldwide: it is not just an Australian challenge. For that reason, it is challenging for employers to both find labour for certain roles within Australia, but also outside of Australia, as Australia's competitor nations concurrently pursue workers from around the world to meet critical demands at home.

### **Australia is experiencing acute labour shortages in all sectors, which can't be simply addressed through migration**

During periods of labour market shortages, employers often compete for workers by offering improved employment conditions. They may offer higher rates of pay, more flexible working conditions, or additional entitlements aiming to entice employees. Though Australia's wage growth remains stubbornly slow, this dynamic is beginning to emerge in the Australian labour market, which is adding further difficulties for NDIS employers to find staff.

Labour shortages are not isolated to Australia. In many advanced economies, pent-up demand from COVID-19-era restrictions on consumption

and economic activity have alleviated, leading to increased demand for goods and services. This has lowered unemployment rates throughout advanced economies. As unemployed workers find work, there have, generally speaking, been too few workers available for businesses and organisations to hire, which has led to advanced economies considering more lenient immigration policies. A desire to attract international workers to address labour shortfalls has seen advanced economies compete for labour internationally.<sup>3</sup> Given this circumstance, immigrant labour cannot be viewed as a simple 'quick-fix' for the NDIS' labour challenge over coming years; instead, more considered reforms to how NDIS workers' are employed need to be explored.

Most Australian workers, especially those who enjoy permanent full or part time work, have access to a suite of workplace entitlements. These include paid sick, holiday, bereavement, and domestic violence leave; long-service leave; maximum hours of work; redundancy provisions; and paid public holidays. Casual workers receive much fewer entitlements, though are typically compensated with a 25 per cent 'loading' to somewhat compensate for lack of workplace protections. 'Independent contractors' are workers with access to the fewest entitlements, despite often being employed in way that is comparable to employees.

### **The NDIS workforce composition is broad, diverse, and growing**

There are dozens of different occupations that workers implementing the NDIS perform. Given the breadth of individual needs of NDIS participants, it is understandable that a broad array of professionals work within the scheme. The NDIS itself categorises the sector's workforce segmented into four large groups: 1) Home based support workers; 2) Community based support workers; 3) Allied health professionals; and 4) all other workers in the scheme (See Figure 1.1). Categories 1 and 2, however, are often composed with the same type of workers: they are all disability support workers. Within these subcategories are a vast array of different



individual tasks and employment models. Many allied health professionals, for example, are usually employed by a health service provider which counts among its clients NDIS participants; disability support workers, in contrast, might exclusively work for NDIS participants, and do so on a contract basis through a digital service provider.

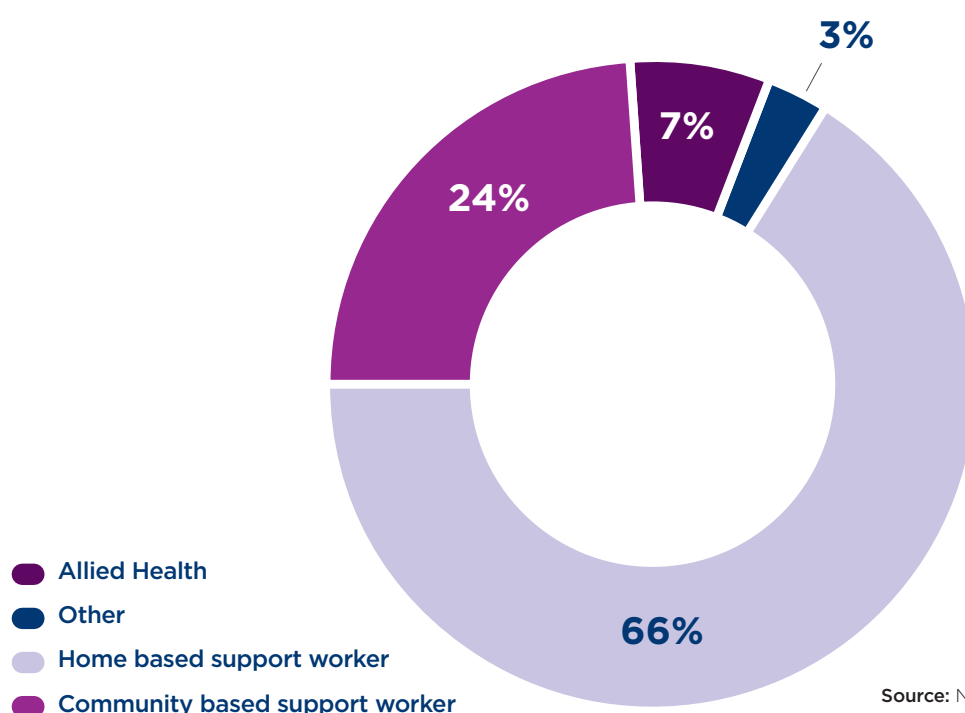
### The NDIS sector is reliant upon fragmented work to meet participant needs

Inherent in the design of the NDIS is the notion of participant choice and control. The scheme was designed to maximise the decision-making agency of scheme participants, granting participants as much control over their own support as possible. The individuality of disability is such that every NDIS participant is unique in terms of the type of care they require, and these needs are constantly evolving for each scheme participant. While there are some NDIS participants that may require around-the-clock

care, many NDIS participants simply do not require full-time equivalent care. Instead, they rely on less regular support of various types, which often involves tasks split between a number of individual workers with unique skill set.

Simply, NDIS work, by design, is often incompatible with conventional working patterns, which is why most scheme service providers tend to use 'flexible' employment models, such as casual roles and contracts, to meet the specific needs of individual NDIS participants. The fragmentation of work within the sector has created a dynamic where many individual workers engage in work for full-time equivalent hours, but often as employees or contractors to several different service providers, or NDIS participants directly. This style of employment is essential to meet the specific needs of NDIS participants, but doesn't need to come at the expense of individual worker welfare. This report recognises the need for any entitlements scheme for NDIS workers to sit within and work with this flexible choice and control framework.

