

**Submission
No 53**

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

Organisation: Hireup
Date Received: 15 October 2021

The Hon Daniel Mookhey MLC

15 October 2021

Chair

Select Committee on the impact of technological and other change
on the future of work and workers in NSW

By email: futureofwork@parliament.nsw.gov.au

Dear Chair

On behalf of Hireup, I appreciate the opportunity to make a submission to the inquiry of the Select Committee at this stage of the inquiry, noting the Committee's acceptance of late submissions in recent months.

Our company is particularly pleased to see the Committee's interest in gaining a comprehensive understanding of the landscape of the fast-growing, dynamic 'on-demand' or 'digital' economy. We are also pleased to see the Committee willing to consider reform measures to remedy the concerns that these newer forms of work have brought about, and we would argue this is particularly important when it comes to the work of personal care and support.

Hireup is a national provider of disability support services and registered through the National Disability Insurance Scheme (NDIS). Through a secure online platform, Hireup provides people with disability the tools to find, hire and manage their own support workers who fit their needs and share their interests, enabling the principles of choice and control that underpin the NDIS.

The Committee may find special interest in Hireup's story and model, as we are one of the only online platforms in Australia that directly employs its workforce — and we are certainly the largest. We are a contractor-free model. At the heart of our perspective is the proposition that: simply because technology makes certain work easier to arrange, doesn't mean those workers should lose workplace rights and conditions afforded to employees. When it comes to those rights and conditions, workers should be treated fairly, obligations should be set out transparently, and workplace laws should be applied in full. The technology that arranges the logistics of the work shouldn't change that.

Most importantly, we are showing how achievable this is.

Earlier this year, Hireup provided a submission to the Select Committee on Job Security and raised a range of concerns about the application of current laws and regulations to workforces in the digital economy, particularly as it relates to the disability sector in which we operate. These same matters are highly relevant to this inquiry, and as such we have provided a copy of this previous submission as an **attachment** to this cover letter for the information of committee members. There are some matters in addition to this submission that I will raise briefly here, but I urge members to review the attached submission in detail as it provides the bulk of our input to the inquiry.

At Hireup, one of our primary goals is to be the employer of choice for support workers. Treating our workers well means we have a proud place in a community that values choice and control for people with disability, for their families and for those who work with them.

From our unique perspective at Hireup as an online platform that employs our workers, we can see some worrying workforce trends in the disability sector. Precarious work is increasing as the proportion of people formally employed by the traditional not-for-profit providers, and more modern, tech enabled providers like us, falls, and the proportion of sole traders — or independent contractors — rises. This may result in risks to workers' conditions and wages, as well as risks to the oversight of safety and quality of the services being provided, both for workers and clients. The attached submission points to some of the reasons behind this and suggests ways to address it.

While we recognise that many of the recommendations we and others make about changes to industrial relations laws would need to be pursued at the Commonwealth level, there are a range of impacts of the explosion of contracting and sole trading in the digital economy that state governments should take time to understand and address. The most obvious impact for state governments, which we mention in our attached submission, is the potential loss of millions of dollars in payroll tax revenue. That is, if platform workers, such as disability support workers, are being misclassified as independent contractors, sole traders or 'small businesses', then platforms would not be declaring these workers as employees. This would likely result in no payment of any appropriate payroll tax that would normally apply for work of this nature — in which a worker is paid by the hour, principally for their labour — and so that revenue stream for state government could be considerably diminished.

In addition to the *Payroll Tax Act 2007*, there are a range of other legislative options at the state level to ensure support workers who are engaged as 'contractors' receive similar protections to 'employees', as well as imposing more responsibilities on the organisations

that engage these workers. For example, the protections given in the *Industrial Relations Act 1996 (NSW)* currently only apply to 'employees'. An amendment could be considered to expand the definition as it relates to support work.

Our perspective is unique and I hope our submission will inform the committee's work. We would be pleased to expand on it at the Committee's request. If the Committee would like further information regarding this submission, please contact Liam Caulfield on

or at Again, thank you for the opportunity to provide our perspective to the Committee about these important matters.

Yours sincerely,

Neil Pharaoh

Director of Corporate Affairs

Hireup

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Dear Chair,

On behalf of Hireup, I welcome the opportunity to make a submission to the inquiry of the Senate Select Committee.

Our company is particularly pleased to see the committee's interest in improving the fast-growing, dynamic 'on-demand' economy, particularly as it relates to the disability sector in which we operate. We're happy to provide insights from our experience and expertise, and raise some issues we think it would be helpful for the committee to address.

I worked — for years — as a disability support worker myself. I'm trained as an occupational therapist. So I know what it's like to work on the front line of our sector. Having grown up with a brother with a disability — and seen the support he received, good and bad — I know too how important happy, secure workers are to those they support. At Hireup, one of our primary goals is to be the employer of choice for support workers. Treating our workers well means we have a proud place in a community that values choice and control for people with disability, for their families and for those who work with them.

But from my seat as the CEO of a large disability service provider I can see more general trends in the disability sector which worry me. Precarious work is increasing as the proportion of people formally *employed* by the traditional not-for-profit providers, and more modern, tech enabled providers like us, falls and the proportion of sole traders — or *independent contractors* — rises. Our submission points to some of the reasons behind this and suggests ways to address it.

Our perspective is unique and I hope our submission will inform the committee's work. I'd be pleased to expand on it, or provide further information at a future hearing of the committee.

Yours sincerely,

-
Jordan O'Reilly
CEO and Co-founder, Hireup



Submission

Senate Select Committee on Job Security

March 2021

Our purpose

To enable the pursuit of a good life for everyone

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EXECUTIVE SUMMARY

Hireup has a rare perspective to present to the Select Committee. Our ‘platform provider’ business model is unique. We’re a fully NDIS-registered provider of disability services, operating through an online platform and yet directly employing our thousands of support workers across Australia. Our experience has given us insights that we think the committee will find valuable, and has raised issues we hope the committee will help address.

Support work in the disability sector has — like any market — a demand side and a supply side. On the demand side there has been intentionally rapid change over the last five years. The roll-out of the National Disability Insurance Scheme (NDIS), with its person-centred funding, has been unequivocally good for people with disability. People have more control than ever over how best to allocate funds to access the support they need. Coinciding with the arrival of the NDIS has been technological innovation. Tech-enabled platform providers and platform marketplaces in particular have supercharged the ability of people with disability to find support workers, giving them much more choice and control over their lives.

Superficially, on the supply side the NDIS has been broadly positive for the disability workforce too. Workers also value choice and control and have embraced technology to achieve it. Thousands of people are joining a sector that keenly needs them. However, the *bedrock* of the supply side — the system underpinning secure working conditions — has not changed to keep pace. It’s out of step with the new reality that the NDIS and technology have created. The result is less formal employment and more unintended workarounds leading to more precarious work.

