

## Submission to the Productivity Commission Study on Aged Care Employment

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### About Us

The Health Services Union (HSU) is a growing member-based union with over 95,000 members. Our members work across the breadth of health and social assistance industries, in the public, private and not-for-profit sectors. While this submission has been prepared by HSU National, it is made on behalf of our branches and members Australia-wide.<sup>1</sup>

HSU members in aged care work in roles including personal care worker (PCWs), enrolled nurses, physiotherapist, occupational therapist, therapy assistant, recreational and lifestyle officer, assistant in nursing, enrolled nurse, food services, laundry attendant, cleaner, and administrative officers. In addition to those directly employed in the aged care sector, the HSU has members working in health professions that require them to interact on a regular basis with older Australians. This includes paramedics, mental health clinicians, disability support workers, and other allied health professionals. Our members work predominantly work in residential aged care facilities (RACFs) but are also in community services and home care.

### Summary

Models of employment that subvert the traditional employment relationship do so at a cost to building a stable, highly skilled, valued and well-resourced workforce. The ability for workers to spend time with care recipients and meet their individual needs is diminished under indirect employment. HSU members and in the evidence laid out by various witnesses to the Royal Commission into Aged Care Quality and Safety (the Royal Commission), report a very real and adverse link between job insecurity and loss of continuity of care. The trend away from traditional, secure jobs jeopardises what workers, older Australians and the community rightfully expect from aged care - high-quality, person-centred and holistic care.

The HSU notes that to date, the Government has overlooked the workforce recommendations from the landmark Royal Commission and where there has been a response, it has fallen well-short of what the final report recommended. The Royal Commission recommendation relevant to this study did not suggest further canvassing of indirect employment but rather urgent action to enshrine direct employment and the benefits it affords workers and older Australians. Any additional research, such as this study, should not preclude the Government from accepting Recommendation 87 and supporting providers to implement it urgently.

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<sup>1</sup> HSU National is the trading name for the Health Services Union, a trade union registered under the *Fair Work (Registered Organisations) Act 2009*. The HSU has registered branches for New South Wales/Queensland/Australian Capital Territory; Victoria (4); Tasmania; South Australia/Northern Territory; and Western Australia.

## The extent of insecure employment in aged care

HSU members across the health and social assistance industries will attest that insecure work is rife and on the rise.<sup>2</sup> In aged care, 78% of the residential ‘direct care workforce’ is part-time and 10% is casual or contract. In home care, ‘three-quarters of all... direct care workers are permanent part-time’ and 14% are casual.<sup>3</sup> In home and community care, especially in disability, over a quarter of providers report a preference for hiring people under non-direct (agency/labour hire, brokered, externally contracted and the self-employed) arrangements.

It is critical to recognise that a ‘traditional’ model of employment does not guarantee job security. For example, part-time employees rely on agreement at the commencement of employment as to the days they will work and the start and finish times on each of those days. With that agreement should come an ability to structure their lives accordingly, through receiving a reliable weekly income and having time to meet other responsibilities such as caregiving for loved ones, or study commitments. However, there has been a marked increase in low and ‘zero-hour’ part-time contracts. Under these contracts, there is no regular agreed pattern of work, weekly wages become variable, and the worker’s roster can be filled entirely with “additional hours” at no extra (overtime) pay. HSU members on these part-time contracts regularly report concerns relating to inconsistency of hours and having to subsidise wages through additional jobs.

The HSU draws attention to the increasing prevalence of non-traditional employment models across a wide range of occupations in aged care, not just personal care and nursing. Since the removal of stringent workforce reporting under the *Aged Care Act 1997*, the HSU has witnessed an increase in non-direct care roles, namely catering, laundry and cleaning, being contracted out. These workers are commonly engaged via complex sub-contracting arrangements. There is a preference for this practice in these ancillary roles as it provides a cost-saving mechanism for providers, with no accompanying regulatory scrutiny or endeavour to understand the full impact of these employment structures on care quality.

Similarly, due to funding constraints and a regulatory vacuum, providers are not required to engage allied health professionals as a regular part of care teams in RACFs or for their services to be automatically captured in home care packages. There has been a subsequent increase in these workers moving to independent contractor arrangements. For older Australians, the result is inconsistent access to allied health. These services end up being provided at a time of crisis for the older person, rather than in the preventative, restorative and reablement stages of care.

The Royal Commission was unequivocal that ‘getting the aged care workforce right is vital to the success of any future aged care system’ and that this requires a comprehensive set of interrelated measures to be urgently enacted.<sup>4</sup> Job security is one of the most pressing issues. Defining the problem with a narrow scope limits the policy responses that are taken to address the issues arising from job insecurity.