**FIGURE 1.1** STRUCTURE OF THE NDIS WORKFORCE



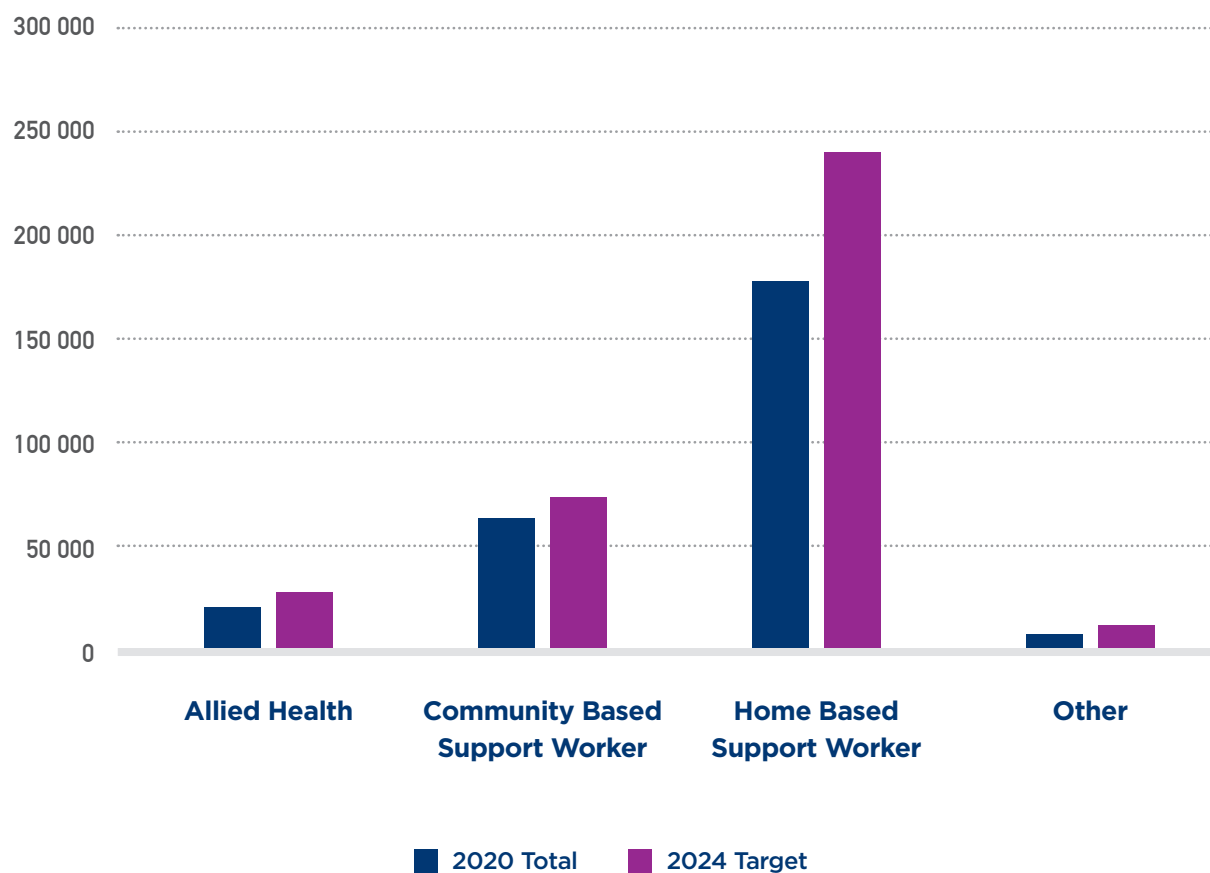
Source: NDIS Workforce Plan, 2020.

## The NDIS will struggle to meet its workforce demand under current trajectories

As of 2020, the NDIS supported 450,000 participants, with 11,600 NDIS providers “employing around 270,000 workers across 20 occupations”, according to the 2021-2025 NDIS Workforce Plan, released by the Minister for National Disability Insurance Scheme in 2020. To 2025, it is expected that the number of NDIS participants will climb to 500,000, requiring the employment of a further 83,000 NDIS workers to meet that demand.<sup>4</sup>

This is a daunting challenge for the Government—especially given the structural issues facing retention of existing NDIS workers, and the challenges associated with attracting new talent into the industry to meet this soaring demand. This workforce predicament facing the NDIS also comes at a time of widespread labour shortages across all sectors, a result of the escalation of demand in the economy associated with the economic recovery after COVID-19 restrictions were eased earlier in 2022.

**FIGURE 1.2** 2020 WORKFORCE HEADCOUNT AND PROJECTIONS, BY TYPE



Source: NDIS Workforce Plan, 2020.







The 2021-2025 NDIS National Workforce Plan<sup>5</sup> recognised this challenge, even before the acute skills shortage of 2022 (and now 2023) materialised. But its proposals for addressing the looming worker shortfall remain inadequate.

The Workforce Plan put forward three ideas to address the shortage:

1. Improve **“community understanding of the benefits of working in the care and support sector”**;
2. **“Train and support the NDIS workforce”**, while supporting the sector to expand vocational educational opportunities; and
3. **“Reduce red tape”**, and facilitate **“new service models and innovation”**.

These proposals, while having merits of their own, ignore one of the major deterrents for workers both entering and remaining within the NDIS workforce: pay and conditions.

In order to attract and retain talent in the sector, particularly at a time where workers have a unique opportunity to find work in other sectors as a result of labour and skills shortages, the NDIS must work to improve the nature of employment in the sector. Currently, too many workers are dissuaded by inadequate levels of pay, but also by a lack of access to the basic entitlements that many workers usually enjoy. Though many NDIS employees appreciate and welcome the flexible nature of employment in the sector, inadequate pay and conditions have undermined the attractiveness of a meaningful career in the sector, and led to a high rate of attrition.

## The NDIS is populated with many ‘non-traditional’ service providers utilising digital platforms to attract and distribute labour

The rapidly growing need for additional labour within the NDIS sector has led to a proliferation of service providers utilising ‘gig-work’ style employment models and digital platforms to attract, distribute, and manage labour. Given the piecemeal nature of much of the work NDIS workers undertake, these types of platforms can assist in ‘matchmaking’ between work that needs to be undertaken, and a worker that is available. There are, however, significant downsides to a reliance on this type of work that could, to some degree, be countered by improving the quality of the work contractors receive when engaging the NDIS through these platforms.

The increased utilisation of contractor labour doesn’t only effect individual NDIS sector workers reliant on these forms of employment, but may degrade, to an extent, the long term quality of care provided through the scheme. As Per Capita (2022) noted, “Digital contracting by definition reduces organisational knowledge and peer-to-peer support between employees, and may cause a decline in the structured training of workers.”<sup>6</sup>

Given this dependence on new forms of employment, and a growing utilisation of a more transient contractor workforce in the provision of an essential government service, policymakers need to consider ways to ameliorate the negative impacts of this contractor dependency—impacts on the workers themselves, as well as the impact on the scheme.