Our submission highlights how the complexity and rigidity of unreformed labour regulation for employers is dissuading newcomers to the disability sector from becoming employers in the first place. With fewer opportunities to be employees as a result, workers are pushed towards the rising alternative: becoming self-employed ‘independent contractors’. Increasingly workers are encouraged by technology-driven companies who operate ‘platform marketplaces’ for independent contractors and, indirectly, even by government procurement which doesn’t preference employers operating to strict labour standards.

It is our submission that sole-trading, or ‘independent contracting’ is inherently more precarious than employment. It carries big, often underestimated liability risks and is untouched by the protections and rights associated with being an employee. But it is growing much faster than employment because of structural barriers and systemic disincentives to responsible, secure employment.

The NDIS’ person-centred funding, and new technology — particularly online platforms — are positive developments that are here to stay. The central question we’d like the committee to address is what labour standards should underpin them. We have three recommendations that should help.

1) *Employment laws are unclear and need to be clarified*

In one month last year 50,200 people became sole traders in Australia.¹ In that same month there was an increase of just 2,600 in the number of employees. Optimists might see a sudden wave of entrepreneurs. Realists would see work once done by employees being taken on by contractors instead. That raises the question of whether the new wave of sole traders are genuinely independent contractors or, in fact, *de facto* employees.

We think disability support work meets, and has always met, the criteria of work that needs to be classed as ‘employment’. In our experience, disability support work is based on long-term relationships and paid regular hours. It is not simply a series of one-off-gigs. We don’t think simply encouraging workers to get an Australian Business Number (ABN), or indeed applying technology to help assign jobs, changes that.

But are we right?

Other companies operating platform ‘marketplaces’ in our sector see things differently. They encourage and enable the shift towards independent contracting. That brings — we think — risks to both workers, clients and society. Workers are in a more ‘precarious’ position because they have no guarantee of minimum wages, no right to superannuation, nor entitlements, nor workers compensation insurance. They don’t operate with a requirement for the same supervision nor within the external safeguards of employees either. Independent contracting means potential liabilities for people with disability too; they could be deemed a worker’s direct employer. As governments miss out on huge revenues in the form of payroll taxes, widespread independent contracting can have a negative impact on social cohesion too.

There is also a commercial reality. Companies engaging independent contractors have lower costs than a company that employs its workers, as Hireup does. Payroll tax, superannuation, compliance and employee training add up. We believe everyone in the sector — be they small care operators, the large, traditional, not-for-profit providers, or the new crop of modern, tech-enabled platforms — should share similar responsibilities and obligations. A two-tier system — one tier operating with higher costs than the other — is not sustainable long term and will undoubtedly lead to greater job insecurity across the entire sector.

Recommendation one: Employment laws are unclear and need to be clarified. We recommend the committee investigate whether reform to employment laws could clarify the status of support workers in our sector.

2) *Industrial awards should be modernised*

From the start, Hireup has engaged workers as employees. Secure work, we believe, means work that is properly paid, meeting award-pay levels including relevant

¹ Australian Bureau of Statistics (September 2020) [Strong employment growth for non-employees](#), ABS Website, accessed 30 March 2021.

entitlements. It means workers who are paid to do training, insured and supported. It means the right contributions going to governments through tax. We have combined innovation with compliance; compliance with the rules — of being a good employer and treating our employees well.

But Hireup is unusual. So far, of at least eight newly-established companies which offer support workers through online platforms, Hireup is the only one that employs its workers.

Why? One reason is because being an employer in the disability sector is not straightforward. Industrial awards have failed to keep pace with the digital economy, especially as they relate to relationship-based support and assistance services. This makes compliance inherently complicated, and can lead to poorer and less flexible outcomes for workers and people with disability.

It is our submission that the complexity of being an employer in the disability sector is dissuading many new, tech-enabled entrants from taking that route. It contributes to the incentive to operate outside the tried and tested structures of secure employment. Reform of the industrial awards system is overdue.

Recommendation two: In the disability sector, awards have not kept up with the pace of change. We recommend the committee investigate how industrial awards could be simplified and modernised to enable everyone — traditional and new digital companies alike — to play by the same rules when it comes to the workforce.

3) There is a lack of community awareness of the risks associated with independent contracting

As our submission explains, there are many potential risks associated with independent contracting. For workers, quite apart from a lack of regulated pay and entitlements, there are potential liability risks. In contrast Hireup — as an employer — is responsible for our employees while they work. In the case of an accident, there is no dispute over liability nor responsibility. The buck stops with us. But in the case of independent contractors, it's different. The buck stops with the individual worker. We think, at the moment, individual workers don't fully appreciate this or truly understand the risks and liability faced in the event of a claim or catastrophic injury. For clients too there are risks. When tested, a court might find a *de facto* employment relationship exists between a worker and each individual client. That puts people with disabilities on the hook if things go wrong — especially for under-payment of wages, back payment of super, tax and other entitlements.

So we'd like the committee to investigate the potential personal and professional risks that can be a feature of independent contracting. There's little community awareness of these; there should be.

Recommendation three: We recommend that the committee investigate the benefits of increased community-awareness of the potential risks associated with independent contracting.

Addressing the extent and nature of insecure, precarious work — as the committee intends — will help clarify the right way forward for the disability sector. As a business that is proudly ‘for purpose’ — putting the needs of our community above all else — we will help in every way we can.



INTRODUCTION

About Hireup

Hireup is a proud employer of all our support workers. Many people assume we use independent contractors. We don't. We are a platform *provider* not a platform *marketplace*. To clients, those might look — superficially — the same. But in reality, for them and especially for workers, there are significant differences. Unlike Hireup, most platform *marketplaces* treat their workforce as 'independent contractors'.

Hireup is a national NDIS-registered provider of disability support services. We are an innovative and for-purpose business driven by a desire to achieve real and revolutionary change for Australians with disability. Through a secure online platform, Hireup provides people with disability the tools to find, hire and manage their own support workers who fit their needs and share their interests. Hireup harnesses technology to support the fundamental principle of the National Disability Insurance Scheme (NDIS) for people with disability: choice and control.

Most people who work for Hireup are disability support workers who provide support services to people with disability, by-and-large within or from private homes. As our workers are employees, we take responsibility for the wellbeing and safety of our community by doing pre-employment screenings, setting quality assurances and delivering workforce training. We also provide comprehensive insurance and pay competitive wages through the industry award.

As an employer, we take responsibility for ensuring our workers have access to healthy working conditions and employee benefits. We also take the responsibility to address and mediate any incidents or complications that might occur in the course of support. We ensure a safe workplace for our workers and peace of mind for those seeking support on Hireup.

