



## **HACSU Submission**

*Inquiry into the Victorian On-Demand Workforce*

February 2019

## About Us

The Health and Community Services Union (HACSU) is the only specialist union for workers in Victoria's mental health, alcohol and other drugs and disability sectors. We are committed to advancing and protecting the professional and industrial interests of our 9,000+ members through campaigning and workplace activism.

For questions regarding the contents of this submission, please contact:

**Mark Farthing**

Senior Policy Advisor

e. [Text redacted]

## Overview

HACSU welcomes the establishment of this important inquiry and welcomes the opportunity to make a submission. This brief submission focuses on the rapid emergence of on-demand platforms in the disability sector following the introduction of the National Disability Insurance Scheme (NDIS) and their impact on the Victorian disability workforce.

While much media, academic and regulatory attention has been given to on-demand work facilitating transport (e.g. Uber) and food delivery (e.g. Deliveroo, Foodora and UberEATS), there has been far less scrutiny on the growing emergence of on-demand work in the healthcare and social assistance sectors. In particular, both the aged care and disability sectors have seen the emergence of a number of new providers exclusively operating in the on-demand economy, the majority of whom use digital platforms to match service recipients to workers.<sup>1</sup>

The emergence of on-demand work in the aged care and disability sectors has been largely facilitated by Commonwealth Government policy and funding changes. These changes have been designed to increase market-competition through the individualisation and contestability of social care funding, often accompanied by a reduction in regulatory oversight. In the disability sector, these policy changes have been embedded into the design and structure of the NDIS—which, when fully rolled out in Victoria from 1 July 2019, will provide support to over 105,000 eligible Victorians with disabilities at an annual cost of \$5.1 billion.<sup>2</sup>

### The National Disability Insurance Scheme

It is important to understand some of the dynamics of the NDIS to appreciate how it facilitates on-demand work. The basic principle of the NDIS is that people with disabilities who meet the scheme's access criteria are assessed to determine their reasonable and necessary support needs.<sup>3</sup> This assessment leads to the creation of an NDIS plan, which provides NDIS participants with a budget they can use to achieve the goals they have set out in their plan. At the plan approval stage, participants can opt to manage their funding in three different ways (or a combination of each) – two of the options lend themselves to more readily to NDIS participants accessing supports through on-demand platforms.

#### Agency-Managed Funding

The first option is to have an agency-managed plan. This means that the National Disability Insurance Agency (NDIA) pays disability service providers on behalf of participants. NDIS participants who select this option can only purchase NDIS-funded services from service providers who are registered with the NDIA. As at 31 December 2018, 44% of Victorian NDIS participants had agency-managed funding.<sup>4</sup>

#### Plan-Managed Funding

The second option is plan management, where the NDIA will fund a financial intermediary (a Plan Manager) who will pay providers for purchased supports and manage financial

---

<sup>1</sup> Some of the most prominent on-demand platforms in the disability and aged care sectors are: Carechoice, Careseekers, Find a Carer, Hireup, Mable (formerly Better Caring) and Newly. Based on inquiries with HACSU members we understand Hireup and Mable to be the market-leading on-demand platforms.

<sup>2</sup> NDIA (2016) *Market Position Statement – Victoria*, p. 1.

<sup>3</sup> To be eligible to access the NDIS and therefore become an "NDIS participant" you must be an Australian citizen or permanent resident, be under the age of 65 when you request to access the scheme and have a disability that is attributable to one or more intellectual, cognitive, neurological, sensory or physical impairments or to one or more impairments attributable to a psychiatric condition. Additionally, your disability must be, or is likely to be, permanent and results in substantially reduced functional capacity to undertake one or more of the following: communication, social interaction, learning, mobility, self-care, self-management.

<sup>4</sup> NDIA (2019) *COAG Disability Reform Council Quarterly Report – 31 December 2018*, p. 117.

reporting. NDIS participants who use plan-managed funding can use both registered and unregistered providers. As at 31 December 2018, 29% of Victorian NDIS participants had plan-managed funding.<sup>5</sup>

### Self-Management

The third option is self-managed funding, where the NDIA provides funds directly to the NDIS participant who is responsible for managing their own plan. Self-managing NDIS participants can use registered or unregistered providers and directly employ their own staff (or engage them as independent contractors). As at 31 December 2018, 15% of Victorian NDIS participants were fully self-managing their funding, with another 12% partly self-managing.<sup>6</sup>

## Models of On-Demand Work in the Disability Sector

Emerging on-demand platforms in the disability sector have generally marketed their offering to NDIS participants who either plan-manage or self-manage their funding as these participants can use unregistered service providers. We have identified two competing on-demand models that have emerged in the disability sector following the introduction of the NDIS. The table below identifies the differing features of the two models by comparing the practices of the most used providers under each model.