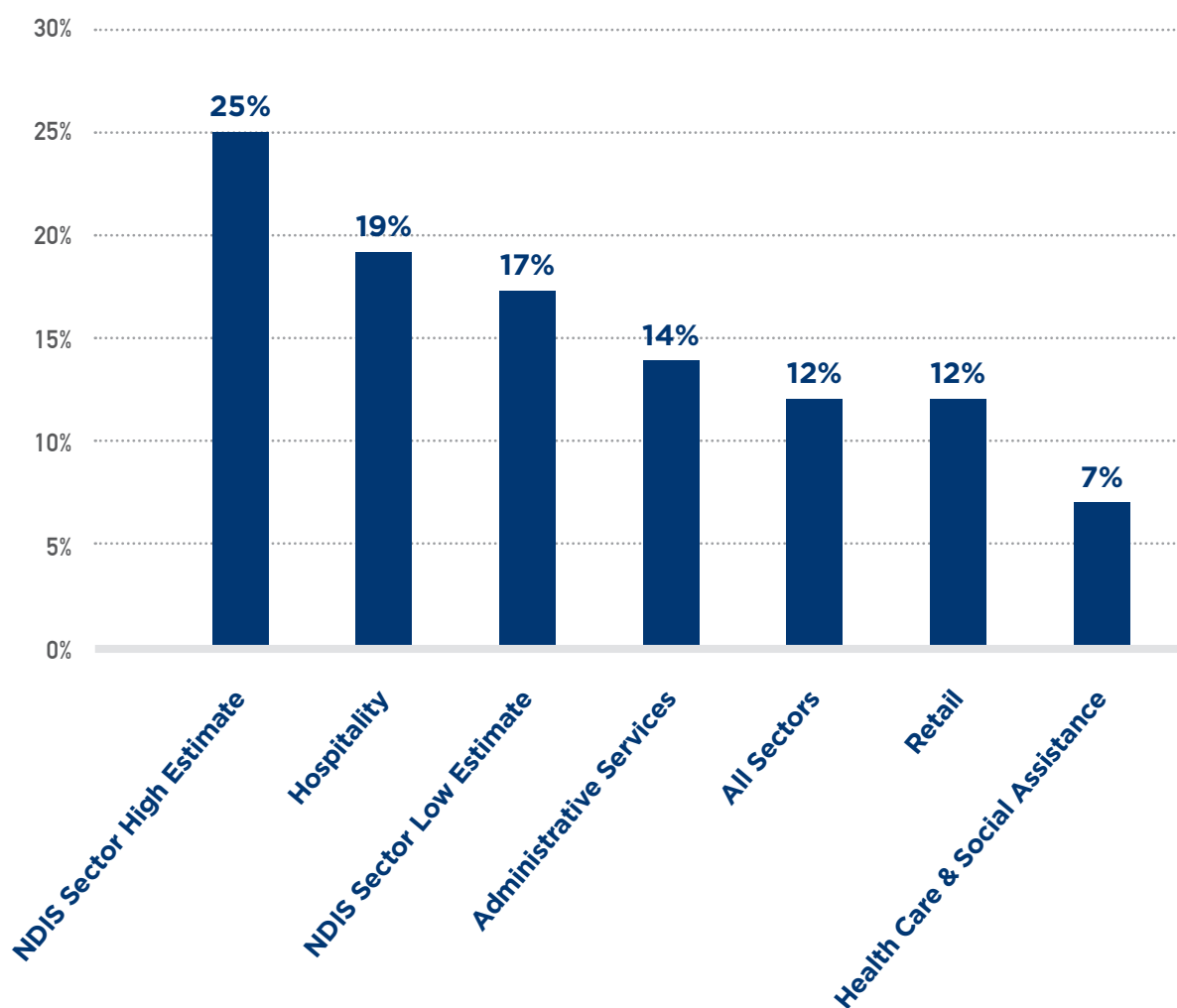
A portable entitlements scheme would deliver improved working conditions to this contractor workforce, placing downward pressure on the attrition rates of this segment of the NDIS workforce. In doing so, the longer term benefits of employee retention could be realised, including deepening institutional memory within the broader cohort of workers in the sector, and achieving better care outcomes for those NDIS participants that prefer more stable, consistent relationships with the workers they interface with.



## The NDIS workforce sees the highest turnover rates in the Australian economy

As of 2021, the NDIS sector has the highest rate of attrition of any sector in the Australian economy. Data released by the NDIS itself suggests that the attrition rate of NDIS employees could be as high as 25 per cent.<sup>7</sup> With one quarter of NDIS workers leaving the sector after commencing a career in disability services, the industry is challenged by an attrition rate higher than sectors long associated with a high 'churn rate', such as hospitality and retail.

**FIGURE 1.3** NDIS SECTOR RATES OF ATTRITION, COMPARED WITH OTHER SECTORS



Source: NDIS Workforce Plan, 2020.

This attrition data is reflective of the challenges workers' face in the sector. Other industries, particularly hospitality, agriculture, and tourism-facing jobs would expect high rates of attrition given the seasonality of the work.

Given the NDIS is not confronted by these types of seasonal challenges, the attrition rates can likely be attributed to the quality of work, the remuneration associated with that work, and an inability to access entitlements that would allow workers to rest, recover, recuperate, or take paid leave during times of hardship or duress.

Notably, the attrition rates within the disability support sector is significantly higher than in the broader health and social services sector, in which similarly irregular work patterns can be the norm.

Attrition rates within this sector stand at around 7 per cent, a rate up to 18 per cent less than what is observed in the NDIS sector.

This report notes the challenging nature of working in the NDIS sector. Though NDIS workers cite a pride in the work they do, there is also recognition that jobs within this sector can be physically and emotionally draining, with careers in this space viewed by some as less appealing than in other sectors.<sup>8</sup>

For this reason, the NDIS sector—an entirely government funded sector—is the prime candidate for government to try and deliver better working standards and conditions to attract and retain talent.

### **NDIS workers cite numerous problems with their jobs**

Having noted the high attrition rates of NDIS workers, policymakers must then understand the drivers behind this attrition rate. For the 2020 NDIS Workforce Plan, the NDIS surveyed representative samples of the NDIS worker cohort to understand their sentiments towards their jobs. Figures 1.4 and 1.5 illustrate some of the findings from these surveys.

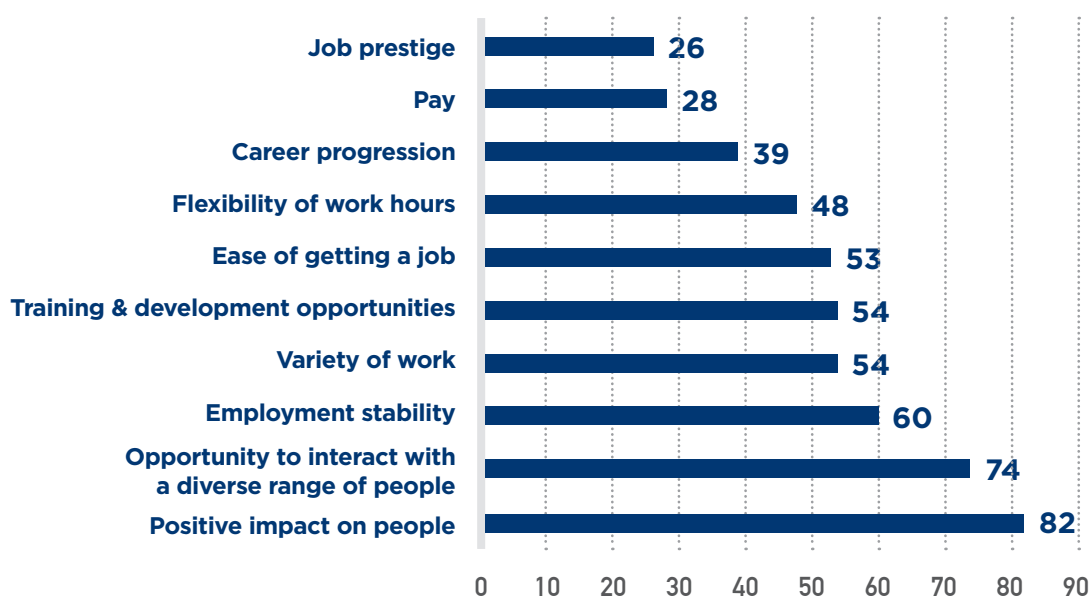
There is some positive news from the surveys: NDIS workers overwhelmingly believe that their work is generating benefits for other people, and that the job provides them with an opportunity to “interact with a diverse range of people”. Purpose and interactivity within occupations is important for maintaining morale, and for bettering the mental health of the employee. However, the findings typically reflect poorly on the quality of work NDIS workers face, and their job satisfaction.

*Figure 1.4* notes that only slightly over a quarter of NDIS workers believe their pay is ‘very good’ or ‘fairly good’; only 26 per cent think their job has prestige, and only 38 per cent feel there is a ‘good’ chance of career progression within the NDIS. These are relatively damning findings, and demonstrate that hundreds of thousands of NDIS workers are likely dissatisfied with their employment offering, likely leading to the high attrition rates that are seen today.