Hireup's decision to employ our workers came from an understanding of the nature of the support work that would be provided through the Hireup platform: *we wanted to make sure we cared for the people who would care for our clients*. At this stage, almost all Hireup support workers are casual employees, and we are building out our permanent employment offering as well.

We believe that the dual planks of Hireup as an employer and as a registered NDIS provider result in a very effective model that prizes wellbeing and good conditions for workers, and quality and safety of support services for our clients. With technology that's the essence of our 'platform provider' model.

Each month we have more than 6,000 support workers actively engaged in working support shifts. Since 2015, we have provided more than seven million hours of support to clients.

The rationale for Hireup's approach to this submission

While Hireup is proud of our operating model and eager to increase the positive social impact it can bring, we also seek clarity and certainty about the effect of certain laws

where there is currently confusion and risk. The disability sector is a complex ecosystem, and we make no claim to holding all the answers to the questions we pose about the workforce. We also acknowledge that for many people with disability, the choice between varying ways of finding support workers is a positive experience and this is an important feature of the breadth of services available through the NDIS.

This clarity is important to us because, while there are currently eight online platforms that we know of for disability support, we are the only online platform that is also an employer. We want to make responsible decisions that benefit our community, our workforce, and the overall sector, but to do that we are asking questions to ensure there is certainty across all platforms.

At Hireup we believe that, where there are these foreseeable risks for people with disability and for disability support workers — risks which may impact the sustainability of the NDIS workforce — then we have a duty to call attention to this. The outcomes of a discussion about contracting in the disability sector are important for workers and for people with disability, as well as for service providers and other sector organisations, and, through the NDIS, for all Australians. We hope that our submission is understood as a call for clarity where it is needed and deserved, and a point from which governments and the community can make deliberate decisions about the way the future of work should be managed in our increasingly digital world.

Terms of reference to be addressed in this submission

As an online platform operating at large scale within the digital economy, Hireup's employment model is unique. Our submission therefore comes from a unique perspective. We know how our model works for Hireup, for our workforce, for our community — and within the broader disability sector and the NDIS.

We wish to assist the committee's inquiry by applying our perspective and expertise to select terms of reference.



EXISTING EMPLOYMENT LAWS

(e) the effectiveness, application and enforcement of existing laws, regulations, the industrial relations system and other relevant policies

The *Report of the Inquiry into the Victorian On-Demand Workforce*² investigated the interaction of current employment laws and online platforms, and we encourage the committee to review the report as part of this inquiry (this topic is specifically addressed in Chapter 6 of the report). The report discusses the importance of the classification of a worker as an employee, or otherwise, in the following terms:

‘Employment’ is the basic building block that determines how workers, and those who engage them, must interact with various regulatory frameworks. In practical terms, their status also influences where workers may obtain help and advice should they wish to raise a concern or pursue a complaint about their conditions, entitlements or obligations.

*A person’s ‘work status’ is pivotal. Work status determines a range of entitlements, protections and obligations with very different outcomes for each category. Non-employment workers are provided fewer guaranteed protections than employees.*³

While a person’s work status is here considered ‘pivotal’, the report notes that the ability to determine that status is undermined by unclear laws:

Notwithstanding the significance of being an employee, key elements determining a person’s work status are not set out in the employment statutes. Instead, the legislation invokes terminology that references and applies the constructs already described – to ‘an employee’ or ‘a person in a contract of service’ – a reference to the ‘common law’ contract underpinning the relationship. Constructs, underpinned by a range of factors and developed over time by courts applying common law ‘tests’, are applied to particular cases.

Employment arrangements are distinguished from independent contracting arrangements by applying these multi-factor legal indicia developed by the courts over time...

*...There are no consistent rules about the weight that should be given to the different indicia.*⁴

The report found that the ‘inherent uncertainty of the work status test’ was a key cause of failings in the on-demand workforce:

² Victorian Government, *Report of the inquiry into the Victorian on-demand workforce*, 2020. https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.vic-engage.files/4915/9469/1146/Report_of_the_Inquiry_into_the_Victorian_On-Demand_Workforce-reduced_size.pdf

³ Ibid. p 101

⁴ Ibid. p. 105

This, in the Inquiry's view, is the 'root cause' of the current system's failings. It, in turn, causes uncertainty about the application of work laws.⁵

We agree with these findings and submit that current industrial relations laws have not responded to the rapid change in the labour market, in particular regarding online platform workforces. There is no proactive process to determine the work status of workers of online platforms, instead that determination is left to the court system to interpret each individual worker's relationship to a platform or a client, in the process applying legal indicia that were not composed with any reference to the digital economy.

We consider that the current system is likely to fail to accurately identify the work status of online platform workers. To understand better the varied work status applicable to workers on different platforms, it is necessary to look into the spectrum of relationships created by platforms.

Three-way platform relationships

Platforms facilitate three-way relationships between the platform, client, and worker, and it's important to understand that these exist across a varied spectrum, depending on the platform and the sector. This varied spectrum means that there will not be one simple solution that applies neatly to all online platforms in all sectors.

At one end of the spectrum, platforms that enable customers to book one-off tasks or 'gigs' appear to genuinely facilitate a service-user to engage a contractor to perform a specific, one-off task, or 'odd job' (often reliant on certain skills, such as a carpenter or painter). This is akin to 'classified' ads in newspapers. In that example, we submit the worker cannot reasonably be perceived as employed by either the newspaper/platform or the service user.

Towards the middle of this spectrum are platforms offering ridesharing and food delivery. Court proceedings have already proven how uncertain work status can be in this area. The workers are entirely dependent on the platforms for their work, albeit that workers can choose when and where to work. However, again the work of each booking is clearly designed to be engaged on a single basis for one trip or one delivery, with no ongoing relationship between the customer and the worker.

At the other end of the spectrum are platforms offering services related to person-to-person care and support, whether that be aged care or disability support. We submit that these forms of personal support work are not the same as food delivery, or landscaping, for example. Support work is not generally task-based and it is not intended to be a one-off interaction between the client and the worker.

Disability support work is paid by the hour for the support worker's labour — it is not paid for specific individual tasks. Support work is directed by the client, especially under the NDIS principles of choice and control, and it's usually re-engaged on an ongoing basis. As personal trust and safety is critical to good support, the best support

⁵ Ibid. p. 185

relationships are ongoing, not one-off. Rather than completing tasks, this work involves building and maintaining relationships of care, support, and personal growth.

At Hireup, for example, the average support worker-client relationship is around 12 months, and encompasses many repeated bookings of the same support worker/s by a client.

Potential for sham contracting on online platforms

As mentioned above, there is no proactive legal process to determine the work status of platform workers, and similarly there is little or no proactive enforcement action by authorities to determine whether online platforms with independent contractor workforces may be engaging in sham contracting. These matters are generally attended to 'post-breach', where a complaint or legal case has been commenced.