	<b>Direct Employment (Casual)</b> Hireup <a href="https://hireup.com.au/">https://hireup.com.au/</a>	<b>Independent Contracting</b> Mable <a href="https://mable.com.au/">https://mable.com.au/</a>
<b>Engagement model</b>	Workers are directly employed by Hireup as casual employees. Hireup provides an online matching service between support-recipients and support workers through its website.	Independent contractor model. Mable provides a matching service through its website, whilst support workers operate as independent contractors, negotiating a rate with the support-recipient.
<b>NDIS Registration</b>	Registered NDIS provider in NSW, VIC, QLD, TAS and ACT	Not a registered NDIS provider in any jurisdiction. Individual workers may be registered.
<b>Platform costs (users)</b>	Users pay a set price to Hireup depending on when support is provided. For a weekday shift performed between 6am and 8pm, Hireup charges \$42 to the service recipient. Rates vary depending on whether the support is delivered on a weekday (day/evening/night), weekend, public holiday.	Users pay a flat 5% on top of the hourly rate they have negotiated with the support worker.
<b>Platform fees (workers)</b>	Nil.	Workers pay a 10% service fee deducted from their negotiated hourly rate.
<b>Wage regulation</b>	As the direct employer, Hireup is bound by the minimum terms and conditions prescribed in the relevant Modern Award – <i>Social, Community, Home Care and</i>	Mable's policy dictates that workers cannot enter into an hourly rate of less than \$23.50. Mable suggests personal care rates of between \$30 and \$40. <sup>7</sup>

<sup>5</sup> NDIS (2019) COAG Disability Reform Council Quarterly Report – 31 December 2018, p. 117.

<sup>6</sup> NDIS (2019) COAG Disability Reform Council Quarterly Report – 31 December 2018, p. 117.

<sup>7</sup> See: [https://blog.mable.com.au/blog/care-workers/setting-indicative-rates-mable/?\\_ga=2.43545958.27907279.1550612363-2132846583.1548050034](https://blog.mable.com.au/blog/care-workers/setting-indicative-rates-mable/?_ga=2.43545958.27907279.1550612363-2132846583.1548050034)

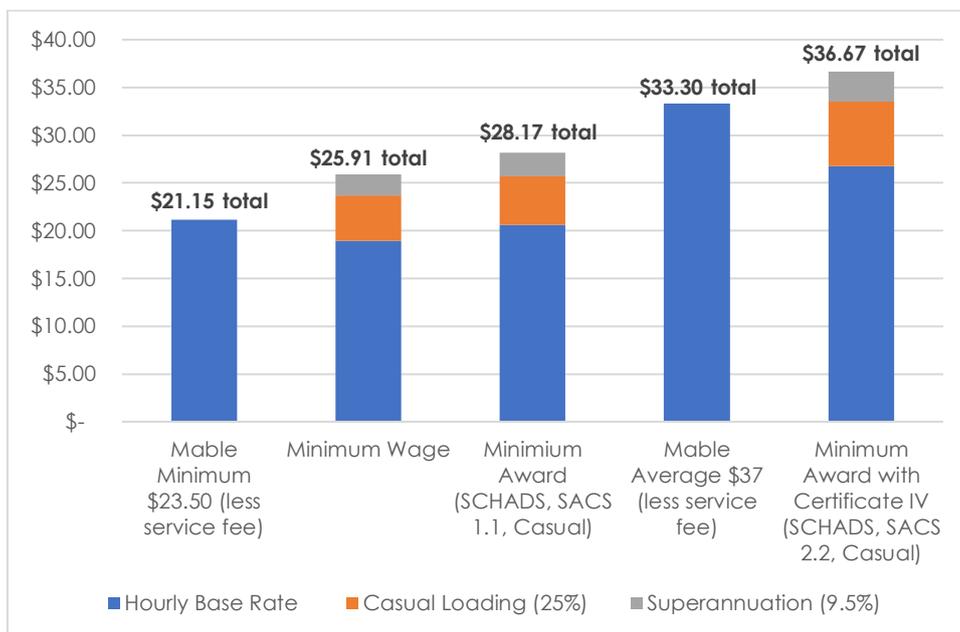
	<b>Direct Employment (Casual)</b> Hireup <a href="https://hireup.com.au/">https://hireup.com.au/</a>	<b>Independent Contracting</b> Mable <a href="https://mable.com.au/">https://mable.com.au/</a>
	<i>Disability Services Industry Award 2010 (SCHADS)</i>	
<b>Superannuation</b>	As the direct employer, Hireup pays the 9.5% superannuation guarantee to its employees.	Mable does not pay superannuation to support workers, instead workers are encouraged to negotiate a price that would cover the 9.5% superannuation guarantee
<b>Insurance</b>	Hireup states that it provides its employees with workers compensation insurance and professional indemnity insurance.	Mable states that it provides professional indemnity, public liability and personal accident insurance (including journey insurance) to all workers who deliver support through its platform.

## Institutionalising Wage Theft, Low Wages and Insecure Work

### Wage Theft and Low Wages

HACSU submits that on-demand platforms which apply the independent contracting model (such as Mable) institutionalise wage theft. The chart below shows a comparison of the minimum rate allowed by Mable (\$23.50 less 10% service fee) and the average rate advised by Mable (\$37 less 10% service fee) against minimum wage, minimum Award wage and minimum Award wage for Certificate IV qualified disability support worker.

