

Submission  
No 49

**INQUIRY INTO IMPACT OF TECHNOLOGICAL AND  
OTHER CHANGE ON THE FUTURE OF WORK AND  
WORKERS IN NEW SOUTH WALES**

**Organisation:** NSW Nurses and Midwives' Association

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# Response to: NSW Legislative Council Select Committee Inquiry on the impact of technological and other change on the future of work and workers in NSW.

**APRIL 2021**



**NSW NURSES AND MIDWIVES' ASSOCIATION**  
AUSTRALIAN NURSING AND MIDWIFERY FEDERATION NSW BRANCH

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# Foreword

The New South Wales Nurses and Midwives' Association (NSWNMA) is the registered union for all nurses and midwives in New South Wales. The membership of the NSWNMA comprises all those who perform nursing and midwifery work. This includes: registered nurses; enrolled nurses and midwives at all levels including management and education, and assistants in nursing and midwifery.

The NSWNMA has approximately 70,000 members and is affiliated to Unions NSW and the Australian Council of Trade Unions (ACTU). Eligible members of the NSWNMA are also deemed to be members of the New South Wales Branch of the Australian Nursing and Midwifery Federation.

NSWNMA exists to be a strong, influential union of members respected as a contemporary leader in society for its innovation and achievements. We welcome the opportunity to provide a response to this consultation.

This response is authorised by the elected officers of the New South Wales Nurses and Midwives' Association

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## Introduction

The terms of reference for this Inquiry are extensive and we do not intend to address these individually. However, the NSW Nurses and Midwives' Association wishes to make this submission with specific regard to the implications of platform care agencies on the nursing workforce.

The gig-economy is relatively new for the healthcare sector, originating within the disability sector before entering the aged care sector with a growing market share. There are several gig-economy companies offering digital platforms in the aged and disability sector. The most notable being Hire-Up, Care.com and Mable Pty (formerly Better Caring).

Whilst we would not wish to stifle innovation within health and aged care, as a Union representing workers in both the aged and disability sectors, we are concerned about the impact of the gig-economy on: The employment rights of workers; the professional obligations of registered nurses and enrolled nurses and public safety.

As one of the main platforms offering nursing services and recently contracted by Federal Government, this submission mainly focusses on the operation of Mable Pty. However, our concerns would extend to any provider operating similarly within the gig-economy. We believe there must be adequate protections for both the client and worker arising from the provision of nursing and/or personal care to people in a formal capacity. We believe the gig-economy has provided a dangerous loophole in the system, one that commercialises the provision of health and social care with little regard for workers and public safety.

The fact that the Federal Government has legitimised the presence of platform providers by contracting Mable Pty for the provision of surge staffing during COVID-19 shows scant regard for the safety of both workers and residents in NSW. We are pleased that this Inquiry is shining a spotlight on this important issue.

## Mable Pty.

Mable Pty is an online marketplace linking workers to clients seeking aged, disability and other types of support including social activities and travel.

Prospective clients and workers independently register themselves on the Mable Pty platform and create a profile. Clients can then post a job, specifying the type of worker they require, and type of activity required. The client can filter workers against certain criteria such as geographical location, religion, qualification, and interests.

Workers register themselves listing key attributes such as driver's license, qualifications, skills, and languages spoken.

Mable Pty state they undertake certain basic checks on workers, including Police checks, Working with Children checks and registration status with AHPRA as needed.

Once a client finds a worker, they connect through the Mable Pty platform and agree an hourly rate and terms of arrangement. When a contract is signed between the client and worker Mable Pty withdraw from the arrangement but retains 10% commission on the total earnings from the worker, and a 5% commission from the client for the life of the contract.

It is important to state what Mable Pty does not do. Mable Pty is not an employment service or agency. It does not provide or arrange for care services. It does not participate in the interaction between support workers and clients, except to provide technology to facilitate the interaction, including in relation to the processing of payments on behalf of clients to workers. It does not involve itself in the terms of a Support Worker Contract between client and workers or the regulation of their engagement with each other.

In removing itself from responsibility for direct care and terms of engagement Mable Pty operates within aged care and disability care legislation which allows approved providers to subcontract work, but with an implicit assumption that the approved provider retains accountability for the care provided to clients. This can disadvantage workers and clients alike.

