



Submission

Social, Community, Home Care and
Disability Services Industry Award 2010
(AM2018/26)

3 August 2021

Our purpose

To enable the pursuit of a good life for everyone

AM2018/26: Four Yearly Review of Modern Awards – Social, Community, Home Care and Disability Services Industry Award 2010 (SCHADS Award)

Submission on behalf of Hireup Pty Ltd concerning the decision of the Fair Work Commission [2021] FWCFB 2383

Part A Background

1. On 4 May 2021 a Full Bench of the Fair Work Commission issued a decision in relation to the 4 yearly review of modern awards for the *Social, Community, Home Care and Disability Services Industry Award 2010* [2021] FWCFB 2383 (**the Decision**).
2. The Decision invited interested parties to file any submissions and evidence in respect of the draft variations and provisional views expressed by the Full Bench in the Decision¹. The Decision also invited interested parties to provide submissions as to the proposed operative date of the variations to the SCHADS Award².
3. For the reasons that follow, Hireup is a party that has a material interest in the variations proposed to the SCHADS Award and will be significantly impacted by the timing and terms of the Decision. It makes the following submission in accordance with the invitation of the Full Bench.

Part B About Hireup

4. 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, connect with 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.
5. Of eight existing online platforms connecting disability support workers and people with disability, Hireup is the only platform that engages its support workers as employees. All other platforms engage workers as contractors, or merely provide a marketplace or brokerage facility between individual workers with an Australian Business Number (ABN) and people with disability.

¹ Decision at [1288]

² Decision at [1289]

6. Hireup employs disability support workers for the provision of home care services to people with disability, with our employees almost entirely engaged as casual employees. As an employer, we take responsibility for the wellbeing and safety of our community in accordance with applicable laws by undertaking pre-employment screenings, setting quality assurances, and delivering workforce training. We also provide comprehensive insurance and pay competitive wages.
7. Over the past twelve months we employed more than 10,000 support workers , supporting a similar number of clients. Since 2015, we have provided more than seven million hours of support to clients.

Background: the process of working on the platform

8. Prospective workers sign up through the Hireup website with their details, identity documentation, and two referees, as well as submitting to a police check and any other required checks such as the NDIS worker screening check or a working with children check. We verify the individual and conduct referee checks, and if approved we provide support to the worker such as information about the varied work that can be involved in the role, and logistical matters for using the Hireup platform to find and contact clients. We provide each worker with paid online training to get started.
9. Hireup support workers create their own personal profiles that provide information about themselves and the types of work they are able to perform for clients, and these profiles can be searched by clients based on a range of criteria, and workers can be contacted by private message through the platform. Workers can also contact clients directly if they have placed a job post on our online job board. The best disability support is that which is chosen by the person receiving the support — that’s the positive outcome of the person-centred principle of choice and control that underpins the NDIS.
10. If there is alignment between a client and a worker, a shift may then be booked through the platform, and the support work is performed by the support worker largely at the direction of the person with disability. After the shift, the booking is confirmed through the platform by both parties, and the client’s funds are invoiced by Hireup and the worker’s wages are paid by Hireup on a regular fortnightly basis.
11. As an employment arrangement, Hireup takes a 100% choice-based approach to its casual workforce. **There is no rostering of casual employees at Hireup.** Casual employees and clients agree to shift bookings, and employees may elect to work or decline any shift, entirely without intervention from Hireup as their employer (aside from ensuring that bookings adhere to the requirements of the award). Hireup is always available to assist and support employees and clients, take responsibility for

conditions and entitlements, health and safety, incidents or injuries — fulfilling the obligations of being an employer. However, we do not require casual employees to work any particular shift; instead, they are chosen completely by the employee.

Part C Challenges stemming from proposed changes to the award

12. Of the changes proposed by the Fair Work Commission to the award, some will cause significant disruption to Hireup's clients and have significant operational impacts for Hireup. Namely, these are the changes to the minimum shift length and changes to broken shifts. Remote response clauses may also cause significant challenges, however it is too early to judge this without more detail on the final form of these changes.