Figure 1 Comparison of total hourly remuneration for weekday, daytime support



As the table shows, the minimum rate allowed by Mable on its platform (less the 10% service fee) undercuts the legal minimum wage for a casual employee receiving the 9.5% superannuation guarantee by \$4.76 per hour or 1/5<sup>th</sup> of the legal minimum wage. Whilst on-demand platforms such as Mable would argue it is the responsibility of individual workers to negotiate a rate with a service user that reflects their own perceived value, HACSU would submit Mable exerts a significant degree of control over support workers using its platform

and that they ought to be classified as employees rather than independent contractors.<sup>8</sup> Mable's own advice to prospective workers ignores the reality that in Australia there a set of legally binding employment instruments which dictate minimum rates of pay and conditions:

*"Remember – What eventually determines a rate is the marketplace. You could have all the qualifications in the world, but if there are care workers operating in your area with equal qualifications at a cheaper rate, then the users of your services have the power to 'shop around' for better value."*<sup>9</sup>

By misclassifying workers as "independent" contractors these types of on-demand platforms are sidestepping industrial laws and regulations, enabling exploitative labour practices that provide these operators with a competitive advantage over more "traditional" service providers.

Whilst the prevalence of on-demand work in disability services is still limited at this stage<sup>10</sup> it is growing quickly.<sup>11</sup> HACSU is concerned that if these models continue unchecked, they will exert increasing downward pressure on wages and conditions for already low-paid workers. This concern is not unfounded, indeed the *Independent Pricing Review* performed by McKinsey & Company on behalf of the NDIA to examine the adequacy of capped NDIS prices specially identified "tech-enabled providers" who "serve participants via online platforms, which allow participants to book and manage their own care schedule directly" were models that held "significant potential" for the future NDIS market.<sup>12</sup>

### Insecure Work

On-demand platforms are also accelerating insecure employment as the default employment mode in the disability sector. It is important to recognise that this is a sector already characterised by high-levels of casualisation. In Victoria, according data compiled by National Disability Services (NDS), the rate of casualisation in the disability sector is 40% (35% nationally).<sup>13</sup> Whilst traditional disability service providers still provide some—albeit limited—opportunity for workers to access secure employment, on-demand platforms rely exclusively on a casual workforce.

### Quality and Safety Risks

In preparing this submission, HACSU spoke with several members who had performed work through on-demand platforms, specifically Mable and Hireup. These members had significant experience in the disability sector, ranging from 6-years to over 25-years and all of them held at least a Certificate IV qualification in disability support. They reported supporting

---

<sup>8</sup> Before allowing a worker to use its platform, Mable requires workers to submit a Police Check, performs personal and professional reference checks and requires uploaded copies of qualifications (including certificates and transcripts) for workers performing personal care. This type of screening is carried out by disability service providers who directly employ workers and appears to be quite comprehensive for a service that markets itself merely as a matching service between workers and service recipients. See: <https://help.mable.com.au/knowledge-base/how-does-the-registration-process-for-care-workers-work/>

<sup>9</sup> See: <https://help.mable.com.au/knowledge-base/how-much-should-i-charge/>

<sup>10</sup> As at September 2018, Mable reported it has a database of 50,000 workers and clients, see: <https://www.australianageingagenda.com.au/2018/09/12/online-care-marketplace-reborn-as-mable/>; Hireup reports that it has provided 1.2 million hours of support, but does not publicly report on the number of employees using its platform, see: <https://hireup.com.au/>

<sup>11</sup> Hireup reported that in the 3-years to December 2017, revenue had grown by 7,700%, see: <https://www.smartcompany.com.au/entrepreneurs/hireup-ditching-gig-economy/>

<sup>12</sup> McKinsey & Company (2018) *Independent Pricing Review* (commissioned by the National Disability Insurance Agency), p. 28.

<sup>13</sup> National Disability Services (2016) *Workforce Wizard Report Q4 2015-16*, p. 4.

clients through both Mable and Hireup with a range of complex behavioural and medical needs, including:

- High-dependent quadriplegics requiring respiration assistance
- Percutaneous endoscopic gastrostomy (PEG) feeding
- Significant behaviours of concern associated with psychosocial disabilities, autism-spectrum disorder, intellectual disability and acquired brain injury.

Our members expressed significant concerns that the on-demand platforms they delivered support through provided either no training or only limited voluntary training through online modules. [Text redacted].

### **Opportunities for Reform**

Many of the levers to properly regulate on-demand/gig work are only available to the Commonwealth Government. In this regard we endorse the recommendations put forward by the Australian Council of Trade Unions (ACTU) in its submission to this inquiry.

On the specific matter of on-demand work in the NDIS environment we recommend that the Victorian Government use its role as a member of the COAG Disability Reform Council to push for regulatory changes to the NDIS that prohibits the use of NDIS funds, including funding used by self-managed and plan-managed participants, to pay workers less than the relevant Modern Award (including any applicable casual loading and shift penalties). Further, any NDIS funded supports used to pay workers must attract the compulsory superannuation guarantee as part of broader reform to remove the \$450 monthly earnings threshold.