## Employment rights

We concur with the Unions NSW submission to this Inquiry and refer the Committee to this for matters pertaining to general employment rights for workers engaged in activities through the gig-economy. The disproportionate representation of female and migrant and/or culturally diverse workers and lack of secure employment within the care sector of the gig-economy are particularly concerning.

Whilst offering flexibility, workers engaged in the gig-economy lose out on rights they would be entitled to if they were employed full time, part time or on a casual basis. Some of these rights can include, but are not limited to, paid time off, rest periods and on-call allowances.

Being effectively self-employed workers also lose the ability to collectively bargain for improved terms and conditions of employment. This means they are more at risk of exploitation, insecure work, and financial hardship.

These factors can result in workers working multiple jobs leading to tiredness and errors in judgement. This not only leaves nurses professionally compromised but is wholly undesirable in the care industry given the vulnerability of people likely to use care platforms like Mable Pty.

Mable Pty markets itself as being able to offer workers the flexibility to set their own pay rates. However, there is a minimum suggested charge of \$25 p/h. Although not explicitly stated, it can be assumed this basic rate would apply to an assistant in nursing/personal care worker rather than a registered nurse, or enrolled nurse.

It cannot be established with any degree of certainty the actual charges that a client might negotiate with an assistant in nursing/personal care worker. However, based on Fair Work<sup>1</sup> casual rates of pay the minimum expected for an inexperienced nursing assistant would be \$27.06 p/h basic, rising to \$60.89 for a public holiday falling on a weekend.

For an experienced nursing assistant with a level III qualification, the industry standard for aged care, would expect a minimum of \$28.86 p/h basic, rising to \$64.94 for a public holiday falling on a weekend.

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<sup>1</sup> [www.fairwork.gov.au](http://www.fairwork.gov.au)

As a minimum in the Federal Nurses Award (2010) nurses who do home care work are not paid for the travel time to their first client or from their last client to home. However, they are paid for all travel time between clients as per their hourly rate including any applicable penalties. If they are using their own car, they are also paid a flat rate per kilometre (currently set at \$0.80).

Unlike casual workers, self-employed workers shoulder additional costs such as transport, leave payments, insurance, superannuation, and protective clothing. Given the minimum pay rates suggested by Mable Pty already fall below those expected by a Fair Work rates for casual workers, \$25 p/h is set well below that which workers would need to command a fair wage.

Mable Pty claims it offers clients greater value for money and the flexibility to only pay for the hours of care they receive. We believe these claims come at the expense of workers.

Work health and safety concerns in relation to infection prevention and control have come to the fore throughout the COVID-19 pandemic. Mable Pty has no obligation to ensure workers are equipped with personal protective equipment (PPE). Nor is there any responsibility to ensure clients place of residence or any other area where care is delivered is safe, and subject to infection prevention and control measures.

Mable Pty terms<sup>2</sup> explicitly state the responsibility for work health and safety fall to the client and worker.

*“By using the Mable Pty Site as a Customer, you agree that you will observe and comply with all regulations relating to the engagement of Support Workers, including any applicable workplace laws. For more information see <https://www.fairwork.gov.au/about-us/legislation> and <http://www.safeworkaustralia.gov.au/sites/SWA>.*

*By using the Mable Pty Site as a Support Worker, you agree that you will comply with all applicable workplace laws and any applicable occupational health and safety policies or directions given by a Customer in relation to the provision of Care Services pursuant to a Support Worker Contract.*

*Mable Pty does not involve itself in regulating or managing these issues and by using the Site you warrant that you have made yourself aware of the requirements under applicable workplace and occupational health and safety laws which may apply to the engagement between a Customer and Support Worker.*

*The Customer warrants to the Support Worker that they have inspected their premises and that it is a safe work environment for the Support Worker to provide the Care Services requested by the Customer.”*

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<sup>2</sup> Dated 20 October 2020 accessed via the Mable Pty website [www.Mable.com.au](http://www.Mable.com.au)

We question whether the individual worker or client would have the necessary qualifications and experience to undertake a workplace health and safety inspection.

Similarly, to acquire sufficient expertise to ensure the workplace meets all health and safety expectations would require a degree of capability that clients might not possess, given the service is targeted towards the aged and disability sector.