Minimum shift

13. Hireup provides home care services and offers its casual employees and clients the ability to book shifts from a minimum of one hour in length, as provided by the award. The proposed change to increase this minimum period to two hours will impact a substantial proportion of Hireup's clients and employees.
14. To demonstrate the scale at which employees and clients currently choose to engage in shifts of less than two hours, more than one-third of Hireup clients have booked a shift of less than two hours in the past 12 months. Significantly, these shorter shifts are frequently utilised on the platform, with approximately 23% of all Hireup bookings in any given week representing shifts of less than two hours in length. While not all clients require support of less than two hours on a weekly basis, the overall frequency of clients who seek these short support shifts is substantial.
15. These proportions indicate a number of significant factors concerning engagement of shifts which are less than two hours:
 - (a) It is common for clients to seek engagements with our employees that are less than two hours in duration;
 - (b) That whilst there are clients that do utilise our employees for multiple home care support services, the 'bundling' of services so that an engagement would last for longer than two hours is not a relevant consideration for how clients seek to engage with our employees (if it were you could expect that the engagements of less than two hours would not represent almost one quarter of the rostered shifts which our employees work per week). The Hireup experience is therefore at odds

with the conclusions arrived at by the Fair work Commission in its decision as to the “bundling of services”³;

- (c) The nature of many of the services that are provided to clients by Hireup employees are, by their nature, services which do not mandate a minimum two-hour engagement – it simply does not take two hours to undertake many of the activities which clients seek support with.
- (d) Our casual employees choose to work shifts of less than two hours — as mentioned above with absolutely no input, rostering, or direction from Hireup. All bookings are made by agreement between support workers and clients only.

16. Common reasons for utilising shifts of under two hours for clients and employees include:

- (a) Assisting a client to get out of bed and shower in the morning before leaving their home to attend work, or similarly, to shower and go to the bed for the night in the evening.
- (b) Assisting a client to drop off or pick up their child from school or day care.
- (c) Assisting a client to eat a meal.
- (d) Assisting a client to travel to attend a therapy or other service.
- (e) Assisting a client to do their grocery shopping.

17. These examples are not exhaustive, but they indicate the type of everyday activities for which many of our clients and employees agree to make short shift bookings. This is not to revisit the Fair Work Commission’s decision, but it highlights the ways in which this change could have serious impacts on individuals and decisions about whether particular services (due to their short duration) could continue to be offered by Hireup as a result of the variation to the minimum engagement terms.

18. We also submit that the flexibility of choosing short shifts can be of great value to both clients and employees. For employees it can mean shifts can be completed around other activities and responsibilities such as education or family caring. The free choice and ability to mutually agree on appropriate support bookings is one of the key benefits of Hireup for our community.

³ Decision at [372]

Minimum shift - impact on clients & employees. Why there must be a substantial delay in implementation of the Decision

Impact on Clients

19. The simplest and most obvious impact on our clients relates to their funds to pay for services. Our clients rely on their limited NDIS plans to fund their support services on Hireup. These funds are finite, and our clients plan out their spending on various types of services throughout 12 months in order to ensure their services can continue until their plan budget is renewed each year.
20. Clearly, if a person is currently utilising multiple one-hour support shifts each week, and these are forced to become two-hour shifts, then unless they can fit other activities to make proper use of the two-hour timeframe in these new, longer shifts, they could essentially be forced to spend their NDIS funding twice as quickly. For example, if a client has a daily hour-long shift to help get ready for work on weekday mornings, the five hours of support that they are currently paying will be forced to become ten hours of paid support — but for precisely the same outcome for that person. As that person's NDIS plan contains limited funds, for those shifts the funds will be expended twice as quickly.
21. This means their funding may run out before the end of their plan's timeframe, and leave them unable to receive the support services they need to live the life of their choosing and that meets their health and wellbeing. Not only is that clearly not the intended outcome of the NDIS, but it also restricts the ability of people with disability to make their own choices about the services they receive. This contradicts the principles of choice and control underpinning the NDIS. Many people have arranged their necessary support services based on the funds made available to them through the NDIS and the conditions required by the employment laws covering their support workers — with this one change, those arrangements will be utterly dismantled, and the autonomy of those people will be lessened.
22. In order to maintain continuity of service, many clients will need to apply to receive a funding increase from the NDIS — which is not a guaranteed outcome, especially given the Government's current description of NDIS spending as 'unsustainable'⁴ — in order to increase the one-hour shifts they currently receive to two-hour shifts. However, in the NDIS funding context, the negative impact of forced higher spending from 1 October 2021 is two-fold: first, NDIS plan reviews cannot be undertaken en-masse in order

⁴ *Linda Reynolds says NDIS independent assessments will go ahead 'in some form'*, SBS News 3 May 2021, <https://www.sbs.com.au/news/linda-reynolds-says-ndis-independent-assessments-will-go-ahead-in-some-form>

to address the funding shortfall that will be brought about by the Commission’s award changes, and there is no guarantee of higher funding levels being provided, so many people will simply not have the extra funding available; and second, NDIS participants are facing recent additional funding pressures, as the usual practice of indexing NDIS plans to cover the cost increases created by changes to worker wages in each financial year did not take place this year.

