

Response to the Boland 2018 Review of the Model Workplace Health and Safety Laws

NDS would like to address two of the matters raised in the Boland Review's Discussion Questions which are directly relevant to the new industry context of the National Disability Insurance Scheme (NDIS). The disability industry is currently undergoing rapid restructuring and some research indicates disability health and safety practices could be under threat as the sector grows and diversifies. Effective workplace health and safety laws that speak to the specific circumstances of disability and other industries organised around individual funding plans and funding are important in this context.

Q 5: Have you any comments on the effectiveness of the model WHS laws in supporting the management of risks to psychological health in the workplace?

Psychological health in the workplace is an important issue in the disability sector. Disability support workers consistently state that they choose disability work because of the deep job satisfaction it brings. However, recent research suggests stress and other psychosocial conditions can also be a negative consequence of the work for a minority of people. Further, that stress and anxiety are being exacerbated by new pressures on workers associated with the NDIS.

The disability support workforce features many of the characteristics which the Boland Review discussion paper identifies as creating vulnerability to work health and safety risks. It is highly casualised (approximately 40 per cent of disability support workers are employed as casual workers)¹ and working hours are short, such that many workers have more than one job. Turnover rates are high, with around one-quarter of the disability support workforce turning over each year.

Both these employment characteristics are becoming more pronounced with the introduction of the NDIS. In addition, as people with disability have more opportunity to express their preferences for the timing and location of support, workers are more likely to be working in people's homes and the community, in isolation from peers or supervisors. NDIS pricing assumes that a very high proportion of a worker's time will be spent face-to-face with clients and therefore limits the extent to which workers can take part in organisational briefings and education, access peers or receive support from others in the organisation.

¹ NDS (2018) Australian Disability Workforce Report, 2nd ed., www.nds.workforce

- **Rates of mental disease**

Consequently, it is believed that the rate at which occupational injuries and diseases are reported is artificially low.² The high turnover rate militates against reporting stress-related conditions which have a slow and cumulative development. NDS members report that issues of liability are confused by workers' multiple job holding. Nevertheless, in the period 2012-13 to 2015-16, mental disease claims made up on average 15 per cent of all workers' compensation claims in NSW for the occupational group 'aged and disabled carers'.³

The hazards associated with home-based disability support work have been identified in the literature and are a combination of high physical, cognitive and emotional workload and job demands, including negotiating and interacting with family members who may themselves have psychosocial needs/issues.

Because of characteristics of the work environment that exacerbate worker exposure to psychosocial risk, these hazards too frequently result in distress and long-term conditions. Of relevance here are the following:

- the solitary nature of the work across environments where the worker does not always have control (clients' homes and the community)
- lack of peer and supervisory support, as supervisors manage large teams across several shifts
- job complexity – the diversity and complexity of tasks involved in providing support to people with disability, especially where the worker is working alone to support people with complex needs
- a competitive environment where the priority of keeping clients happy needs to be juggled with tight costing.

A recent study of home-based aged and disability support workers found a majority of those interviewed cited working conditions in the sector - low pay, understaffing and time constraints - as the most challenging aspect of their work and a source of stress.⁴ The study, which involved research into the practices of employers as well as employee consultation, found that standard risk management planning (even where up to date) was less relevant to psychosocial conditions where hazards are non-physical and build up over time. Evesson and Oxenbridge⁵ observed:

Risk assessments and hazard reduction were seen as critical, but did not address issues of ongoing exposure to emotional and other accumulated work demands that can lead to burnout.

Formal risk assessments did not anticipate unpredictable risks such as changes in client presentation and/or family behaviour.

² Evesson and Oxenbridge (2017) *The Psychosocial Health and Safety of Australian Home Care Workers: Risks and Solutions*, pp. 22 and 28

³ Ibid., p. 22. It should be noted that aged care workers make up the majority of the group 'aged and disabled carers', and it is not possible to further disaggregate the data.

