



# Submission

Productivity Commission  
Aged Care Employment Study

April 2022

**Our purpose**

To enable the pursuit of a good life for everyone

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## Introduction

The Productivity Commission's March 2022 issues paper on indirect employment in aged care (issues paper) states it is particularly looking at the use of "independent contractors" and "workers engaged through digital platforms". This area of study came from a recommendation of the Royal Commission into Aged Care Quality and Safety (Royal Commission) that aged care providers be required to preference direct employment of workers engaged to provide personal care and nursing services. The issues paper aims to provoke discussion on whether an employment model is in fact preferable to a contracting model when it comes to the make-up of Australia's aged care workforce.

From the outset, this submission wishes to highlight that "workers engaged through digital platforms" do not need to be "independent contractors". Many digital platforms offering aged care support workers do engage their workers as independent contractors. But it is also possible to employ workers directly and still offer their services via a digital platform arrangement. This is how Hireup operates; Hireup is an employer and platform provider of disability support workers.

The Productivity Commission notes that its particular objectives in studying how to optimise Australia's aged care workforce are the provision of both quality care *and* flexibility. We would argue that an employment-model digital platform like Hireup exemplifies how to satisfy these twin objectives. As an employer, Hireup offers its support workers award pay and employment award conditions, the benefit of superannuation and entitlement to workers compensation, opportunities for training and career development, and support for rehabilitation and return to work plans in the event of a workplace injury or other incident. Hireup's nurturing workplace and support of its employees means that those workers are in the best position to provide optimal care to clients. And, as a platform provider of disability support workers, Hireup offers clients and workers alike the flexibility in service provision that is the hallmark of tech-enabled services and the platform economy.

While the Australian government considers how to rectify the workforce gap facing our aged care sector, as well as how to safeguard these critical care services into the future, we suggest Hireup's employment-based platform model both is consistent with the recommendations of the Royal Commission and offers an innovative, agile and sustainable response to the delivery of quality care.

## About Hireup

Hireup is a national, NDIS-registered provider of disability support services. Through a secure online platform, Hireup provides people with disability the tools to find, engage and manage their own support workers who fit client needs and share their interests, putting into practice the principles of choice and control that underpin the NDIS.

As an online platform for support work, Hireup is a rarity: we operate a contractor-free model and directly employ our support workers. This allows Hireup to offer its support workers a range of entitlements such as award wages, superannuation payments, workers compensation insurance and return to work services for anyone injured on the job. In the past year, more than 10,000 people with disability were actively using the Hireup platform, with a similar number of support workers providing support.

Many other platform businesses offer “gig”-type work in industries that are suited to one-off, impersonal transactions (such as food delivery, or ride-sharing services). We believe that, in the care sector, platforms offering support work are different from these gig economy services. Hireup’s workers offer personal connection and support to our clients that is frequently on a long-term basis. This is comparable to aged care support work. Our workers enter people’s homes and may provide the most personal types of care. This is one of the reasons we believe that an employment model is preferable for care and support work: it properly reflects the enduring personal relationships forged between our workers and clients, as well as the regular and repeat engagements that form the basis of our platform’s work.

As already noted, Hireup generally operates in the disability sector. Nonetheless, we make this submission as an advocate for a platform employer model of disability services, demonstrating a viable way in which to bolster the aged care workforce without compromising on quality of care or burdening care recipients and workers with risks and liabilities in service provision.

## Preferring employment to contracting in the disability and aged care sectors

Hireup’s operational model gives us a unique insight into the challenges facing the aged care sector and how these may be addressed. By way of background, the introduction of the NDIS created a new marketplace for disability services, aiming to facilitate greater choice and control for people with a disability. Many new entrants in this marketplace have adopted a contracting model for service provision, whereby digital platforms purport to match up NDIS participants with “independent”, or non-employee, disability support worker contractors.