23. This year, award increases to support worker wages and an increase to the superannuation guarantee led to a 2.95% increase in service price limits, which are set by the National Disability Insurance Agency (NDIA). In previous years of the NDIS, the NDIA has conducted an Annual Price Review to determine a range of pricing adjustments for various service types and workplace requirements, and when new prices are announced to commence on 1 July of a given year, NDIS plans for all participants are duly increased in line with the rising costs. This year, however, the NDIA did not conduct an annual price review — and they did not provide any increase to NDIS plans, despite the 2.95% rise in price limits for NDIS services.
24. The consequence of this is a real fall in spending power for NDIS participants. Service costs have increased appropriately by providers to accommodate higher support worker wages, but NDIS participants will have only the same funding available to them when service prices were cheaper.
25. Given an NDIA Annual Price Review is scheduled to begin later in 2021 in order to inform pricing changes that will not commence until 1 July 2022, it is our submission that any final changes to the award should be commenced after anticipated annual pricing changes are handed down on 1 July 2022 to provide fair opportunity for NDIS participants and the NDIA to ensure adequate funding is available for services.
26. The Commission in the Decision correctly identified that one of the significant countervailing considerations against a change to minimum engagements under the Award was that it *“may adversely affect customer service levels or prevent providers from providing particular services”*⁵. Such a conclusion is inescapable given the matters relating to NDIS funding which are detailed above. We submit that the Commission should allow us and our clients, and all NDIS participants, adequate time to advocate for increased funding from the NDIA in order to ensure they are able to receive the level of services that they need. The date of 1 October 2021 provides insufficient time for this to occur, with the next annual price review consultation currently scheduled from August to December 2021, followed by ongoing review by the NDIA, with changes to come into effect on 1 July 2022. Furthermore, many clients will need to review their support needs and shift arrangements, across a range of categories of services and with different

⁵ Decision at [359]

providers, in order to manage a productive, continuous transition when increasing shifts of less than two hours to a minimum of two hours.

27. To be clear, this proposed change will have a seismic impact for some people with disability and the way they arrange their services — and more importantly, the way they arrange their lives. It will not be a minor or straightforward matter for some people. In fact we are concerned that for some people, it will be impossible to maintain the level of support that they currently receive if the minimum shift time is increased to two hours; or if they can do so, it will require a regressive step in their autonomy that diminishes the ability of some people with disability to choose the life they want. After the progressive step forward of the NDIS for people with disability, based on sound human rights principles of individual choice and control, this could have a devastating impact on some people’s quality of life.

Case Study (via phone discussion conducted by Hireup, with names changed to preserve anonymity)

Nick is the account manager for his sister, Wendy:

Wendy books up to 21 hours’ worth of 1-hour shifts every week.

For example, Wendy receives a 6.00am service to get up and prepare for the day, and on some days she leaves in a taxi directly after the 1-hour shift. There is no further service required after that first hour.

At night, Wendy receives a dinner service for an hour. While there is no further service required after that first hour, this 1-hour support shift has been critically important as Wendy previously would not eat dinner when served by her family carers. Her health suffered markedly. However, it was discovered that she was happy to eat dinner with her support workers, and she now needs this 1-hour shift each evening.

If Wendy was forced to use 2-hour bookings, it would mean compromising Wendy’s choices and her ability to live her life the way she wants to, and at the times she chooses. The alternative, if she was forced to make her 1-hour shifts into 2-hour shifts, would be to run out of funding for support services.

“It’d be pretty much wasting money,” Adrian says of changing to 2-hour shifts.

Adrian says Wendy would not leave her current support workers, some of whom she has known and trusted for more than 20 years, so if those workers decided to move to another platform so they could continue 1-hour shifts as independent contractors, she would go wherever they went.

Alice is one Wendy’s team of support workers:

“For us to do 2 hour shifts for each client, well, we simply wouldn’t be able to service everybody.