*Figure 1.5* tells of the consequence of this dissatisfaction. It tables the results of questions put to metropolitan and regionally based NDIS workers related to their future plans. Alarmingly, a majority of both regional and metropolitan workers don't feel they have possibilities for career progression, and that they believe their job is “more stressful than I had ever imagined”. Concerningly, 50 per cent of metropolitan NDIS workers and 59 per cent of regional NDIS workers stated that they “will not be in the sector in 5 years' time”. Whether or not this statement is acted upon, it reflects a deep-seated dissatisfaction with the employment on offer through the NDIS. This is an unsustainable situation, which demands action from the policymakers responsible for the NDIS improvements in the quality of work on offer.

**FIGURE 1.4**

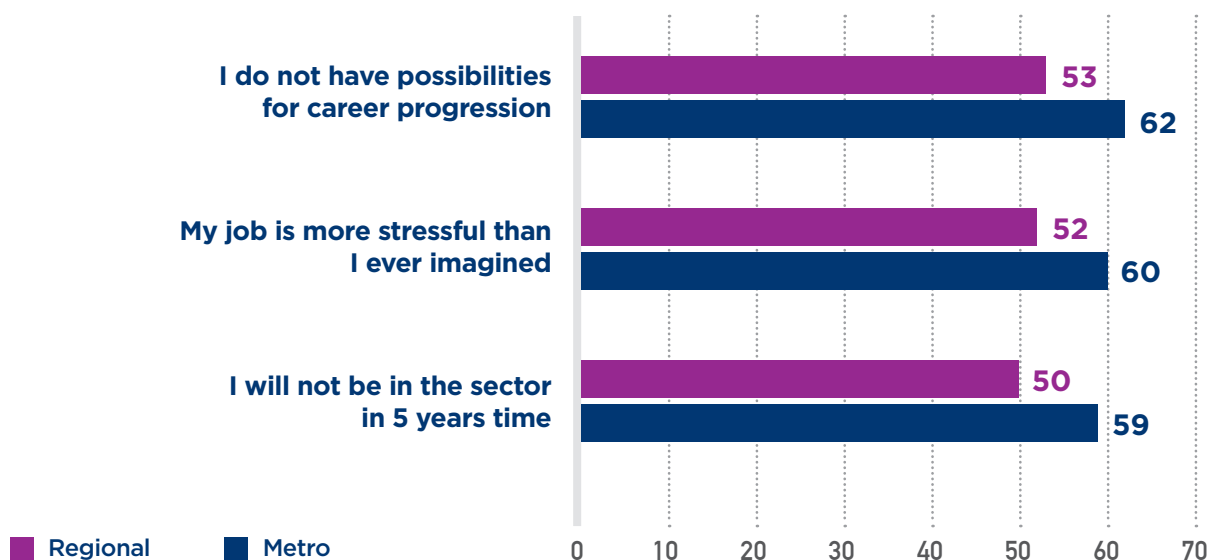
RESULTS FROM A SURVEY OF NDIS WORKERS ASCERTAINING THEIR OPINIONS ON CERTAIN ASPECTS OF A CAREER WITHIN THE NDIS



Source: NDIS Workforce Plan, 2020.

**FIGURE 1.5**

RESULTS FROM AN NDIS SURVEY OF WORKERS, DIVIDED BY REGIONAL AND METRO WORKERS



Source: NDIS Workforce Plan, 2020.







## PART TWO: UNDERSTANDING PORTABLE ENTITLEMENTS

### KEY POINTS

- 1** As work in Australia has become more ‘flexible’ and often more precarious, an increasing number of Australian workers are going without entitlements such as paid annual and sick leave.
- 2** Entitlements have usually been ‘pinned’ to a specific job—entitlements accrue for a worker so long as they remain at the same employer. ‘Portable’ entitlements sees this changed, so that entitlements are ‘pinned’ to the worker, with employers often paying into industry-wide entitlement funds, benefiting all employers and workers within a sector.
- 3** Once solely applied to long-service leave, innovative Portable Entitlements Schemes are beginning to see the principle of portability applied to other workplace entitlements, including sick leave.

Many Australian workers today are afforded the benefits of numerous employee entitlements. Since Federation, there has been an unending effort by worker advocates to push the extension of basic workplace entitlements, such as paid sick and annual leave, long-service leave, redundancy, and more recently, paid domestic violence leave. These entitlements are an essential component of Australia's industrial relations framework, and benefit both employee and employer by ensuring that workers are able to rest and recuperate during their career, and continue to perform at work in a sustainable way.

But as the nature of work itself has evolved since the 1980s, a growing number of Australian workers have found themselves employed in forms of employment where many of these entitlements are not accessible. This is particularly the case for Australia's contractor

workforce—a large and growing segment of the labour market who are working as 'independent contractors' rather than 'employees', and often work in occupations with unconventional working hours or engagements.

Both permanent employees and casual employees are entitled to certain basic protections at work. Though casuals do not accrue leave entitlements, they are covered by certain foundational protections, such as unfair dismissal if they have been demonstrated to have worked consistent, regular hours over a sustained period. Independent contractors, however, are not afforded even these most basic protections, as they are considered 'self-employed', and contracting out their own services to a third party, which usually has little responsibility for that individual self-contractor.

## CASE STUDY

### CONSTRUCTION INDUSTRY-FUNDED SCHEMES

**The concept of portable entitlements in the construction industry has been common for well over two decades.**

In recognition of the short-term, project-based nature of construction work, the industry has developed various schemes that allow casual and contractor employees within the sector to accrue long-service leave.

These types of services have typically been arranged by the industry themselves, with various providers managing portable leave funds, which are pinned to individual workers, rather than the employers.

In most cases, construction sector employers pay into a portable leave 'bank', at a percentage of their total payroll, ensuring equitable contribution.

Few schemes allow for the accrual of paid leave entitlements other than long-service leave, although there are some organisations, such as the *Building Employers Redundancy Trust*, that allow previously full-time employees to transfer sick leave between employers.<sup>9</sup>

## Use of 'independent contractors' is spreading throughout economy—and into the NDIS

Many individuals do wilfully choose to be an independent contractor. The form of employment is a legitimate feature of Australia's labour market, as independent contractors with niche skills are able to offer their services to a range of customers in an ad-hoc fashion, helping firms meet their various objectives.

There is an increase, however, in the misappropriation of 'independent contracting' models of employment, and often, these forms of employment resemble an employer/employee relationship, rather than a traditional contracting model.<sup>10</sup>

This is particularly prevalent in the services sector, where it is now common to see workers performing tasks such as cleaning hired as 'independent contractors', despite at times working for a single business, wearing the uniform of that business, and engaging in hours that would be consistent with formal employment. Contractors in these scenarios forgo many basic entitlements, while the employer is advantaged by not having to bear the administrative and financial liabilities associated with the direct employment of a worker.

## 'Portability' of entitlements is a fix to project-based work and job insecurity

For much of the twentieth century in Australia, working people's rights gradually expanded to include the right to paid annual, sick, and carers' leave; the right to redundancy payments when dismissed; the right to long-service leave; the right to superannuation; and more recently, the right to more novel forms of leave, such as paid parental leave and domestic violence leave. None of these entitlements are viewed merely as a luxury: they're essential in sustaining a healthy and satisfied working population.

But as the nature of work itself has evolved, especially since the advent of digital work, 'gig' platforms, and the increasing fragmentation of work in many industries, a growing cohort of workers find themselves working in forms of employment where they do not have access to many of these entitlements.<sup>11</sup> This is because, traditionally, the accrual and dispersion of these entitlements has been managed as a relationship between a single employer and single employee. In industries where workers do not work for a single employer—jobs which are project based, or see the individual worker move from worksite to worksite, receiving remuneration from a range of actors—the conventional management of entitlements doesn't make as much sense.