We think that, where the law is unclear about the status of those working through a platform, the Fair Work Ombudsman should investigate potential 'digital sham contracting'. 'Digital sham contracting' is where when an employee is misrepresented as a contractor and the organisation avoids the responsibility of paying employee entitlements such as accrual of leave, tax and superannuation.

Given tens of thousands of people now work through such platforms, this is pressing. Without such action we believe that circumstances in digital economy workforces will continue to evoke the colloquial 'Wild West', where the usual rules don't apply and enforcement is almost non-existent. The result of this is a high risk of poor working conditions and wages, and elevated risks and liabilities for the workers and customers of platforms.

Industrial awards and online platforms

In a similar vein to the discussion above about the operation of employment laws, the current industrial award applying to the disability sector lacks applicability to both the NDIS context and online platform workforces. The relevant award, the Social, Community, Home Care and Disability Services Industry Award 2010 ('the Award'), was developed before the NDIS existed and before online platforms began providing disability services.

The terms of the Award are intended to cover a range of sectors, presenting challenges to their direct application to the disability sector. Where terms do relate to the disability sector, they remain tied to the previous era of the disability services — where block funding was provided by the Government to service providers, not to individuals, and people with disability had very limited control regarding the services they received.

With funding for support services now provided directly to each individual with disability, there is an appropriate expectation of much greater flexibility in the way services are delivered, whether that be the choice of support worker or the amount of time required for a support booking. This means that some elements of the Award can come into conflict with the application of choice and control for NDIS participants — that is, the strict requirements of the Award can be inconsistent with the person-centred principles of the NDIS.

The result of this is two-fold: first, the lack of clarity in the application of the Award to modern disability services lends itself to confusion over the appropriate classification of workers in the sector; and second, there are significant challenges in developing a model which adheres to the principles of the NDIS and the Award simultaneously. The result of the latter means that responsible employers are at a structural disadvantage when compared to platforms with support workers that are independent contractors to whom the Award does not apply.

For example, the phrases ‘support work’ and ‘support worker’ do not appear in the Award, yet they describe tens of thousands of workers nationwide. The references to disability services within the Award classifications describe workplace scenarios that refer only to people with disability living in residential facilities, which is an area of the sector in which Hireup and many other providers and platform marketplaces do not operate. Similarly there is no reference to the NDIS or the person-centred nature of work that it has brought about in the sector — not having a core and critical value, that of person-centricity, captured in the Award creates friction with the choice and control objectives of the NDIS.

We note some clauses within the Award create strict requirements that do not appeal to either support workers or their clients — for example, the provisions for sleepover shifts. One requirement of sleepover shifts is that a support worker must be paid for an adjacent support shift in addition to the sleepover shift, and this adjacent shift must be for at least four hours. Four hours is often far more support than many clients require immediately prior to or after sleeping overnight, yet the Award forces clients to use their funding to pay for this unnecessary time.

From anecdotal evidence of clients, the direct result of this strict provision is either that clients feel they are needlessly spending their much-needed NDIS funding for hours of support that they do not require, or they are driven to make use of contracting platforms to engage a worker that is not covered by the Award in order to make appropriately flexible use of their limited funds. Of course, it is a requirement that is not applicable to independently contracted support workers.

This situation is not beneficial for many support workers, people with disability, service providers, or the disability sector at large. We submit that a nation-building program of such significance as the NDIS, with such a large and varied workforce, demands its own industrial award that operates to support and complement it. We would be pleased to work with the Government, employee organisations, people with disability, and other providers to build an Award that ensures the NDIS is providing the greatest value and experience for everyone, avoiding incentivising the use of independent contractor labour in order to ‘get around’ inflexible provisions that may benefit few people.

WORKPLACE AND CONSUMER TRENDS AND IMPACTS

(c) workplace and consumer trends and the associated impact on employment arrangements in sectors of the economy including the 'gig' and 'on-demand' economy

Trends in the digital economy and the NDIS

Hireup's experience of consumer trends and employment arrangements is formed entirely within the 'on-demand', digital economy. As an employer and provider of disability support services, Hireup is not a 'gig economy' business. The services we offer are ongoing, relationship-based engagements between our workers and people with disability. We don't believe that disability support work is generally well-suited to the commonly understood classification of 'gig economy' — a brief, one-off, engagement of a worker to complete a specific task.

With that in mind, our starting point begins with disability support work as it is performed within the context of the NDIS. The nature of disability support work, and the related support for people with disabilities and their families, has been changing. With the advent of the NDIS, and the rapidly changing nature of how work is being organised through digital means, disruption is already here.

The NDIS is driving a positive new system of personal choice and control for people with disability accessing the support services they need. For the first time, people with disability have the funding and power of choice to engage the support services they choose, and it is leading to transformative results for people's lives. In addition, it has resulted in new ways of organising and performing support work – which is less compatible with inflexible rostering and scheduling rostering, and more aligned with flexibility and choice

This disruption is powerful and exciting, and a person-centred approach to services for people with disability is demonstrably positive and based soundly on fundamental human rights.

But critically, growing alongside the NDIS are two versions of this disruption playing out in the disability workforce. There is one version in which support workers are employees with guarantees of wages, entitlements, conditions, and protection from liability. And there's a second version in which workers are set up as individual business entities: independent contractors to perform the same work as the first version but without the same guarantee of wages, entitlements, conditions or protection from liability.

We believe the first version is more likely to place quality and safety standards at the core of an organisation's operations, and the second version leaves quality and safety standards largely up to the interpretation and actions of the individual performing the work.

This could also result in a two-tier system for the delivery of NDIS services.

One tier is regulated, quality-focused, and employment-based.

The second tier shifts risks onto workers and the NDIS participants who engage them, and operates with minimal regulatory oversight and low costs of compliance. Commonly, these low-cost, low-regulation arrangements are facilitated by a third-party app or online platform, with support workers performing work at the direction of individual NDIS participants on a contract-by-contract basis.

While the contract relationship isn't necessarily new, the technology that facilitates these transactions is very new. It will allow this model to scale at a rate and pace never seen before in the disability sector. In fact, it has already.

In and of itself, connecting people directly with support workers is a good thing, and the growing popularity of platforms is evidence of that. However, if governments and the community are not deliberate about the ways we want to harness this disruption — especially for the disability workforce — then it is possible that a crisis in the workforce may emerge very quickly.

In fact, we believe that unchecked and unregulated disruption to the nature of disability support work has the potential to be one of the biggest threats to the NDIS, starting now and increasing in the future.

Findings of the Aged Care Royal Commission

The recent Final Report of the Royal Commission into Aged Care Quality and Safety, *Care, Dignity and Respect*⁶, made findings that are relevant to the committee's investigations into job security.