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<sup>2</sup> Here, we use insecure work to refer to independent contractors and gig-economy workers, as defined in the Issues Paper, as well as other forms of non-traditional and non-direct employment.

<sup>3</sup> Department of Health 2017, ‘2016 National Aged Care Workforce Census and Survey – The Aged Care Workforce’, report, pp. 10 and 67.

<sup>4</sup> Royal Commission into Aged Care Quality and Safety, ‘Care, Dignity and Respect,’ Final Report, Volume 3A, Chapter 12, p. 371.

## Flexibility and job security are not mutually exclusive

Every aged care worker should have access to fair pay and working conditions. Their employment should allow them meaningful social and economic participation in life. At the same time, employers must remain financially viable and able to accommodate the individual needs of older Australians using their services. The HSU recognises that permanent workforces may need supplementing with flexible labour, and that workers themselves may opt for flexibility.

There is nothing within traditional, direct employment that prevents flexibility and security for all parties. Employment under casual and fixed-term contracts directly held with an employer, for example, can offer this kind of labour agility while affording workers essential entitlements such as paid leave, superannuation and workers' compensation. The social and economic toll of missing out can be immense, particularly for the aged care workforce which is predominantly female and already disadvantaged by wage inequality and the low valuing and wages of 'feminised' work. At a time when costs of living are becoming unmanageable for many, it is counterproductive to place further downward pressure on wages and entitlements. The HSU draws the Commission's attention to evidence to the Royal Commission that 'the apportioning of these costs of the labour process to the worker, in addition to the lack of paid [entitlements] and other protections in Australian employment regulation, suggests an inevitable erosion of the hourly rate of pay'.<sup>5</sup> We also encourage this study to review the HSUs evidence in the work value case currently before the Fair Work Commission, lodged in response to the recommendation of the Royal Commission.<sup>6</sup>

The introduction of on-demand platforms in care work reduces the preferencing of direct employment and removes genuine choice for job security from the worker. Secure, permanent work (full or part-time excluding low and zero-hour contracts as described above) must be offered as a first and genuine choice to workers who nominate for flexible work. Similarly, the right to convert from casual to or contract to permanent work must also be available. Workers and older Australians using on-demand platforms are far less likely, if at all, to receive any education on the shifting of costs and liabilities to them through these applications.<sup>7</sup> The associated direct and indirect cost of non-direct employment and the negative impact it has on care quality is well-covered by the Royal Commission and other inquiries.<sup>8</sup> The HSU refers the Commission to these reports. We reiterate our position that these models of employment provide a deliberate circumvention of employer rights and responsibilities under the *Fair Work Act 2009* (Cth). This is unacceptable and action must be taken swiftly to ensure flexibility does not come at the significant detriment to workers and older persons.

## Striking the right balance: Mable (gig) versus Hireup

We have identified two competing on-demand models that have emerged in the aged care and disability sectors. The table below identifies the differing features of the two models by comparing the practices of the most used providers under each model.

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<sup>5</sup> Royal Commission into Aged Care Quality and Safety, 'Care, Dignity and Respect,' Final Report, Volume 3A, Chapter 12, p. 429.

<sup>6</sup> Royal Commission into Aged Care Quality and Safety, 'Care, Dignity and Respect,' Final Report, Volume 3A, Chapter 12, p. 415.

<sup>7</sup> Ibid 5.

<sup>8</sup> For example, Senate Select Committee Senate Select Committee on Job Security 2021; Inquiry into the Victorian On-Demand Workforce 2018.

	<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 and support workers operate as independent contractors, negotiating a rate with the support-recipient.
<b>NDIS Registration</b>	Registered NDIS provider	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 \$51.07 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 Disability Services Industry Award 2010</i> (SCHADS)	Mable’s policy dictates that workers cannot enter an hourly rate of less than \$25. Mable suggests personal care rates of between \$28 and \$40. <sup>9</sup>
<b>Superannuation</b>	As the direct employer, Hireup pays the 10% 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 10% 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.

<sup>9</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)

The HSU submits that on-demand platforms that apply the independent contracting model (such as Mable) institutionalise wage theft. Looking at the disability sector, where on-demand work is increasingly common, allows a clear comparison of the minimum rate allowed by Mable (\$25.00 less 10% service fee) and the low range of the average weekday rate advised by Mable (\$38 less 10% service fee) against minimum wage, minimum Award wage and minimum Award wage for Certificate IV qualified disability support worker.