“It is basically going to waste people’s funding, and we’re not going to be able

to fit people in. We just won't be able to cover everyone — people need certain things at certain times, you can't force that timing on them. There would be so much wasted time if it had to be for 2 hours.

“If you doubled hours on 1-hour shifts you would have to cut some services out for other clients. You simply couldn't fit in what was needed with different clients. People would miss out.

“If we needed extra time, we would have booked the extra time — but for some shifts, even an hour can sometimes be too long and unnecessary.

“The way it is now is good, we've worked it out ourselves as a team, we sat down together and worked all our shifts out in a way that works for everyone.

“Because I can choose where I work and I only accept certain jobs, my furthest job is 12 minutes from my home. I've been doing this for more than 20 years, and this is the best system I have come across, because of the choice. Please don't change that, it will stuff us completely.”

Impact on Employees

28. We understand that the Decision does not mandate a minimum “engagement” per se, but instead only a minimum payment. It is unrealistic however to presume that clients or employers will look to enshrine arrangements where payments are being made without the provision of equivalent services. The practical impact of the Decision is therefore that minimum shift durations will increasingly be in line with the minimum payment structures. In this context, we have heard from some support workers who may be unable to service their current client load if they are required to work a minimum of two hours each shift. For example, some workers currently provide support to two clients in an evening, across two shifts of less than two hours each, to assist with the dinner meal and other end of day activities. These workers often have longstanding relationships with their clients, and are committed to providing the care and support each client needs. If, for example, a worker is now forced to work a two-hour shift instead of a shorter shift for a client for nightly meal-time support, it could make the timing impractical for them to be able to provide that nightly meal-time support for the second client as they used to.
29. For that second client, they would be placed in a position where they can no longer have their chosen, trusted support worker for that usual shift, and be forced to spend much time and emotional effort finding new support workers instead. Feedback from our clients indicate the relationship with their support worker is the key element of quality support services, and the continuity of being able to book the same, chosen support workers is critical for people's quality of life and their ability to achieve their goals.

30. Furthermore, in the above example both clients would now have to spend more of their support funding for these longer shifts, without any additional benefit or outcome compared to the previous shorter shift. For the worker, they would be restricted to working for one client only in the evening, with the possibility of working less hours in total or losing their longstanding clients because they are no longer available at appropriate times to provide support.
31. For both workers and clients, the choices they have been making to date would be taken away from them. Given it can take many weeks or months for clients and workers to build appropriate connections and rapport in order to build trusted, constructive home care support relationships, there is insufficient time until 1 October 2021 for this to occur.

Impact on Hireup operations

32. As indicated above, the impact of this change on Hireup's clients and support workers could be severe in some circumstances. For Hireup as a provider, it will also have significant impacts on the way our platform technology works, and for the education and consultation we would need to undertake among our community.
33. As Hireup builds our own technology and platform ourselves, this change would require a significant diversion of resources to enable, and at a significant cost to the business. We submit this business impact is unreasonable in the short space of time until 1 October 2021, and should therefore be delayed to allow businesses such as Hireup the time to re-engineer and consult. For our technology changes, it is likely to require a minimum of three months' work of engineers to make changes to the platform, conduct testing and reviews, and also manually amend more than 5,000 already-lodged bookings of less than two hours, at a minimum cost to Hireup of between \$150,000 and \$200,000. This does not include the opportunity cost of having to redirect those resources from other initiatives currently under development.
34. Furthermore, in order to maintain continuity of service and bookings for clients and employees, Hireup would need to engage in lengthy and sustained communications to educate our community about the proposed changes; consult with them about the way changes would be embedded into our platform; work with them to understand their support needs under the new shift minimum; support them to request a review of their funding through the NDIA; assist them to rearrange their bookings to maintain their services, their crucial support relationships, and as much of their funding as possible; and continue to provide adequate working opportunities for our employees.

35. While it is difficult to estimate a required timeframe due to the multi-dimensional and qualitative nature of the above considerations, it would be inappropriate to force these changes on people with disability and their support workers with any less than six months of preparation. Support relationships and service arrangements that fit into the lives of thousands of individuals are not able to be rearranged in a matter of weeks; it is an impactful, demanding process that is different for each individual, and it requires detailed work and support. The cost to Hireup of this additional support and administration is likely to be measured in the thousands of hours for our support worker and client service teams.