By placing responsibility for work health and safety upon the worker and client Mable Pty are unduly exposing workers to potential workplace hazards. We believe this is a loophole that allows gig economy companies to financially benefit from workers whilst absolving responsibility for their safety.

Mable Pty website states:

*“To protect you and your workers for every invoiced session, Mable Pty has partnered with Zurich Australian Insurance to arrange insurances on behalf of workers.”*

We believe this advantageous marketing statement by Mable Pty comes at the expense of workers who are liable for additional costs such as policy excess fees and workers compensation cover. These hidden outlays need to be accounted for when examining whether such employment unfairly disadvantages gig-economy workers.

Mable Pty website informs prospective workers that they are effectively running their own business. However, workers are restricted in their ability to promote themselves via feedback through the online review system, which is controlled by Mable Pty.

*“By using the Site and posting feedback (including a review) (“User Feedback”), You grant Us an unrestricted, worldwide, royalty-free, sub-licensable licence to use, reproduce, publish, communicate to the public, modify, and adapt Your User Feedback posted on the Site for the purpose of publishing that User Feedback on the Site and as otherwise permitted by this Agreement.”*

Whilst the intention might be to enable Mable Pty discretion to remove potential for slanderous or inappropriate content. A system whereby a company can modify feedback about a worker operating effectively as a self-employed individual, is wholly unfair and has the potential to impact a person’s livelihood without recourse.



## Professional obligations

As part of their ongoing professional requirements to practice registered nurses and enrolled nurses must undertake 20 hours of continuous professional development relevant to their practice annually. The costs associated with this are covered in most healthcare settings through the provision of mandatory annual on-site education even for casual workers.

Whilst Mable Pty benefits from being able to connect clients to nursing services, they do not bear any costs associated with undertaking professional development activities necessary for registered nurses and enrolled nurses to maintain their professional status.

We believe this is a further example of an additional financial burden on gig-economy employees that disadvantage them compared to other forms of employment.

Mable Pty collectively uses the term 'Independent Support Worker' to describe the range of workers it connects clients with, including registered nurses and enrolled nurses. Their website states it offers clients access to "*Independent Support Workers who have verified nursing qualifications*".

The inclusion of registered nurses and enrolled nurses within the category Independent Support Worker de-professionalises and devalues the nursing workforce. This leads to lower expectations around remuneration, education, and training.

Mable Pty actively recruits both registered nurses and enrolled nurses to its platform. To comply with professional standards for practice<sup>3</sup>, enrolled nurses must provide care with supervision of a registered nurse. Given that Mable Pty targets those requiring home care, often by a single worker, it is unclear how an enrolled nurse could operate safely within this framework.

These potentially problematic professional dilemmas fall to the workers themselves to resolve. Whilst Mable Pty benefits from being able to offer introduction to enrolled nurses through its platform, it does not facilitate solutions to enable them to practice safely, and within their scope of practice.

It could be argued that a company benefitting through its relationship, either formally or informally with registered nurses and enrolled nurses, should be accountable in some way for ensuring it does not professionally compromise them.

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<sup>3</sup> <https://www.nursingmidwiferyboard.gov.au/Codes-Guidelines-Statements/Professional-standards/enrolled-nurse-standards-for-practice.aspx>

## Public safety

Mable Pty is available as a platform to both approved providers of residential aged care and recipients of in-home care. It was recently engaged by the Federal Government to provide a surge workforce to residential aged care facilities in NSW in response to COVID-19. We have raised our concerns about the lack of transparency in awarding the tender to Mable Pty over other more experienced nursing workforce providers.

It has been widely reported that the CEO of Newmarch House, the residential aged care facility worst affected by COVID-19 in NSW, found Mable Pty workers lacking in their ability to meet the demands of complex high care residents.

We believe this can, in part, be attributed to the fact that Mable Pty is unable to afford workers and care recipients the same level of protections as approved aged care providers, who directly employ nurses and are regulated by the Aged Care Quality and Safety Commission (ACQSC). Such protections include access to training, PPE and professional development.

By the very nature of the peripatetic nature of many gig-economy nurses and assistants in nursing/personal care workers, they are more likely to be visiting more than one client and have more than one form of employment. Given concerns raised during COVID-19 regarding spread of infection by workers employed across multiple-sites this is a potential risk.