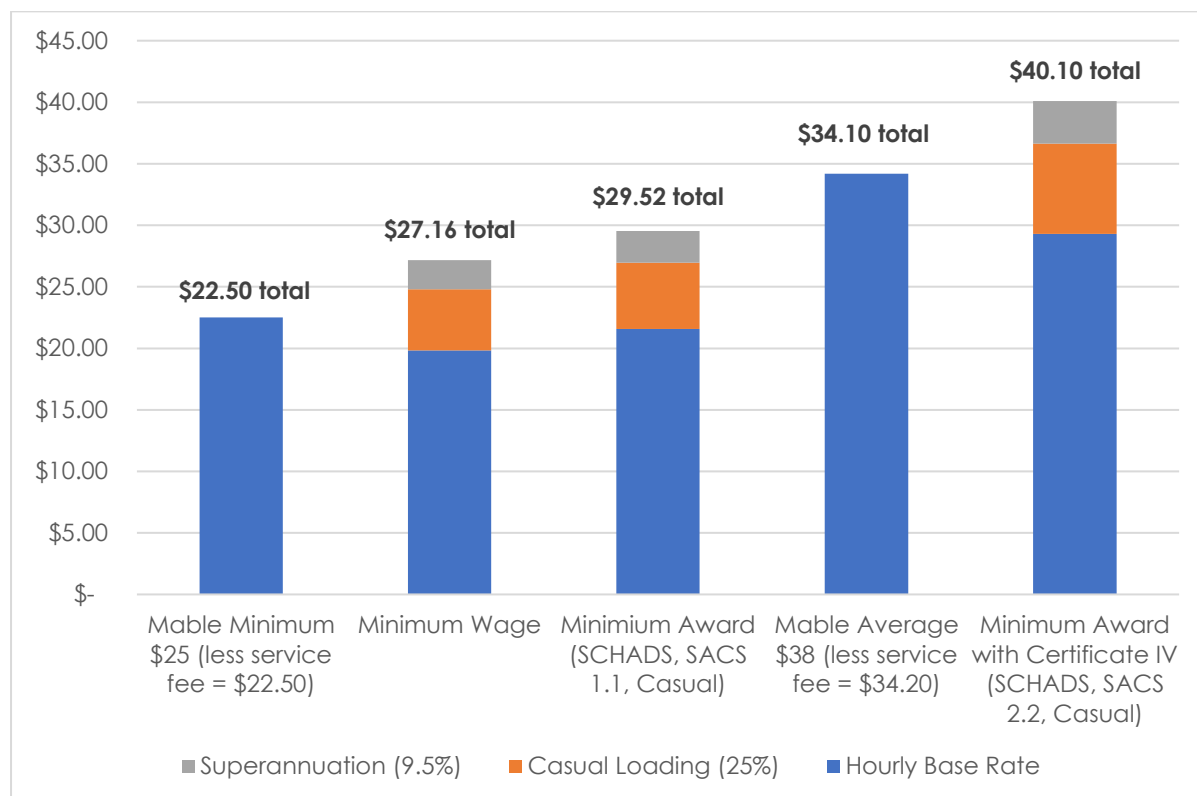


Figure 1: Comparison of total hourly remuneration for weekday, daytime support

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 10% superannuation guarantee by \$5.45 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, HSU submits that 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>10</sup> By misclassifying workers as “independent” contractors these types of on-demand platforms enable exploitative labour practices that provide these operators with a competitive advantage over more “traditional” service providers.

<sup>10</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/>

## The virtuous circle of care

The HSU rejects any downplaying of the relationship between the terms and conditions of indirect employment with continuity and quality of care.<sup>11</sup> There is a wealth of research clearly demonstrating the link between high quality care, as conceptualised and experienced by aged care workers and older Australians, with high quality jobs and job satisfaction.<sup>12</sup> The evidence points to the need for employment policies and practices that facilitate a 'virtuous circle', in which good organisation of care work, good employment and working conditions, supportive management and an empowering work culture, relevant and accessible training, and job satisfaction underpin high quality, person-centred, holistic care. As outlined, indirect employment models do not accommodate these conditions necessary to a virtuous circle of care. In fact, the Royal Commission made clear that even traditional providers in aged care are struggling to foster positive work and care environments (noting this is due to a confluence of factors, some of which are well outside their control, for example funding). The promotion of indirect employment will only further compromise employment and care outcomes.