Employee travel to service clients

36. The Fair Work Commission’s decision identifies in the context of its determination of the minimum engagement claims:

(a) *“An employment arrangement may become exploitative if the income provided for the employee’s labour is, because of very short engagement periods, rendered negligible by the time and cost required to attend the employment⁶”*

(b) *“In most cases it is likely that the time and cost associated with working short engagements will be disproportionate to the income derived from the period of the engagement.⁷”*

37. Respectfully, the above does not reflect the experience of Hireup as it relates to its employees. The Hireup model tends to result in local workers supporting people in their local neighbourhoods. In the Hireup model, there is no problem created by an employer sending a support worker from one side of town to the other to work two disparate, short shifts. Our system is based on free choice and agreement between the support worker and client, so there is no coerced or involuntary nature to these shifts, and people choose shifts that make sense for the way they fit flexibly into their lives. Often, this means they can work at a distance nearby to their home, or if they choose to work two shifts, nearby to each other.

Broken shifts

38. The proposed changes to broken shifts create similar impacts to those mentioned above in terms of limiting the choice available to clients, who need to book services that contribute to their life and wellbeing, and to support workers who are not subject to rostering on Hireup and freely elect to work any shift they choose to accept.

⁶ Decision at [338]

⁷ Decision at [356]

39. In addition, the implementation of a broken shift allowance means the introduction of a new direct cost, but the funding available to NDIS participants, and the price limits set by the NDIA, have not factored in this additional cost. Any associated increase to service costs will result in less funding and services available for people with disability, unless the NDIA fully funds the increase to costs in its next annual price review to take effect on 1 July 2022. If this change to the award is introduced before 1 July 2022, there will be no opportunity for providers and participants to engage with the NDIA to press for adjustments to be made to participants' NDIS plans and NDIS price limits.
40. It is important here to acknowledge the unusual 'market' that the NDIS presents. It is not a free market. It is a regulated, controlled market with limitations on both the prices of services (supply side) from providers and workers, and the expenditure on services (demand side) by clients. These limits in service prices and spending capacity mean that externally introduced changes, such as changes to wages or award conditions, can have a significant impact when the market is unable to adapt to them. In the case of the NDIS, there is no ability for the market to adapt to the proposed changes by 1 October 2021. At best, it may be possible for this to occur at a time after 1 July 2022, and even in that case it is only at the behest of the NDIA that these introduced additional costs may be able to be met.
41. Finally, we note that, while the Commission's view that employees rostered to broken shifts should be compensated as they may not have a choice in the rostering and this brings with it certain 'disutilities', as a provider that does not roster its casual staff, this places Hireup in a challenging position. The modern nature of work arrangements through platforms in the disability sector means that workers make their own choices regarding their work arrangements, such as shift times and the locations at which they are willing to work. The new broken shift allowance would be paid by Hireup for shift arrangements over which Hireup exerts no control or rostering directions. To ensure work arrangements continue in a fair manner for all parties, and to ensure costs do not escalate for our clients, Hireup will need to engage in a significant consultation and education campaign with our clients and workers.
42. In addition to these education and consultation needs, we estimate that the complexity of re-engineering the Hireup platform to ensure compliance with the proposed broken shift clauses in the award would occupy a development team for a period of three months at a minimum, at a cost in excess of \$200,000, and result in the sidelining of work on important initiatives to improve our services to our community. These timeframes and costs are in addition to the engineering timeframes and costs mentioned above, as it must be carried out in a linear manner by the one team with the expertise to codify these changes. It is not feasible for Hireup to achieve

this by 1 October 2021 as proposed without causing significant disruption to our operations.

Remote response

43. While the final detail of the proposed clause is not expressed within the Decision, we note the following conclusions from the provisional views of the Full Bench:

- (a) That a term dealing with remote response work should be included into the Award⁸;
- (b) A shorter minimum payment should apply where an employee is already being paid an ‘on-call’ allowance⁹;
- (c) There is merit in ensuring that each discrete activity which an employee might undertake does not trigger a separate minimum payment¹⁰;
- (d) That a definition for “remote response work/duties” is prudent;
- (e) That time spent by an employee working remotely should be recorded and communicated to their employer¹¹;

That there should be differential minimum payment obligations dependent on when the remote work is undertaken. With the Full Bench’s provisional view being that a minimum payment of 30 minutes be applied for a remote response between 6:00AM to 10:00PM, and a minimum payment of 1-hour be applied for a remote response between 10:00PM and 6:00AM¹²; and

- (f) That there is an interplay between the minimum payment amount and the rate of payment (whether the payment is made at overtime rates or ordinary time rates of pay)¹³.