However, unlike approved aged care providers Mable Pty is not responsible for delivery of care, and by default, scheduling of work or tracking the movements of workers.

Registered nurses and enrolled nurses are bound by professional codes and standards. They are required to be registered through AHPRA and subsequently listed on a register of licensed practitioners that employers can use to verify whether they are able to practice.

Mable Pty states it checks registered practitioners, including nurses against this register. However, once an agreement is signed between client and worker the client effectively becomes the employer. This suggests it would be the responsibility of the client to periodically check the registration status of nurses employed against the AHPRA register of licensed practitioners.

It would not be unreasonable to suggest that a member of the general public seeking aged and disability services in their own homes would not necessarily be aware of the need to undertake an

annual check on registered nurses and enrolled nurses providing care, meaning they are vulnerable to receiving services from an unlicensed practitioner.

Similarly, there are requirements placed upon employers to report to AHPRA cases of suspected malpractice or serious complaints against workers. Mable Pty does not explicitly provide such direction to prospective clients in its terms. These protective obligations may therefore be missed within the gig-economy.

Mable Pty allows clients to self-select a worker but retain no responsibility for the quality of the worker.

*“Mable Pty is only an intermediary that facilitates the provision of selected information about Members as represented by Members.*

*“We do not offer advice regarding the quality or suitability of any particular Member for specific treatments or health conditions, and no information on this Site should be construed as health or medical advice.”*

When undertaking a sample search for a registered nurse on the website a list of registered or enrolled nurses appeared. However, when selecting CPR and First Aid certificate/qualifications the list of available candidates reduced to none. As a basic requirement for all nurses and midwives, the fact that neither of these usually mandatory qualifications is verified, nor required by Mable Pty leaves the public exposed.

Annual vaccination for workers against seasonal Influenza to protect both workers and clients, particularly during a pandemic, is a basic requirement in most healthcare settings.

Removing the additional requirements filter of self-declared seasonal flu shot on the Mable Pty list of available workers reduced the number of available workers. This suggests basic protections for workers and clients cannot be guaranteed through a gig-economy.

After exhausting internal resolution, clients receiving aged care services in their own home through Mable Pty wishing to raise concerns are directed to the ACQSC by their website. However, being responsible only for regulating approved providers receiving commonwealth funding, the ACQSC cannot investigate Mable Pty.

The ACQSC can only investigate the approved aged care provider whose only job it is to pay the invoices for the workers sourced through Mable Pty. This approved aged care provider can correctly claim that, in relation to the client’s concern, it is not in breach of aged care regulation because the contractual

relationship is between the client and the Mable Pty-sourced care worker. As a result, the ACQSC is powerless to address any issues arising, because it cannot investigate the care worker or the client. Effectively, Mable Pty presides over an arrangement that legally bypasses legislated consumer protections.

People requiring nursing services in the aged and disability home care sector may be extremely vulnerable, and at risk of potential abuse. To seek care services and understand the process for recourse effectively through a platform company such as Mable Pty, a client would need to have low needs and high levels of literacy, including health literacy.

### Home Care Heroes Pty Ltd trading as Like Family

Like Family operates similarly to Mable Pty and is another uber-style platform care agency offering disability and home care services for a flat rate of \$42 p/h. Formerly Home Care Heroes, Like Family have a presence in Victoria and NSW.

However, unlike Mable Pty, Like Family explicitly state they do not offer professional care services or provide direct intimate care. However, they advertise their staff as having qualifications such as Certificate III in Health and Aged Care and Occupational Therapy qualifications and state that workers may prompt medications and provide health and wellbeing support. Ambiguity about role and qualifications of workers could lead to potential for direct care to be provided without workers having adequate protection such as PPE.

Workers are required to be 'onboarded' to the platform and are deemed sole contractors requiring an individual ABN. However, their earning potential is restricted since Like Family determine the fees that clients pay which is advertised as a set \$42 p/h rate with no additional payment for public holidays or unsocial hours<sup>4</sup>. Workers pay Like Family a platform fee out of the service fee collected from clients and Just Family are responsible for setting, invoicing, and collecting payments despite workers being self-employed.