This type of ad-hoc, project based work isn't going away: in fact, it is likely to proliferate into more industries and sectors. This advantages employers, who can hire individuals for briefer periods of time to meet niche demands, and sometimes benefits employees who see value in moving from project to project, job to job without being 'stuck' with a single employer.

Fortunately, models do already exist that allow workers undertaking this type of project-based employment to accrue entitlements. Instead of having entitlements 'pinned' to a single job, the entitlements are 'pinned' to an individual worker, with their short-term employers contributing modestly to a centralised entitlements fund which follows the worker around from job to job. This is, in essence, what 'Portable Entitlements' are: they're entitlements pinned to an individual worker, rather than an individual job. And for decades, this innovation has already been in play for Australian workers in industries where project-based work is the norm.

# CASE STUDY

## QUEENSLAND STATUTORY BODY ADMINISTERING PORTABLE LONG SERVICE LEAVE

**QLeave<sup>12</sup> is a statutory authority of the Queensland Government responsible for administering a portable long-service leave scheme for community services, building and construction, and contract cleaning employees in the state.**

First legislated in 1992, QLeave emerged as a response to the construction industry's campaign to address construction workers' lack of long-service leave due to the project based nature of their work.

In 2005, access to QLeave was extended to contract cleaners in the state, citing the ad-hoc nature of that work, and in 2021, access was further granted to community services workers in the state.

QLeave is a statutory body that is independent from the Queensland Government. It has three independent boards responsible for overseeing the scheme with respect to each of the industry's it serves, reporting on scheme performance to the Minister for Industrial Relations.

The scheme is funded through a levy on construction projects valued at over \$150,000, and a levy on employers, calculated on the 'ordinary wages of their workers'.

QLeave is exclusively used to provide long-service leave.

### Some NDIS workers have access to leave due to state interventions and schemes

Although there is no nationally consistent scheme for portable entitlements for NDIS workers, some workers in the sector do currently benefit from access to portable entitlements under the auspices of state-based schemes. Disability support workers in Queensland, Victoria and ACT are currently able to access forms of leave—usually long service leave—through these state-based programs.

### Existing portable entitlements schemes often bare similarities to the implementation of superannuation

Existing schemes, mainly focused on providing Portable Long Service Leave to employees in industries dominated by project-based contracting or casual work, typically fund such schemes through a modest levy on an employee or contractors' regular wages. Occasionally, a levy set as a percentage of project value might also be used, such as in Queensland's construction industry.

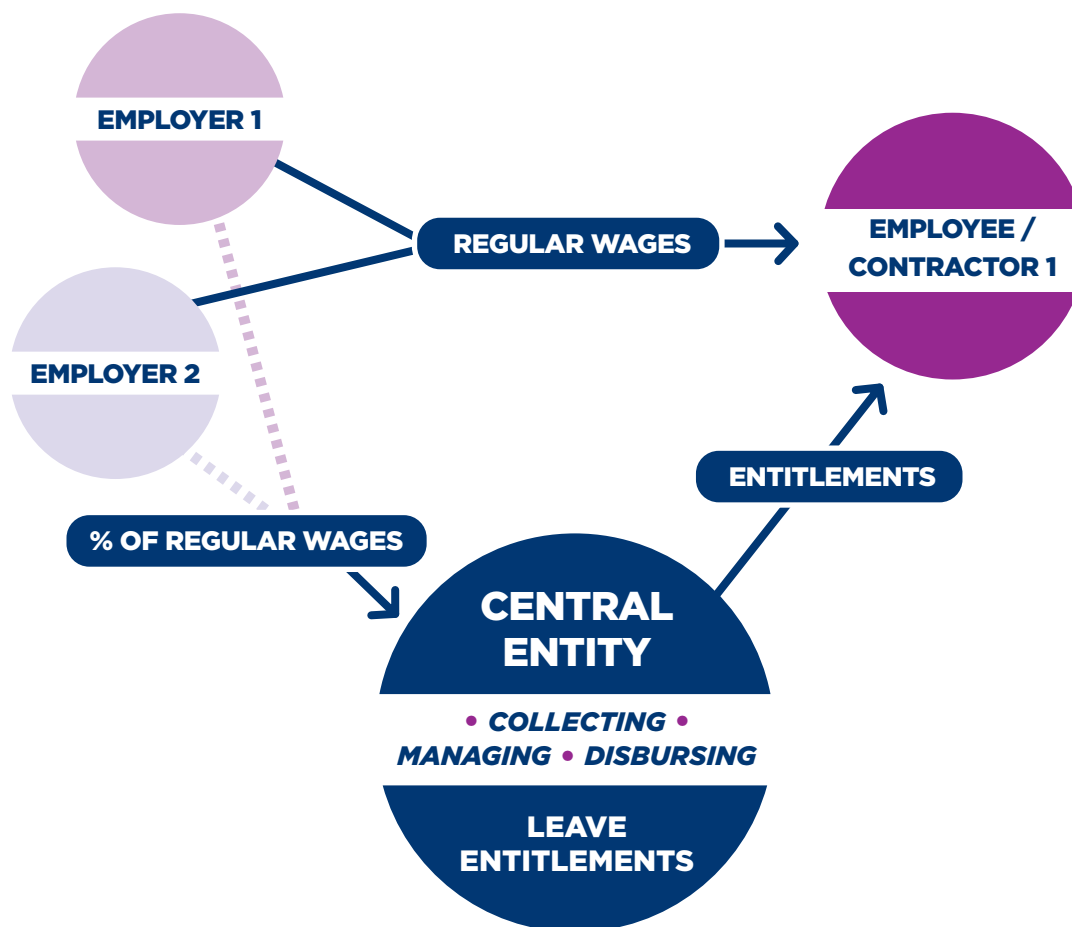




Effectively, this conventional model works in a similar way to the payment of superannuation. It is not necessarily an additional cost to employers; rather, it reflects the costs the employer might expect were it to directly extend these leave entitlements to its workforce. The advantage for the business in such a scheme is that it maintains employers' abilities to offer flexible working and project-based employment, but it does so in a way that encourages long-term retention of skilled workers within that sector. These relatively simple models of Portable Entitlements are not new, and have been in operation in Queensland since 1988 for the construction industry.

**FIGURE 2.1**

THE 'SUPERANNUATION' MODEL OF PORTABLE ENTITLEMENTS. THESE SCHEMES ARE COMMON IN CONSTRUCTION SECTORS ACROSS AUSTRALIA, OPERATING IN A MANNER SIMILAR TO THAT OF SUPERANNUATION FUNDS



### It is time to extend portability principles to other forms of leave

Over decades, the proliferation of portable long service leave schemes across the country have demonstrated a crucial point: portability works. Now, as work itself becomes more ad-hoc, and more workers are shifting into careers where they will have shorter relationships with any single employer, it is time to begin expanding portability principles beyond long service leave, and towards the more routinely accessed entitlements, such as paid sick and annual leave. Given the NDIS' dire need for improved job quality for its workers, and its government-funded model, the sector is an ideal candidate for these principles to be extended.

### **Sick leave for NDIS workers will improve the health of NDIS participants**

The COVID-19 pandemic demonstrated the vulnerability of Australian workplaces to airborne and transmissible viruses or illnesses—particularly those workplaces where employees do not typically have access to sick leave. As the disease began to circulate in Australia, governments recognised this vulnerability, with temporary Paid Pandemic Leave established to provide financial support for sick casual and contractor workers who otherwise may have

been forced, for financial reasons, to go to work, and therefore inadvertently spread COVID-19.