44. In response to the provisional views expressed above, Hireup submits:

- (a) It would occasionally happen that Hireup employees as part of a client handover on a particular day might contact each other over the telephone, or by text message, and discuss information relating to the client. This would usually occur after or before the worker is on-site with the client and as such is remote in nature. It would be uncommon for

⁸ Decision at [722]

⁹ Ibid

¹⁰ Ibid

¹¹ Ibid

¹² Decision at [733]

¹³ Ibid

these interactions to extend beyond one or two text messages, or a few minutes in duration, but often would be much shorter;

- (b) There may be rare occasions where on a given day a worker might have a number of interactions with different clients' support workers depending on the number of clients the worker has supported that day and the need to provide notes or information to the client's subsequent support worker. In that context, the ability to aggregate the number of small discreet engagements into a total minimum engagement period would be very important – otherwise there could be a significantly disproportionate payment required to be made to a worker relative to the actual time spent undertaking remote work/duties;
- (c) The differential minimum payment obligations based on the time when remote work might be undertaken is sensible, however Hireup submits that a minimum period of 15 minutes is the appropriate quantum for work undertaken between 6:00AM and 10:00PM. This would typically more than cover the time an employee actually spend undertaking such work;
- (d) It should be made clear that activities associated with determining when and if work will be required should not be covered by the clause. This should include things like an employee checking their rosters, responding to an inquiry as to whether they are available to work, or engaging with an online platform in order to identify or make arrangements for when the employee will work.

Implementing that Change

45. The terms of the proposed remote working clause will obviously be made clear through the terms of a subsequent decision of the Full Bench. It must also be considered however as to the timing of any operative provision that a remote response clause will introduce further complexity for recording or verifying work falling into this category. It may require significant re-engineering of the technology underpinning the Hireup platform and indeed some of the complexities as to the determination of how to treat the payment and the contingent complexities of a payment made at the “appropriate rate” have correctly been identified by the Decision¹⁴. When combined with the intensive re-engineering that would be required to support the introduction of the above proposed changes, again this would not be feasible for Hireup to meet the new requirement by 1 October 2021.

46. To explain a potential work program in order — re-development of a technology platform to implement complexities involved with bookings and payments, such as those proposed in these changes to the award, requires:

¹⁴ Decision at [737]

planning and scoping of the work, consulting with third parties we integrate with to scope changes on their end, coding and re-engineering changes in our platform, waiting for third party to make required changes (this can take months, and we cannot control the third party), testing internal changes, testing integrations, amendments to implementation to fix issues, pilot deployment and monitoring with real data, amendments to implementation to fix issues, full release and monitoring. It would be irresponsible of Hireup not to follow a strict, accountable process when making these changes, both to ensure they are compliant and to ensure that the thousands of hours of support provided each day through the platform remain unaffected by changes to the underlying technology. If a software error, failure or outage were to occur it could jeopardise the carrying out of critical support services and essential work, therefore it should not be rushed to meet artificial deadlines.

Part D Potential outcome of award changes: incentive to forgo employment

47. As mentioned previously, there are now eight platforms that connect people with disability and disability support workers, but all of them, bar Hireup, engage workers as independent contractors, or simply provide a marketplace facility for workers with an ABN to find clients and provide services through their ABN. In addition to this, there is a growing marketplace of workers with ABNs advertising their services to potential clients through online classified websites, such as Gumtree, or through large public groups and marketplaces on social media platforms such as Facebook.
48. Due to the fact that contractors and ABN-holders are not required to adhere to the relevant industrial award, changes to the award that further limit the flexibility of disability support services can result in incentivising clients and workers to engage support services directly with each other, without a service provider or employer, and without any requirement to adhere to quality and safety standards of the NDIS (aside from the basic Code of Conduct). This could be an unintended consequence that results in fewer services being provided with coverage of NDIS quality and safety assurances.
49. Flexibility and lower prices that can be delivered through direct contracting of disability support services, due to low or non-existent overheads and little or no workplace or NDIS-related compliance obligations, are understandably very attractive to people seeking support with limited NDIS funding. These informal, “offline” arrangements could potentially result in a person gaining access to many additional hours of support services, or simply give them the ability to use their services in ways that flexibly fit into

their lives (for example, using short one-hour shifts where appropriate), which could not be legally provided by an employed support worker.