The Royal Commission found that employment of the aged care workforce represents a more beneficial mode of engagement for the aged care sector:

We consider employment as a mode of engagement of the workforce is more compatible with achievement of our broad objectives of developing a well led, skilled, career-based, stable and engaged workforce providing high quality aged care. Employees are, by definition, required contractually to comply with any lawful and reasonable directions they are given about the performance of their work. If a provider directs an employed care worker to provide care through a relationship-based model of care, for example, the employee is required to do so. Where the care worker is engaged by an older person directly via a platform, this is necessarily more difficult, if not impossible, for the provider to control.⁷

Hireup participated in the Royal Commission by appearing as a witness during the 'Sydney Hearing 4' to provide our perspective as a provider of disability support services through an online platform.

⁶ Aged Care Royal Commission, *Final report*, 2021.

<https://agedcare.royalcommission.gov.au/publications/final-report>

⁷ Ibid. p. 431

In consideration of online platforms that facilitate the provision of support services in the aged care sector, which we submit is comparable to services within the disability sector, the Royal Commission found that:

A facilitator of care through a platform... is not just offering a directory service to the general public. The facilitator is holding itself out as a reliable source for those in need of, and seeking, care. It may be that such a facilitator may be held liable under ordinary principles of consumer protection. However, there should be no doubt that an entity which enters the market for profit to facilitate links between carers and the person receiving care will have duties that cannot be avoided. A facilitator of labour, such as an online platform... should have a duty to ensure that any worker who they make available to perform care work has the experience, qualifications, skills and training to perform the particular care work they are being asked to perform.⁸

As evidenced in Appendix 1 (excerpts from various platforms' terms and conditions), the same issues which triggered the Aged Care Royal Commission regarding the quality of services for clients or the well-being of workers using the platform are occurring at pace in the disability services area today.

We submit that the circumstances developing in the disability support sector are remarkably similar to the issues unearthed through the Aged Care Royal Commission.

With the consideration quoted above in mind, the Royal Commission made the following recommendation:

Recommendation 87: Employment status and related labour standards as enforceable standards (Commissioner Briggs)

1. By 1 January 2022, the Australian Government should require as an ongoing condition of holding an approval to provide aged care services that

a. approved providers: have policies and procedures that preference the direct employment of workers engaged to provide personal care and nursing services on their behalf,

b. where personal care or nursing work is contracted to another entity, that entity has policies and procedures that preference direct employment of workers for work performed under that contract.

2. From 1 January 2022, quality reviews conducted by the Quality Regulator must include assessing compliance with those policies and procedures and record the extent of use of independent contractors.⁹

We believe the committee has an opportunity to consider these same features of support services provided within the disability sector and reach similar conclusions.

⁸ Ibid. Vol 3A, p. 99.

https://agedcare.royalcommission.gov.au/sites/default/files/2021-03/final-report-volume-3a_0.pdf

⁹ Ibid.

Comparing employment to independent contracting in support work

While under current laws the circumstances of individual support workers may be found to exhibit features of both employment and contracting, we believe that in the disability sector the essential nature of disability support work has all the hallmarks of employment, such as:

1. Support workers are paid a guaranteed wage irrespective of performance or output of work, work under close direction and supervision, and often in a working relationship for months or years. Ongoing provision of care services is a fundamentally different enterprise to a worker being contracted to fix a leaking pipe, or mow a lawn, or deliver food, for example.
2. Disability support work is captured by modern industrial awards that specify working conditions and entitlements, because it is a large, non-professional, and potentially vulnerable workforce that is chiefly under the direction of the people receiving their services, who may themselves be vulnerable to exposure of risk under employment laws.
3. Personal services such as disability support involve greater personal risks to clients' well-being than other forms of work. It is therefore appropriate that responsibilities for quality, safeguards and liabilities should be held and applied at the organisational level of an employer, rather than the individual.

We believe that the legal criteria for classifying a worker as an employee rather than a contractor apply to many if not all of the elements of support work. Despite this, there's a rapid growth in independent contracting in our sector — it is the fastest growing sub-sector in the NDIS marketplace.

We note it is not the purview of this inquiry to investigate the merits of whether employment classifications are being correctly applied by contracting platforms. We provide this information to show the committee these matters are very far from settled, and they require reform to provide certainty to workers and businesses alike.

It may also be instructive for the purpose of this comparison to review the processes for beginning a role as a support worker with Hireup and on a contractor platform. Perhaps surprisingly, the processes themselves are quite similar. However the ongoing duty of care is worlds apart, as are the responsibilities and liabilities accepted by the platforms that facilitate the provision of these support services. We have stepped through this difference in Appendix 2.

Potential for risk created by 'sham' independent contractors

For workers as "independent contractors", the majority of responsibilities and liabilities for providing the service safely and to any specified quality standards, as well as ensuring a safe workplace, are held by the individual contractor. Further, if that worker is not individually registered as a provider with the NDIS, they are not subject to most NDIS quality and safety standards and are not subject to auditing procedures to validate these standards. In addition, many safeguards critical to the NDIS such as worker



screening, only apply to employment organisations, and not independent contractors — this latter presents a genuine risk of abuse not being captured or reported.

A contracted support worker does not have the safety net provided by employment, including:

<p>Wages guaranteed at legally determined rates, including penalty rates and overtime, which are subject to annual increases regulated by the Fair Work Commission.</p>	<p>Tax payments for workers' wages undertaken by the employer, rather than requiring workers to withhold a portion of their income.</p>	<p>Training, development, and career opportunities provided by employer organisations, which are generally unavailable to a self-employed independent contractor.</p>
<p>Workplace health and safety guarantees that are responsibilities of the employer, including the provision of insurance covering workers and clients. The employer typically also provides support if an incident occurs.</p>	<p>Superannuation paid by the employer, as well as provide default and establishment solutions for first time superannuants</p>	<p>Worker conditions and entitlements as determined by the industry award, such as minimum shift times, break times, allowances, and leave.</p>
<p>Payroll tax paid by the employer to state governments, helping to increase the tax revenue that pays for infrastructure and services.</p>	<p>Overarching working entitlements such as long service leave and workers compensation provided by the employer.</p>	<p>Formal avenues and remedies for dispute which are only available to employers and employees in the existing employment law framework</p>

Apart from being beneficial to each individual worker, we believe these factors create an important outcome: if workers view their job and conditions as fair and satisfactory, more workers will remain in the disability workforce for the long term. The positive result of long-term workforce sustainability is consistency of support for people with disability, and ultimately, long-term NDIS sustainability. These are critical considerations for the future of the disability sector, emanating directly from how the workforce is engaged.

Additionally, our researched feedback from people with disability who use Hireup clearly shows that, when it comes to one-to-one support work, nothing matters more to a participant than the support worker themselves. That person and the relationship that is formed through the support work is the foundation of many participants' ability to reach their goals, and is central to their wellbeing. In that case, we submit it should be incumbent upon governments who fund the NDIS to understand, support, nurture, and sustain the workforce who deliver NDIS services.