There are, of course, few settings where the impacts of viral illnesses can be more severe than in disability care setting. Were ill NDIS workers to feel compelled to go to work because the financial implications of staying home without sick leave too great, this could place at risk the health of NDIS participants. There are few sectors where the widespread availability of sick leave is more critically important than the disability care sector, and this could be achieved through the development of a portable entitlements scheme.

## **CASE STUDY**

### **VICTORIA'S 'PAID SICK LEAVE GUARANTEE'**

**Early in the COVID-19 pandemic, it quickly became apparent that the lack of access many casual and independent contractor workers had to paid sick leave wasn't only bad for the worker, it was also bad for public health.**

The requirement of some workers to take unpaid leave if they contracted COVID-19, or if they were a close contact of a positive COVID-19 case, left many workers with a difficult choice when they had minor symptoms: to 'soldier on' and work through the symptoms to receive pay, or to adhere to health advice, but sacrifice their income.

Though this was briefly ameliorated with supports such as JobKeeper, there was no paid pandemic sick leave scheme in place early in the pandemic. The various schemes that did appear were soon dismantled.

In 2022, the Victorian Government legislated its government-funded Paid Sick Leave Guarantee.<sup>13</sup> The scheme allows Victorian workers who have no access to paid sick leave through their employment access to sick leave, which is paid at the rate of the minimum hourly wage. The Victorian Government selected a broad number of occupations, including disability support care, to which the Guarantee applies.

The scheme was the first of its kind in Australia.



# PART THREE:

## EXTENDING PORTABLE ENTITLEMENTS TO THE NDIS WORKFORCE

### KEY POINTS

- 1 The NDIS is well suited to a government-funded portable entitlements scheme, governed by an independent, statutory body that remains at arms-length from government.
- 2 Key principles of public sector employment, such as a portability of entitlements across jobs within state and federal public sectors, offer precedents for similar provisions for the NDIS workforce.
- 3 The extension of a portable entitlements model for the NDIS would be consistent with the government's role as an exemplar employer, and create a model for other sectors to develop portable entitlements schemes.
- 4 The Government would need to address NDIS worker registration in order to maximise uptake of portable entitlements within the sector.









## NDIS participants must always remain at heart of the scheme

This report has examined why it is important to improve the quality of work for NDIS workers, and how this will benefit the efficacy and performance of the scheme. But as with all matters related to the NDIS, scheme participants must always remain at the heart of the NDIS. Improving the retention of the NDIS workforce would enable greater choice and control for NDIS participants. It would mean that their preferred support worker is more likely to remain within the sector for longer, allowing NDIS participants to sustain longer-term working relationships with their preferred NDIS support worker. NDIS participants are benefited from a consistency in the provision of support workers, as many have niche needs that are best understood by support workers who have worked closely with the NDIS participant over an extended time frame.

*Figure 3.1* illustrates a proposed Statutory Body administering portable entitlements for NDIS workers would be situated within the existing structural flow of the NDIS. The incorporation of such a scheme should avoid unreasonable administrative burden on NDIS participants, with funding for the workers' entitlements coming directly from NDIS service providers (including digital platforms) as a modest percentage of payroll (or as a percentage of NDIS revenue in the case of digital platforms that do not engage workers as employees), to be determined through the design of such a scheme. It is important to recognise that any levy on payroll is not anticipated to come at a significant direct additional costs to government: existing funding streams are constitutive of leave entitlement payments, but are currently largely absorbed in

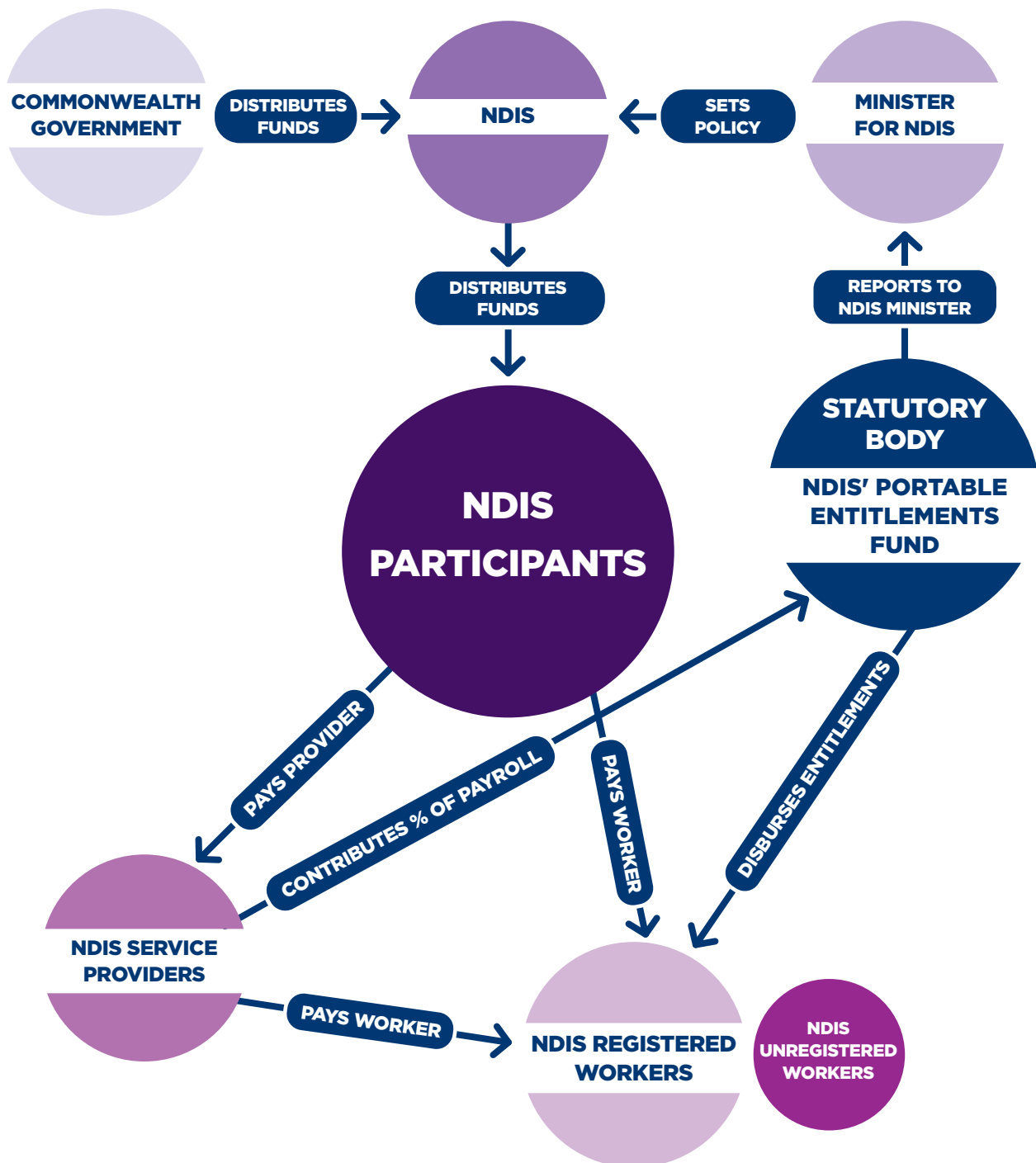
the business models of NDIS service providers, as there is no requirement on them employ NDIS workers to ensure they receive entitlements. It should be noted that in the situation where an NDIS participant is directly employing their own support worker, they could pay into the statutory body on a quarterly basis, as they would do for superannuation payments already.