50. This incentive to shift services away from registered service providers, away from employers with obligations for workplace conditions and entitlements, and away from the quality and safeguarding compliance systems of the NDIS, is of concern.

51. There has been widespread growth in these non-employed disability support arrangements in recent years:¹⁵

- At one of the largest contractor/marketplace 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.

52. The *Report of the Inquiry into the Victorian On-Demand Workforce*¹⁶ 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.

53. In fact, we submit that this increase 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

¹⁵ These figures are drawn from Hireup's observations monitoring the sector.

¹⁶ 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 (n 5) p. 36.

- 76,000 workers by 2030¹⁷

54. To put that into perspective, the 2030 figure represents close to double the current workforce at a large organisation like Bunnings Warehouse. Yet all those workers, performing much the same support work that employees of providers have been performing for decades, will be classified as sole traders and unable to avail themselves of protections and entitlements for employees under Australia's industrial relations laws.

55. 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.

56. Given that many of the proposed changes to the award may result in higher costs for employers, and therefore higher flow-on costs for services provided by those employers, it is likely to introduce a strong incentive from the perspective of NDIS participants with finite funding to seek cheaper, and more flexible, options for support services. We submit that a rushed rollout of the changes without time to consult with and educate the disability community may unintentionally act as a turbo-charge to a trend that is already gathering momentum in the disability sector. This provides further grounds for extending the time before the commencement of the proposed changes.

¹⁷ Data based on Hireup's observations monitoring the sector, applying the rate of change to forward years. There is no data collected by any government authority on this matter.

57. 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 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.
58. For these self-employed workers, 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 worker. 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 registered providers — the latter presents a genuine risk of abuse not being captured or reported.
59. A contracted or self-employed support worker does not have the safety net and entitlements provided by employment. Apart from being beneficial to each individual worker, we believe these factors create an important outcome for the NDIS at-large: 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.
60. 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. We saw this directly during COVID-19 where personal protective equipment was handled differently by employers compared to platform marketplaces: while providers ensured protective equipment or an allowance to procure the equipment was given to their workforce, some platform marketplaces opened up online stores to sell the equipment to the workforce of their own platform.
61. There are also many examples of the shifting of liability and risks onto workers and people with disability, creating an elevated risk profile for workers and clients when workers are not engaged as employees. We 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.

62. In summary, we believe a shift away from employed support work to contracted or self-employed support could 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.

63. Hireup is not alone in holding these concerns, with the recent interim report of the Senate Select Committee on Job Security, *On-demand platform work in Australia*, finding that rising forms of non-employment or contracting work in disability support work are having a detrimental effect on the workforce and the NDIS as a whole:

“Platforms are increasingly engaging support workers as individual contractors, charging unregulated rates, and failing to provide basic protections and reasonable conditions for these workers; there is considerable confusion around who is ultimately responsible for occupational health and safety (as discussed in the previous chapter); and workers engaged in this way may have no superannuation or access to workers’ compensation if injured and unable to work.

Considering the massive public investment in the NDIS, and the predicted growth in the disability care workforce over the next few years, it is in the interests of all Australians to ensure that these jobs are protected for the future.”¹⁸

Part E Conclusion

64. Hireup thanks the Commission for an opportunity to provide a submission in relation to the potential impact of the changes proposed and the provisional views reflected in the Decision. As will be evidenced from the foregoing submission the proposed changes are seismic and will have a dramatic impact not only on the manner in which clients are forced to engage with their care services but also the manner in which many employees presently work – these changes have the potential to work to the disadvantage of both parties, not to mention employers in the sector.

65. It is critical that any changes that might ultimately be determined are not introduced without a substantial period of time to ensure that employers can be compliant with the changes and identify any operational contingencies that might allow those changes to be sustainable, but also

¹⁸ Senate Select Committee on Job Security, *On-demand platform work in Australia* p171

that significant time is provided so that a shift in the funding arrangements through the NDIA can be advocated for by industry participants. Any shift in funding arrangements cannot occur prior to 1 July 2022 and it would be important to not introduce the proposed changes to the Award until after:

- (a) The 1 July 2022 funding changes have been announced; and
- (b) A reasonable time following those announcements has elapsed so that employers can consider the impact of those funding changes on their operations and the necessary changes that will need to be made to apply the variations to the Award within the new funding envelope.

66. We urge the Commission to take into account this significant matter in finalising its decision.