## COVID-19: exposing the risks of insecure work

In aged care, the dominance of insecure work even for so-called permanent employees, along with substandard wages, forces people to subsidise financial insecurity by working for multiple employers, often across multiple job sites. It affects all groups of workers, from personal care, catering, cleaning, nursing, allied health to medical. On-demand platforms are capitalising on the financial vulnerabilities of workers holding multiple jobs are having to accept shifts at multiple work sites. The pernicious impact of insecure work has been felt no more than during the COVID-19 pandemic in aged care. The fault lines of poor employment practices were laid bare, and it was the workforce and older Australians who suffered. The HSU has therefore been alarmed by the Federal Government's preferencing of indirect employers during the pandemic despite the demonstrated and devastating impacts of job insecurity for older Australians over the past two years.

In April 2020, while the Tasmanian North-west and Newmarch House COVID-19 outbreaks escalated, the Commonwealth contracted Mable to provide surge workforce to the aged care sector for a four-week period. The Commonwealth notified providers it would pay the wage costs for any workers contracted via the Mable app for COVID-19 surge purposes. The contract with Mable was worth nearly \$5.8 million and was awarded in a limited tender process. The scheme was available to Residential Aged Care, National Aboriginal and Torres Strait Islander Flexible Aged Care Program and Home Care Package providers. The take up of Mable by providers was low. In part this was due to the platform not having available workers in regional, rural and remote areas – reflecting the well-known issue of attraction and retention in these areas. The decision by the Federal Government to contract and promote Mable at this juncture in the pandemic, directly contradicted their own public health advice to limit movements and interaction with more people than necessary. It demonstrated the lack of understanding and absence of appetite to provide a workforce that is stable, sufficient in size and adequately supported through decent wages and conditions.

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<sup>11</sup> Issues Paper, p. 4.

<sup>12</sup> Meagher, G. Cortis, N. Charlesworth, S. Taylor, W, 2019, 'Meeting the social and emotional support needs of older people using aged care services', UNSW Social Policy Research Centre, pp. 31-32.

## Workforce perspectives

In April 2022, the HSU surveyed its aged care members on the topic of indirect employment and other aged care industry issues. The survey was open for approximately, 2-weeks and produced a sample-size of 486. Almost all respondents worked in NSW (55%) and TAS (41.5%), a small number of respondents reported working in ACT, QLD, VIC and WA and no respondents were from SA or NT. This reflects HSU aged care coverage and where the survey was distributed.

Only 32 respondents (6.6%) reported working through an indirect employment arrangement for any of their current aged care jobs:

- 21 respondents (4.8%) reported working for an agency or labour-hire company.
- 3 respondents (0.7%) reported working through an online app.<sup>13</sup>
- 8 respondents (1.8%) reported they were self-employed and worked directly with client(s).

Due to the low numbers of respondents – the HSU is unable to provide robust data on the experiences of these indirectly employed members. At the same time, we do not believe that this low response rate implies low levels of indirect employment in aged care. Rather, as a survey distributed exclusively to union members, we believe the sample is biased towards workers employed in larger, more established workplaces with greater levels of union presence. Aged care workers in indirect employment – particularly those delivering in-home services – are difficult to reach and are generally less likely to be union members than traditionally employed workers.

## Other Findings

Whilst the recent HSU survey did not provide enough data to properly analyse the experiences of aged care workers in indirect employment, we gathered data on other job quality measures for entirety of the sample which is summarised below:

## Demographics

The overwhelming majority of respondents identified as female (86.9%) and were older – with just over half (50.1%) aged 55+ and a further 25% aged 45-54. Only 1 in 10 respondents was 34 years of age or younger. Nearly 1 in 5 respondents (19%) reported speaking a language other than English at home and 4.5% stated they were on a temporary work visa. Respondents were nearly all qualified, with 87.8% reporting their highest level of education relevant to their work in aged care being a Certificate III or above. The most common qualification was a Certificate III (41.4%) followed by a Certificate IV (25.6%).

## Work Setting and Occupation

Respondents overwhelmingly worked in a residential aged care setting (92.9%). Only 6.6% reported working in an in-home setting with another 3.1% reporting they worked in community services and programs. Very few respondents worked across different aged care settings.

Nearly 2 in 3 respondents (63.2%) identified as personal care workers (variously described) and 8% identified as either registered or enrolled nurses or allied health professionals. Taken together, 71.2% of respondents worked in direct care roles. A further 21.5% of respondents identified working in non-direct care roles (food services, cleaning, laundry, administration, etc.) and 7.3% reported “other.”

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<sup>13</sup> A further 4 respondents stated they had previously used an online app to secure aged care work but were no longer doing so.