⁴ Ibid., p.27

⁵ Ibid., p.94

Care workers in the study described how risk assessments were not necessarily adhered to where home care workers felt under pressure to meet client demands that fell outside of the care plan (and consequently risk assessments).

Participants described demonstrable links between physical injury and psychosocial risk. For example an experienced occupational therapist who attends worksites to perform risk assessments described how a home care worker placed under pressure (by demands from clients or office staff) while performing routine physical tasks can involuntarily tighten their muscles and rush work, which introduces a greater risk of physical injury.

In addition, providers understood that physical injuries that led to time off work frequently have a psychosocial risk dimension and highlighted the importance of supporting home care workers back to work sensitively and quickly.

The Model Code of Practice on *How to manage work health and safety risks* mentions psychosocial risks, but could be usefully updated with additional material on this topic and more current examples. In busy workforces where there are increasing time pressures, new means to build worker wellbeing, connect people via digital platforms and encourage a culture of people speaking up are called for.

Q 10: Have you any comments on the sufficiency of the definition of Person Conducting a Business or Undertaking (PCBU) to ensure that the primary duty of care continues to be responsive to changes in the nature of work and work relationships?

Q 20: Are there classes of workers for whom the current consultation requirements are not effective and if so, how could consultation requirements for these workers be made more effective?

In the new operating environment of the disability sector, a variety of non-traditional employment forms are emerging. As well as services provided by disability organisations employing staff, increasing numbers of people with disability are managing their own plans (attached to their budget) and employing staff themselves with greater or lesser degrees of formality. This is consistent with one of the goals of the scheme, to increase the independence of people living with disability, and is promoted by the NDIA. In the second quarter 2017-18, 20 per cent of people were partly or fully managing their own plans, and a further 15 per cent had their plans managed by an intermediary⁶. Some people are finding support workers through digital platform sites, many of which require workers to be established as independent contractors and take little responsibility for the relationship between worker and client. Franchise businesses are also growing, and professionals who were often employed by government in the past (for example Occupational Therapists) are increasingly working in private practice.

⁶ NDIA (2017) COAG Disability Reform Council Quarterly Report, December, p. 28

In the instances of agency or platform employment, there can be a considerable distance between workers and employers, and a lack of enduring relationship between them. In cases of self-employment and/or families employing workers directly, both workers and employers may be inexperienced or ill-informed in relation to employment obligations. In some cases contracting models are used to avoid the obligations associated with being an employer.

Certainly the PCBU definition is sufficiently broad to cover these employment models. But their proliferation prompts questions about how practical it is to expect individuals and small employers to maintain safe work practices (which also create safe practices for clients and the community) without a strong education and sanction system underneath them.

The Model Act's consultation requirements are unlikely to be observed without external support, and public education and monitoring of employment platforms would be helpful, as well as reporting and advice lines and the provision of information to intermediaries (such as plan managers) regarding workplace health and safety. This goes also to Question 25 which addresses the sufficiency of the powers of the regulator.

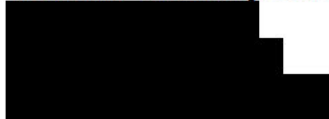
Given the emerging industry changes described above, it is likely that over time there will be greater need for expanded industry education about:

- joint responsibilities to maintain wellbeing in the workplace
- the obligations of people conducting a business or undertaking
- responsibilities that flow through the supply chain (from worker to original funding body)
- potentially deeming additional classes of contractors to be workers required to be covered by workers' compensation insurance

The NDIS requires rapid and large workforce growth. To attract the workforce required, job quality and sound working conditions are essential. It is in everyone's interests to adapt workplace health and safety laws and compliance regimes to respond to the new reality of the modern distributed workplace.

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National Disability Services is the peak industry body for non-government disability services. It represents service providers across Australia in their work to deliver high-quality supports and life opportunities for people with disability. Its Australia-wide membership includes more than 1000 non-government organisations which support people with all forms of disability. Its members collectively provide the full range of disability services—from accommodation support, respite and therapy to community access and employment. NDS provides information and networking opportunities to its members and policy advice to State, Territory and Federal governments.