**FIGURE 3.1**

A WORKFLOW ILLUSTRATING WHERE NDIS' PORTABLE ENTITLEMENTS FUND WOULD SIT WITHIN SCHEME ADMINISTRATION. IT SHOULD BE NOTED THAT BOTH SERVICE PROVIDERS AND INDIVIDUAL NDIS PARTICIPANTS ACT AS 'EMPLOYERS', AND WOULD SEE A PORTION OF NDIS FUNDS PAID FOR SUPPORT FLOW INTO THE SCHEME.



NDIS participants’ interests are served by maximising workforce retention

This report examines the merits of improving job quality within the NDIS sector, not only to benefit the interests of those working within it, but to enhance the performance of the scheme for participants. Much of the care that NDIS participants’ receive through the NDIS is personal, and specific to their needs. NDIS participants’ carers and service providers are often providing bespoke personal support services to participants. Often this is within a participants’ home and creates a unique client-service provider relationship. The knowledge accrued by the carer or service provider relating to an individual NDIS participants’ needs is also

essential to providing impactful care or support for that participant. For these reasons, transience is an undesirable feature of the system for scheme participants. Given that, extraordinarily, fifty per cent of NDIS workers have suggested they’d prefer to leave the sector, it is important that government considers ways to avoid this becoming a reality. It should be noted that high rates of staff turnover within the NDIS sector imposes a significant cost on government and on service providers. High rates of turnover are “extremely costly for all organisations”.<sup>14</sup> Lowering turnover rates, therefore, should be a top priority for the NDIS. Improving the quality of work, through the establishment of a portable entitlements scheme for NDIS workers, is a meaningful way of addressing worker concerns, while providing a more stable cohort of carers and service providers for NDIS participants.

FIGURE 3.2  
THE PROS AND CONS OF ESTABLISHED PORTABLE LEAVE SCHEMES CURRENTLY OPERATIONAL IN AUSTRALIA

SCHEME TYPE	PROS	CONS
Construction Industry	<ul style="list-style-type: none"><li>➤ Industry Led</li><li>➤ Equal levy on all employers</li><li>➤ Can be applied to multiple leave types</li></ul>	<ul style="list-style-type: none"><li>➤ May not apply to all workers</li><li>➤ Relies on industry stewardship</li><li>➤ No or little direct oversight by government</li><li>➤ May not be applicable to NDIS structure</li></ul>
Statutory Authority (Like QLeave)	<ul style="list-style-type: none"><li>➤ Independently run, with government oversight</li><li>➤ Is supported by legislation, which can be applied to all workers within a sector/scheme</li><li>➤ Can engage with other government agencies and systems</li></ul>	<ul style="list-style-type: none"><li>➤ Could be subject to political interference if independence is not sufficiently enshrined during design and legislation process</li></ul>
Victoria’s Sick Leave Guarantee	<ul style="list-style-type: none"><li>➤ Enshrined in legislation</li><li>➤ Applies to all workers without leave in approved professions</li><li>➤ No direct cost to employers or participants</li></ul>	<ul style="list-style-type: none"><li>➤ Paid at minimum wage</li><li>➤ Is only available for sick leave and only available when no other leave available</li><li>➤ Pilot program expires in 2024; continuation not guaranteed.</li></ul>

### Public employers have traditionally recognised service across the sector

Public sector employers have typically recognised an employees' service within the broader public sector when considering the accrual of entitlements. Commonwealth public service employees, for example, are often able to claim previously accrued entitlements if

they change positions within a Commonwealth Government Department, or even if they transfer to another Commonwealth Department. State public services, too, usually have similar arrangements. The principle within these arrangements is that a worker should be able to accrue entitlements as they shift between roles within government: that they shouldn't be punished for transferring to roles where their needs are more critically in demand.

## CASE STUDY

### TRANSFERS OF ENTITLEMENTS BETWEEN PUBLIC SECTOR ROLES

**Although the Commonwealth Government doesn't formally maintain a portable entitlements scheme for its workforce, the manner in which leave entitlements remain with an individual employee if they shift between roles within the Commonwealth Public Service is similar to a portable entitlements scheme.**

If a worker, for example, spent five years working for the Department of Human Services, and then accepted a role in the Department of Finance, they would be able to request that the entitlements they had accrued during their original role be carried over to their new role.

Certain employees entering the Commonwealth Public Service from other public services (state or local government) are also entitled to request that their previously accrued entitlements be carried over into a new Commonwealth role.<sup>15</sup>

While not a formal Portable Entitlements Scheme, the ability for employees to request a transfer of these entitlements between public sector positions is comparable to a Portable Entitlements Scheme, demonstrating the Commonwealth's capacity to implement this type of flexible entitlement scheme.



## A Government-funded, independently run portable entitlements fund is favoured

The NDIS is wholly funded by the Commonwealth Government. This funding is constitutive and intended to include resources available to use for providing entitlements to NDIS workers, though often this is allocated at the discretion of service providers, not the Government. While employers in the scheme are diverse, all NDIS participants' plans are funded through government resources, collected through taxes on the Australian public. Though not directly involved in each individual workers' employment—and while not directly responsible for the poor job quality some NDIS workers face—the Commonwealth has a responsibility to address these challenges, to ensure public money is spent as meaningfully and productively as possible.

In some industries, such as construction, workers and businesses have worked to create industry-specific portable entitlements schemes that are detached from government. Given the Commonwealth's role as the sole funder of the NDIS, this should be avoided. Instead, the Commonwealth should step in and create a fair, meaningful scheme that administers portable entitlements for NDIS workers.

## Funding for leave is already allocated, though not always passed on to workers

There is already funding available within the current payment cost model within the NDIS sector to fund the provision of leave entitlements for most scheme workers. In its 2022-23 Disability Support Worker Cost Model Assumptions and Methodology, the NDIS describes the allocation of NDIS funds for each disability support worker employed within the scheme. Table 3 of the report breaks down the fund allocations for these workers, which account for 152 hours of annual leave, 76 hours of personal leave, 76 hours of public holiday leave, and 32.3 hours of long service leave per year.<sup>16</sup> Though this is already the basis of funding NDIS participant's packages, many workers do not in practice access these entitlements, as their casual or contractor employment structure does not necessitate that their employer pass on these leave entitlements.

**FIGURE 3.2** THE BENEFITS OF THE PROPOSED SCHEME FOR EACH KEY STAKEHOLDER

STAKEHOLDER	BENEFITS OF SCHEME TO STAKEHOLDER
<b>NDIS Participants</b>	<ul style="list-style-type: none"> <li>➤ Strengthen and sustain labour pool for NDIS workers in the longer-term, creating stability and peace of mind for scheme participants</li> <li>➤ Avoids NDIS participants being exposed to sick support workers who are forced to work during illness due to having no sick leave</li> <li>➤ In most instance no administrative impact and does not disturb total NDIS funded package</li> <li>➤ Allows NDIS workers to have respite &amp; recreation (annual leave) promoting worker wellbeing</li> </ul>
<b>NDIS Workers</b>	<ul style="list-style-type: none"> <li>➤ Access to entitlements currently not available to them.</li> <li>➤ Access to sick leave when ill, annual leave for respite and recreation; and long service leave in recognition of service to the NDIS scheme itself</li> <li>➤ Still able to retain job flexibility, while being extended basic workplace entitlements common in other sectors</li> <li>➤ Less incentivised to change careers</li> </ul>
<b>Government</b>	<ul style="list-style-type: none"> <li>➤ Improve retention of the NDIS workforce, allowing the NDIS to meet its growth targets</li> <li>➤ By increasing retention of NDIS workers, the scheme benefits from improved institutional knowledge within its workforce, minimising costs associated with transience providing savings in the medium – long term</li> </ul>
<b>Service Providers</b>	<ul style="list-style-type: none"> <li>➤ Sustaining labour pool to provide services</li> <li>➤ Retaining flexible workforce</li> <li>➤ Reductions in cost of workforce churn (recruitment, onboarding etc)</li> </ul>