For NDIS participants, it is possible that the absence of audited quality and safety standards when engaging contractors places them at greater risk across a range of factors — from basic consumer protection rights, through to injury prevention and accidents, and we saw this directly during COVID-19 where personal protective equipment was handled differently by employers compared to platform marketplaces.

Australian laws provide for certain work relationships to be *deemed* as employment relationships, even where one or both parties perceive the circumstance to be one of contracting.

This means there is a risk that a participant who hires a worker as a contractor may later be *deemed* as the worker's employer, which could then leave the NDIS participant exposed to potentially substantial claims for underpayment or prosecution for failing to provide lawful working conditions and entitlements to the worker.

Appendix 1 of our submissions outlines specific examples of the shifting of liability and risks and contrasts the risk profile for workers and clients when using a platform facilitated 'sham' contractor arrangement as compared to employees.

We believe that consideration should be given to whether this is an appropriate context within which to undertake support work. We also worry that this may place further pressures on those individual support workers who are not only expected to undertake their work, but to shoulder the burden of responsibility for workplace health and safety and liability for any incidents that occur while working.

We believe the current disruption to how support work is organised can, when experienced as contracting, lead to greater risks and liabilities being placed on workers and participants, alongside losses of benefits such as guaranteed wages. If such a working environment has the potential to result in low worker value and low job satisfaction, it could lead to higher worker turnover if workers leave the sector for better pay and conditions elsewhere. This potential churn of support workers entering and then quickly exiting due to a low-quality working experience could make NDIS service delivery lack continuity and sustainability, threatening the success of the scheme.

The scope of online platforms in the disability sector

Authoritative data about the disability support workforce is extremely hard to come by, and what is available is generally of low quality or based on self-selected surveys. As a result, there are challenges to clearly demonstrating the changing dynamics of the disability workforce. That, in itself, is a risk that governments should address urgently.

However, we know there has already been a rapid rise in the number of contracted support workers undertaking work through online platforms. In the disability sector, we have noted that:

- At one of the largest contractor platforms, **the number of contracted workers more than doubled in one year** from August 2019 to August 2020, reaching more than 8,000 contracted workers.
- At a smaller platform, **the number of contracted workers increased by nearly 50% in 7 months** from February 2020, to more than 1,700 workers.
- There are now approximately **eight contractor platforms** operating. In 2014, there was one.

The *Report of the Inquiry into the Victorian On-Demand Workforce*¹⁰ reviewed Australian Bureau of Statistics (ABS) data and found that between 2014 and 2018, the number of independent contractors in the broad category of healthcare and social assistance increased by 29%, from 70,700 in 2014 to 91,700 in 2018, compared with a 19% increase in the overall health care and social assistance workforce during the corresponding period. This indicates the likelihood of a much faster rate of growth already occurring in work being conducted through contracting platforms than through care services provided by employer organisations.

In fact, we submit that this growth has grown considerably in the disability sector in the years since 2018, as the NDIS has since achieved much wider rollout nationwide and more disability support work platforms have emerged. As an example of the growth trajectory of contractor platforms in the disability sector, we project that at recent rates of growth, the number of independent contractor workers at the current largest contracting platform would be:

- 42,000 workers by 2025
- 76,000 workers by 2030

To put that into perspective, the 2030 figure represents close to double the current workforce at a large organisation like Bunnings Warehouse.

This rapid change to the nature of the engagement of support workers could present a number of risks to the disability sector, including:

- Changing the nature of the workforce: away from organised, supervised employment-based systems, to a more fragmented, unregulated workforce where individuals accept liabilities with few external safeguards.
- Potential for lower wages for support workers operating without minimum award wage guarantees, and from a position of bargaining weakness. Some contractor platforms set a single wage for workers, meaning those workers could not set their own penalty or overtime rates even if they wanted to.
- Growing liabilities on people with disability engaging their own workers, including the potential to be deemed as a worker's direct employer.
- Reduced safety and quality compliance requirements.
- Overall development of a two-tier NDIS, in which one set of organisations operate with the costs of employment and compliance with a range of safety and quality standards, and one that operates largely without those costs, but with fewer protections required for workers and clients.

In addition, we believe that this may cause changes to the interconnectedness of the disability workforce ecosystem, such as altering the usual manner of career progression and rising seniority within the sector. For example, some of the entry-level support

¹⁰ Victorian Government, (n 5) p. 36.

workers of today are the house managers, therapists, strategists, and the executive managers of tomorrow. However, this can only happen with organisational experience and opportunity, which, by definition, is not available to independent contractors.

Genuine sole traders in the disability sector

We maintain there is a strong place for genuine sole traders in the Australian disability sector. A strong, vibrant marketplace that includes genuine small businesses is highly desirable, and important for the key principle of choice under the NDIS. Whether that's Support Coordinators, Allied Health Professionals, or support workers genuinely running small businesses independent of external dependencies, those contract workers should form part of the ecosystem.

The key point for individual support workers' businesses is that it be a genuine business undertaking: an informed, deliberate, entrepreneurial choice to open their business, seek out clients through their business, and service those clients directly through their business. Currently, a large proportion of such ABN-contracted support workers are in fact facilitated by large-scale online platforms. Those platforms provide the majority of the administration, oversight, training, insurances, client-sourcing, and business operations for support workers — right up until the point of the actual transaction of service delivery itself. That is, these support workers are dependent on the multiple resources supplied by the platform for their 'independent' small business to operate.

While the law has not caught up with classifying this type of dependency, the relationship appears to be one of dependency, albeit with some limited additional choices available to the contracted worker.

The interaction of employment and registration within the NDIS

As mentioned, in addition to our employment model, Hireup is also a registered NDIS provider. This means that Hireup is subject to a range of safety and quality standards, auditing, and compliance measures. To our knowledge, most independent contractors are not registered providers and as such are not subject to these requirements.

We believe that registration not only bolsters our existing commitment to quality and safety, but also provides a framework for the safeguards that should be put in place on every support shift. In addition to set compliance measures, the regulatory framework also provides Hireup with guidance and direction, and helps us to think innovatively about every step of the journey for our clients, encouraging continuous improvement in how we provide quality and safe outcomes.

An indicative list of compliance measures adhered to by registered providers, which are not applied to unregistered workers, includes:

1. Meeting and adhering to NDIS [registration requirements](#) (which include adherence to employment and workplace health and safety laws)
2. Auditing against [NDIS Practice Standards and Quality Indicators](#)
3. [Reporting](#) to the NDIS Quality and Safeguards Commission

4. Complying with the [NDIS Rules](#)
5. Complying with the [NDIS Operational Guidelines](#)
6. Meeting the Terms of Business

The small set of safety compliance measures for unregistered providers (which also apply to registered providers) includes complying with the NDIS Code of Conduct, some worker screening requirements (optional for some NDIS participants), and some form of managing complaints.