### Working Hours and Job Security

Respondents were asked a set of agreement statements about their working time and job security which revealed that:

- Almost 1 in 3 (31.6%) disagreed that their working arrangements felt secure.
- 41.4% of respondents agreed with the statement “I worry about rosters/working hours” and almost the same proportion (38.7%) agreed that their shifts could change unexpectedly.
- The results also revealed that nearly half of respondents (46.8%) agreed that one aged care job could provide enough hours and pay.

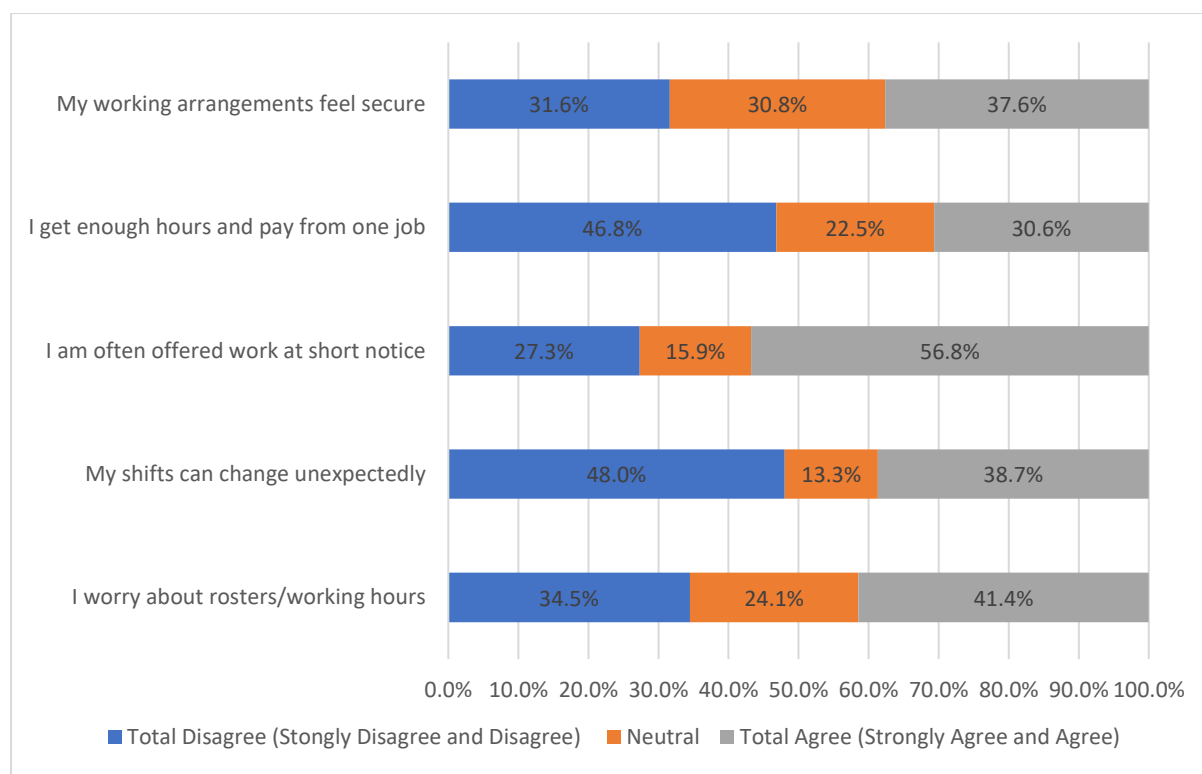


Figure 2: Responses to workforce statements on job security

Taken together – these results demonstrate that job insecurity is widespread throughout the aged care sector. It is in the interests of workers, providers and older Australians to improve job quality in aged care to ensure we can attract and retain a skilled and dedicated workforce who can delivery safe, quality care. However, use of indirect employment models in aged care risks making an already bad situation worse by promoting greater job and hours insecurity.

### Conclusion

Insecure work is an alarming and growing trend in Australia. For aged care, the impact of precarious employment is to the detriment of care provision and outcomes. There are proven links between care and job quality. Outcomes improve for all when the workforce is fairly remunerated, highly trained with ongoing professional development opportunities, and securely and stably employed. As indirect employment erodes these foundations for quality jobs and job satisfaction, in turn it is undermining the quality-of-care aged care workers can provide. In a time of crisis in aged care, the emphasis in our employment, industrial and regulatory systems must be on providing, promoting and regulating secure work.



**Authorised by Lloyd Williams, National Secretary**

HSU National  
Suite 46, Level 1  
255 Drummond Street  
Carlton VIC 3053

**Contact:**

Lauren Palmer  
HSU National  
Research and Policy Officer