### **A statutory authority should administer the scheme at arms-length from Government**

Ultimately, the Commonwealth Government will be responsible for the performance and efficacy of all facets of the NDIS, whether that be scheme performance for participants, or employment conditions for workers enabling the scheme to operate. However, it is important to detach the day to day operations of the proposed Portable Entitlements Scheme for NDIS workers from the day to day politicking associated with government. This report, therefore, proposes that any Portable Entitlements Scheme for NDIS

workers be administered by an independent statutory authority at arms-length from the government of the day. The authority would report to the NDIS Minister, who would have the power to appoint an independent board to administer the authority. There could also be a role for State Governments to have a say in the appointment of the board, as is the case with appointments to the NDIS board. Ideally, the board would also enshrine participant and worker representation into its composition. This independent board, rather than any individual government minister, would be responsible for governing the scheme..

# RECOMMENDATIONS IN DETAIL

## **1 The Commonwealth Government should consider commencing a legislative process designed to extend portable entitlements to registered NDIS workers during this term of parliament, with an intention to have a scheme operational by FY2025/26.**

The establishment of a Portable Entitlements Scheme for NDIS workers would be a significant policy reform, necessitating a robust design and legislative process to ensure the model, its remit, and its governance is sound. It is recommended that the Commonwealth should consider commencing such a process during this term of parliament, with an aspiration to have an NDIS PES operational by the 2025/26 financial year. The process may include a detailed consideration by the Australian Government's current NDIS Review Panel and/or the Parliamentary Committee process, through which detailed design and operational principles could be established and identified, with the close engagement of the disability community and the workers that service the sector.

## **2 The Commonwealth Government should commit to establishing an independent, statutory authority responsible for overseeing, implementing, and managing a portable entitlements scheme for registered NDIS workers, should such a scheme be considered by the Commonwealth**

Although some portable entitlements schemes are governed and funded solely by industry, the fact that the NDIS is solely funded by government necessitates that any portable entitlements scheme for its workforce would also be a government responsibility. It is important, however, that such a scheme remains arms-length from the day to day political and economic decision making of governments of all persuasions. A design imperative should be that an independent, statutory board reports annually to government, and operates in accordance with a strict mandate specified in legislation implementing the scheme.

## **3 The Commonwealth Government should consider ways to maximise the registration of NDIS workers, expanding access to portable entitlements under the proposed scheme.**

The breadth and diversity of the types of services NDIS participants require necessitates the employment of a diverse set of NDIS support workers. Many of these workers are registered with the NDIS, but many are not. The extension of portable entitlements to NDIS workers would likely require a detailed visibility of these workers, which could be achieved through formally registering workers in the scheme. All disability support workers are currently required to have an NDIS Workers Check, a screening process which could be expanded to a positive registration scheme that tracks and accumulates leave entitlements.



# CONCLUSION

This report has argued the case for a **Portable Entitlements Scheme** for **NDIS workers**.

The NDIS is one of Australia's most important government institutions. But the increasing demand for NDIS services requires a considerable expansion of the NDIS workforce, which the government may not be able to achieve without improving the quality of work on offer for those working within the NDIS sector.

More than half of all NDIS workers have expressed an interest to leave the sector, and the sector maintains the highest attrition rate in the Australian economy.

These issues reflect a low-quality of work, and poor pay and conditions for NDIS workers.

The establishment of a Portable Entitlements Scheme for NDIS workers would help improve the quality of work on offer for the NDIS' contractor and casual workforce.

It would extend basic leave entitlements, such as sick and annual leave, to this cohort of workers, while retaining the flexibility necessary to ensure that NDIS participants' receive care when and where they need it.



# REFERENCES

1. Department of Social Services, 2023. 'NDIS National Workforce Plan: 2021-2025'. Accessed online: <https://www.dss.gov.au/disability-and-carers-publications-articles/ndis-national-workforce-plan-2021-2025>
2. Commonwealth Government, 2013. 'National Disability Insurance Scheme Act, Part 2:3:A'. Accessed online: <https://www.legislation.gov.au/Details/C2022C00206>
3. World Economic Forum, 2022. 'Fixing the global skills gap'. Accessed online: <https://www.weforum.org/agenda/2022/11/global-race-for-labour-why-companies-must-get-migrant-management-right/>
4. NDIS National Workforce Plan, 2020. Accessed online: <https://www.dss.gov.au/disability-and-carers-publications-articles/ndis-national-workforce-plan-2021-2025>
5. NDIS National Workforce Plan, 2020. Accessed online: <https://www.dss.gov.au/disability-and-carers-publications-articles/ndis-national-workforce-plan-2021-2025>
6. Per Capita, 2022. 'Contracting Care'. Accessed online: <https://percapita.org.au/wp-content/uploads/2022/06/Contracting-Care-V2.1.pdf>
7. NDIS National Workforce Plan, 2020. Accessed online: <https://www.dss.gov.au/disability-and-carers-publications-articles/ndis-national-workforce-plan-2021-2025>
8. NDIS National Workforce Plan, 2020. Accessed online: <https://www.dss.gov.au/disability-and-carers-publications-articles/ndis-national-workforce-plan-2021-2025>
9. Building Employees Redundancy Trust, 2022. Accessed online: <https://bert.com.au/cip/members/portable-sick-leave-psl/>
10. Cherry, M.A. and Aloisi, A., 2016. Dependent contractors in the gig economy: A comparative approach. *Am. UL Rev.*, 66, p.635
11. Kaine, S. and Josserand, E., 2019. The organisation and experience of work in the gig economy. *Journal of Industrial Relations*, 61(4), pp.479-501.
12. QLeave, 2023. Accessed online: <https://www.qleave.qld.gov.au/>
13. Victorian Government, 2023. 'Victorian sick pay guarantee'. Accessed online: <https://www.vic.gov.au/sick-pay-guarantee>
14. O'Connell, M. & Kng, M., 2007. 'Employee turnover and retention: understanding the true costs and reducing them through improved selection processes'. *Journal of Industrial Management*. 49
15. Department of Finance, 2023. 'Transferring leave'. Accessed online: <https://maps.finance.gov.au/pay-and-employment/leave-and-public-holidays/transferring-leave>
16. NDIS, 2022. 'Disability Support Worker Cost Model Assumptions and Methodology 2022- 23'. Accessed online: <https://www.ndis.gov.au/providers/pricing-arrangements#disability-support-worker-cost-model>





#### CONTACT THE MCKELL INSTITUTE

**T.** (02) 9113 0944 **F.** (02) 9113 0949 **E.** [mckell@mckellinstitute.org.au](mailto:mckell@mckellinstitute.org.au)

PO Box 21552, World Square NSW 2002

 [@McKellInstitute](https://twitter.com/McKellInstitute)  [www.facebook.com/mckellinstitute](https://www.facebook.com/mckellinstitute)

[www.mckellinstitute.org.au](http://www.mckellinstitute.org.au)