We encourage the committee to review the NDIS Practice Standards and Quality Indicators, as an example of the extent of some of these important NDIS safeguards. It provides a good snapshot of the numerous compliance measures that are applied only to registered providers.

For Hireup, employment as the basis for worker engagement and registration with the NDIS Quality & Safeguards Commission leads to better quality and safety outcomes due to the expectation of adherence to benchmarked frameworks or standards. However, there is no doubt that it requires a higher cost of compliance, and therefore higher prices for services. For individuals with few compliance costs, services can be provided much cheaper with fewer strict quality provisions and safeguards. This has the potential to impact the quality and safety of services if they are provided with little oversight, and it could also lead to a two-tier system, in which organisations that take the option of registration must meet a much higher cost base when compared to unregistered providers or individuals who do not face these costs.

Finally on this topic, we note that NDIS registration is a requirement only when providing services to agency-managed participants, but not for plan-managed or self-managed participants. In the past three years the proportion of participants in the category of agency-managed, and therefore requiring services to be delivered by registered providers, has fallen from 66% to 19%. In itself this is positive as more people exercise greater control over their funding and services. However, it means that most of the safeguarding systems set up by the NDIS are not necessarily being applied to 81% of NDIS participants receiving services. At Hireup we deeply respect the dignity of risk when it comes to the choices made by people with disability, but we submit that this situation was not the original intention of the safeguarding system, and the rapid rise of contracting could further erode the ability of safeguards to be applied to the vast bulk of services delivered under the NDIS.



ACCIDENT COMPENSATION SCHEMES AND TAXES

(f) accident compensation schemes, payroll, federal and state and territory taxes

Workers compensation versus personal accident insurance

Ostensibly, employed support workers on the Hireup platform and contracted support workers on other platforms perform exactly the same work, with the same risks for accident and injury, yet are covered by two incomparable sets of compensation outcomes in the event of an accident.

For Hireup employees in NSW, for example, workers compensation insurance currently provides a lump sum payment in the event of a work-related death of \$834,200 plus weekly payments of \$149.30 per week for each dependent child up to the age of 16 (or 21 if they are in full-time education). On some comparable support worker contracting platforms, this amount is limited to \$100,000 through personal accident insurance — or nearly 90% less.

For work-related injuries, workers compensation insurance currently provides for weekly payments up to \$2,242.40 for up to 260 weeks (and an amount indefinitely beyond that until retirement, depending on the level of impairment). Insurances on contracting platforms are either unclear on this matter, or where it is made clear, in one example, the benefits paid are up to \$750 per week for a limited period up to 104 weeks.

This highlights a significant gap between the entitlements of support workers engaged as employees on the Hireup platform and support workers on contracting platforms. There are many cases of support workers performing support work for clients on Hireup and other clients on a contracting platform. It is cause for concern that a Hireup employee who is undertaking the same work as they would through Hireup, but engaged on a different platform, could result in such enormous contrasts in outcomes should an injury or worse occur at work — the implications on the support worker, the client and the NDIS are substantial.

We submit that this is a system in need of reform, and all support workers are essential workers who should be protected when incidents occur at work.

Payroll tax as a competitive incentive for contracting

As the only large-scale online platform that directly employs disability support workers, Hireup's perspective is instructive as the comparator to all other online platforms for disability support work that facilitate large-scale independent contracting. This means Hireup contributes to the payroll tax base, but Hireup's most comparable competitor platforms do not.

We raise this issue not to debate the merits of payroll tax, but to explain that for organisations like Hireup that wish to employ workers and believe that this contributes to higher quality and safer support services, that decision comes with costs that are unfavourable to making that decision to employ. Platforms that do not have to meet costs such as payroll tax due to their engagement of workers as independent

contractors may be able to use that cost saving to undercut the cost of services of their employer competitors.

We believe this expense can act as a disincentive to organisations to operate a responsible employment model in circumstances where competitor organisations are operating in directly comparable circumstances, but do not face this cost when facilitating independent contractors. Indeed, the *Report of the Inquiry into the Victorian On-Demand Workforce* noted it received submissions stating that the avoidance of payroll tax by some on-demand businesses means they ‘effectively receive a subsidy to the value of 4.85 percent on their wages.’¹¹

We submit that this is potentially damaging to healthy competition, and this tax base could be increased substantially if payroll tax was applied to such businesses.



¹¹ Ibid. p. 131

RECOMMENDATIONS

We acknowledge the complexity of the interactions between employment laws, NDIS regulations, people with disability, disability sector businesses, and the digital economy. We have identified three areas for action that could be investigated by the committee to improve or clarify matters, but it is important to note there will be no single action that would improve such a complex system — it will require reform across a range of functions performed, and regulations enforced, by governments.

We also note that under current employment laws, some positions described above would not be persuasive in a legal setting. We submit that, if the committee is persuaded by our experience that the current system includes some regulatory gaps in relation to online platforms in the disability sector, then this is a key reason that current employment laws must change.

Recommendation 1: Employment laws

Employment laws are unclear and need to be clarified. We recommend the committee investigate whether reform to employment laws could clarify the status of support workers in our sector and make the laws and regulations apply equally to “independent” contractors.

Employment laws have not kept pace with the disruption to the organisation of work brought about by the digital economy. We recommend the committee consider the recommendations of the *Report of the Inquiry into the Victorian On-Demand Workforce*, particularly its recommendation to ‘Clarify and codify work status in legislation’.¹² This aims to remove the current uncertainty regarding work status by providing for appropriate weight to be placed on the economic reality of the relationship and modern work arrangements, rather than continuing to attempt to apply laws that did not consider those features.

We also urge the committee to consider whether the classification of independent contracting should be reasonably applied to circumstances in which individual workers are almost completely dependent on an online platform for most aspects of finding, undertaking, and receiving payment for their work. If it cannot be reasonably applied, then we should seek an answer to why it is occurring in widespread practice.

We note some solutions have already been proposed in public debate to similar work status challenges in the rideshare and food delivery gig economy. These solutions tend to either create a new status of worker that exists in-between an employee and contractor, or empower an authority to determine a limited amount of entitlements or protections for contractors, as a sort of quasi-employee. While this solution may be feasible in that sector within the digital economy, we submit it is not feasible for sectors in which ongoing, personal support relationships are developed, as it seeks to force a task-based model into circumstances of ongoing, repeated working engagements based on a person’s time working. If that is correct, then most support workers’ work status is likely to be as an employee.

¹² Ibid. p. 192

Recommendation 2 Industrial awards

In the disability sector, the Award has not kept up with the pace of change. We recommend the committee investigate how industrial awards could be simplified and modernised to enable everyone — traditional and new digital providers and platform marketplaces alike — to play by the same rules when it comes to the workforce.