Despite having their potential earnings capped by Like Family, workers cannot claim entitlements such as sick leave, holiday leave, workers compensation or superannuation. There is an inherent risk of exploitation in this scenario with workers having no options to raise their potential earnings except for the number of hours they undertake. This can lead to exhaustion, excessive workloads, and burnout.

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<sup>4</sup> <https://likefamily.com.au/pricing>

With no direct supervision by anyone other than the client themselves this is highly undesirable in the care industry, since Like Family also removes itself from responsibility for the provision of services (termed 'interactions').

## Care.com

Care.com was founded in 2006 and is another established platform provider that offers nursing services in NSW. Like the other providers, it does this without having any responsibility in relation to the quality of service delivery since it merely connects the client to an independent worker. Care.com outlines this through its terms and conditions which state:

*"Except as described in these Terms and the Data Policy, we do not verify, review, evaluate, interview, screen, vet or perform background checks on Carers or Care Seekers nor do we verify any content posted to the Site by a Carer, Care Seeker or others.*

*We are not a party to any agreement between a Carer and a Care Seeker. Care Seekers are the potential employers of Carers and are responsible for compliance with all applicable employment and other laws in connection with any employment relationship they establish (such as applicable employment standards legislation (including minimum wage laws), occupational health and safety legislation, and worker's compensation insurance or benefit programs).*

*There are risks, including but not limited to risk of physical harm, when you deal with someone you connect with through our Site. You assume all risks associated with dealing with other persons with whom you come in contact through the Site.*

*We provide no assurance or representation (express or implied) regarding the quality, timing, or legality of the services actually delivered by Carers or the integrity, responsibility or actions of Care Seekers or Carers. We do not refer or recommend either Care Seekers or Carers nor do we make any representations about the suitability, reliability, timeliness, and accuracy of the services provided by Carers or the integrity, responsibility or actions of Care Seekers or Carers whether in public, private or offline interactions."*<sup>5</sup>

Care.com site contained advertisements by workers for a little as \$20 p/h at least \$7 less than Fair Work suggested casual rates<sup>6</sup>, \$5 p/h less than Mable Pty and \$12 p/h less than Like Family. This sort of 'race to the bottom' wage setting is not conducive to quality care delivery and can lead to short-cuts in service delivery. It also leaves workers reliant on multiple jobs and excessive hours to earn a reasonable wage.

Like Mable Pty, Care.com delegates responsibility for interviewing, reference checks and verifying information provided by a worker to the person seeking care. Very few workers had limited

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<sup>5</sup> [https://www.care.com/en-au/terms-of-use#sect\\_1](https://www.care.com/en-au/terms-of-use#sect_1)

<sup>6</sup> Ibid

qualifications documents verified by Care.com displayed against their profile and prospective clients are asked to request the worker bring hard copies with them.

We would argue the platform should have a greater responsibility towards verifying workers, particularly ensuring their skills and qualifications accurately reflect their status and ability to perform duties advertised in a safe manner. This sort of due diligence would provide better safeguards for both the worker and client.

Care.com also transfers accountability for maintaining a safe working environment to the client. As previously stated, it is highly unlikely an aged client seeking nursing services would have sufficient knowledge of workplace health and safety requirements to ensure all necessary safeguards are implemented.

A recent search for nursing services through the Care.com website resulted in several 'hits' against potential workers, two claiming to be registered nurses (a protected title under Australian law). However, when reading through their biography they had acquired their nursing qualifications and had only practised as a registered nurse overseas and had not registered or worked as a nurse in Australia.

This sort of false representation and misleading content is highly concerning, is a potential risk to public safety and undermines the nursing profession. When seeking information about consumer rights, there is a link to raise concerns back to a service centre at care.com, no external links are provided nor complaints policy clearly visible on the website.

Being neither employers nor providers, the gig-economy as it relates to Mable Pty, Home Care Heroes Pty and Care.com operate legitimately outside normal legal protections afforded to workers and the public. People who are the most vulnerable, and their carers have the least protections.

We question whether the gig-economy has a place in the delivery of health and personal care given there are currently so few safeguards including the fact they operate outside the normal protections offered by aged and disability care legislation and are outside the reach of the ACQSC.



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