As discussed above, in our experience of applying the principles of the NDIS and the flexibility of the digital economy, the current Award could be made more fit-for-purpose — or a new disability Award could be created with the operation of the NDIS as a foundation. The Award's inability to be applied readily to the digital economy, a popular and fast-growing mode of delivery and receiving services, and its inflexibility in the face of the change being driven by the new funding mechanism of the NDIS, act as a disincentive for new businesses to take on workers as employees. When combined with the lack of clarity in employment laws, it is hardly surprising that some businesses choose to pursue the path of least resistance (and cost) by engaging workers as independent contractors where the law allows this to occur.

In that case we submit that modern awards should take into account the varied nature of organisations operating within the relevant sector and seek to ensure that awards find balance between desired outcomes for employees and conditions that support responsible employers to thrive in new modes such as the digital economy.

Recommendation 3: Community awareness

We recommend that the committee investigate the benefits of increased community-awareness of the potential risks associated with independent contracting.

We submit that general community awareness of the presence of potential risks when engaging independent contractors through online platforms is very low. In the event that further regulation, oversight, or legal reform is deemed unnecessary to reduce risks to workers and consumers, governments should take up a strong role in educating the community to ensure that large-scale contracting markets are operating openly, fairly, and safely.

In the context of support work, the nature of the work is such that it is possible that people with disability could be deemed to be the unknowing employer of their support workers. This situation is clearly undesirable.

Final thought

We have no desire to limit choice and control in the disability sector. Quite the opposite. But to be in control, people with disability and support workers need to be confident that the system underpinning their choices has the right foundations and will be sustainable into the future.

Appendix 1: Specific example of liability risk, and risk shifting

By way of specific examples of liability risks, below are examples of the terms and conditions for users of different contractor platforms currently operating in the disability sector (which have been extracted from platform websites). These excerpts illustrate the contrast in potential risk profile for workers and clients when using a platform with contractors compared to employees.

	Excerpts from contractor platforms terms and conditions
1	<p>The Platform and any Services you arrange through the Platform are provided on an “as is” and “as available” basis and We make no representation, warranty, or guarantee regarding:</p> <p>(i) the condition, performance, accuracy, completeness, reliability, timeliness, quality, suitability, availability or fitness for a particular purpose of the Services; or</p> <p>(ii) the quality, suitability, safety or ability of the Disability Services Provider;</p> <hr/> <p><The Platform> makes no representation that the service provider is suitably qualified, skilled and trained.</p> <hr/> <p><The Platform> has policies as notified on the <Platform> website and Platform designed to promote the provision of quality NDIS services by Disability Service Providers, but <the Platform> does not guarantee the quality, appropriateness, safety or otherwise of the NDIS services, nor that the NDIS service meet the NDIS Quality and Safeguards Framework. You accept the risks arising out of Your use of the Platform to the maximum extent permitted by law.</p> <hr/> <p>Participants are the potential employers of Disability Services Providers (depending on frequency of use) 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.</p>
2	<p>The Support Worker is liable for all acts or omissions of it or its personnel in the provision of the Care Services.</p> <p>The Customer is liable for all acts or omissions in the receipt of the Care Services.</p> <hr/> <p><The Platform> is not liable for any injury, loss or damage suffered by the Support Worker or Customer in the provision of the Care Services.</p> <hr/> <p><The Platform> is not required to verify information made by a Member, and You are solely responsible for sighting original documents to verify any representation that a Member has made.</p> <hr/> <p>You understand and agree that <The Platform>... ...makes no representation or warranty regarding the quality of any Care Services or any other services provided by any Member...</p>

	<p>...and takes no responsibility and has no obligation in contract or duty of care to manage or involve itself in any interactions between Users or in respect of any Support Worker Contract.</p> <hr/> <p>Any disputes related to the Care Services received by a Customer must be resolved directly between the Customer and the Support Worker.</p> <hr/> <p><The Platform> and its Affiliates assume no (and hereby disclaims all) responsibility or liability of any kind, for any advice, treatment or other Services rendered by any Support Worker, or for any malpractice claims and other claims that may arise directly or indirectly from the provision of Care Services or any other actions of any Support Worker.</p>
3	<p>In no circumstances does <The Platform> have control over, or responsibility for, the acts or omissions of Members.</p> <hr/> <p>Members seeking care or support workers are solely responsible for the selection and recruitment process including compliance with all applicable State, Territory and Federal laws.</p> <hr/> <p>To the extent permitted by law, we exclude: all conditions, terms, representations and warranties other than those expressly set out in these Terms of Use; and all liability whatsoever for any costs, expenses, damages, liabilities or losses (both direct and indirect) arising in connection with your dealings with Members or your use of the Services or the Website.</p>

In addition to terms and conditions that shift liability from platforms to workers and clients, workers can face what appear to be conflicting conditions regarding their work status on contracting platforms. For example, on one platform workers are told:

You are not our employee and are not entitled to any employment benefits. We do not supervise, direct or control any of the Support Services you offer. We do not set your fees, work hours, your schedule or your location. We do not provide you with training, equipment or tools or any materials to provide the Support Services;

But the same workers must also agree that:

You agree to behave at all times in a way that does not damage your reputation or ours. You agree to comply with policies as published on the Platform from time to time. Your failure to comply with our policies may result in suspension or termination of your account.

These statements have the potential to be conflicting in terms of whether the worker is in fact partially directed by the platform. This lack of clarity could therefore be detrimental to the ability of workers to understand both their rights and obligations.

Appendix 2: Comparison platform experience between employees and independent contractors

On most online disability support platforms, prospective workers sign up with their details, identity documentation, and submit a police check and any other required checks such as working with children. The platforms verify the documentation (at least in theory — see the table of excerpts of terms and conditions below) and require the worker to complete one or more online training modules (on Hireup this is paid training). Some platforms will contact the worker directly to discuss the new role and provide further information about matters like finding work through the platform. That process generally involves creating a personal profile to provide information about the types of work a worker is able to perform, and learning how to respond to and work with potential clients.

After workers and clients contact each other, most agree to meet in person before booking a shift, to first check their compatibility. If agreed, a shift is booked through the platform, the work is performed by the support worker largely at the direction of the person with disability, the shift is confirmed through the platform, and the client's funds are withdrawn or invoiced by the platform and the worker's wages are paid by the platform.

At this point, noting there will be variations, the experience can appear largely similar to both workers and clients across Hireup and contractor platforms. Also of note is the almost total dependence of the worker on the features of the platform, from verification to training to finding work to booking shifts to being paid for shifts. However, the difference between whether the worker is employed or is an independent contractor, as well as the extra layer of safeguards of Hireup as a registered provider, creates legal differences and service differences that we believe would surprise many workers and clients.