In contrast, Hireup offers the flexibility of an online platform model of service provision - whereby NDIS participants may themselves find, engage and manage their own support workers rather than be allocated support via an intermediary - while Hireup also employs the support workers, to provide them superior guidance, support, training, insurance, pay and benefits. In short, Hireup has shown how to both embrace the opportunities presented by this new market *and* promote the interests of its clients as well as the disability support workforce.

In the aged care sector, there is a similar distinction to be drawn between those who employ support workers and those who merely facilitate the matching of support workers to aged care clients.

The final report of the aged care Royal Commission found that the “contracting” model of care support workers is less likely to deliver quality care. The two commissioners were divided on the reason behind this: Commissioner Briggs stated that, without an employment relationship, it is largely impossible for business operators to dictate and enforce standards of care and conduct. Commissioner Patone concluded that, while it is possible for contracting businesses to impose independent standards of care, it is in practice difficult to monitor and enforce compliance with those standards of care without an employment relationship, where employees are by definition required to comply with any lawful and reasonable directions they are given about the performance of their work.

Overall the two Commissioners agreed to prefer an employment model of support services, as per Recommendation 87 of the Royal Commission:

*Recommendation 87: Employment status and related labour standards as enforceable standards*

*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.*

This submission will now set out the reasons why Hireup supports Recommendation 87.

## **Reasons to support recommendation 87**

### **Contracting service providers largely evade performance monitoring and assessment**

The Royal Commission noted that ideas of “choice and control” in the aged care service sector rely on the availability of meaningful information about service providers and the quality of care they offer. We agree with the Commissioners that strong system governance (including monitoring performance, addressing emerging issues and holding players in the system accountable for performance) is required for there to be high quality and safe services.

It is difficult to gather meaningful information about the performance of service providers in a contracting model. For example, in the disability sector, NDIS Quality and Safeguard Commission checks and safeguards largely do not apply to unregistered, contractor support workers. There is little or no scrutiny of contractor work practices until something goes wrong and a complaint is made against them to the Commission, or a problematic workplace incident is reported. Even then, the individual contractor may be held responsible rather than the entity (platform) that organised, marketed and took a commission from, their services. As well as a troubling absence of information about the way in which contracted support workers are delivering their services, there is no room for systematic service improvement in terms of a productive dialogue between the regulator and those responsible for large-scale service delivery.

We note here that the issues paper states that there is insufficient evidence to conclude that contracting contributes to lesser standards of care in the aged care sector. We argue that a lack of evidence does not correlate with a lack of issues with the quality and safety of support provided by contractors - rather, there is an absence of both qualitative and quantitative assessment of contracting practices overall, both of which are crucial to the performance monitoring of Australia’s aged care system.

The issues paper describes the 2020 Department of Health’s National Aged Care Workforce Census as based on aged care providers’ responses to what is effectively a survey. These responses will not capture information about contracted workers engaged via digital platforms. This is reflected in the fact that the 2020 survey showed that only three per cent of the total aged care workforce (some 13,000 workers) were contractors, most of whom were in allied health occupations. In contrast, Hireup’s workplace research relevant to the same period shows that, at one of the largest care support contractor platforms (and there are at least eight other similar platforms), there were more than 8,000 contracted workers, very few of whom were allied health professionals.

In the aged care sector, certain types of government support require the involvement of an approved provider of aged care services, to impose a layer of regulation in specific contexts. However, it is possible to circumvent this requirement by running contracted support workers under the auspices of a third-party company, even where those workers are engaged directly via a non-approved platform provider. According to such arrangements, the platform provider solicits business from an older person with a plan requiring support be provided by an approved provider, and then runs their payments through this “host” approved provider in order to tick the relevant regulatory box. We suggest that this convoluted process may not be a genuine means of ensuring the approved provider is taking responsibility for the quality of care provided by the contractor, which is obviously the intention of the legal requirement, and is a problematic arrangement. We query the extent of monitoring and compliance that could be carried out by these “host” approved providers who are connected to the support workers in only the most remote terms.

In addition, as mentioned above, in the case of an older person engaging a non-employee support worker through a platform, where there is no requirement for an approved provider, there is no quality and safety information at all to be gathered by the government.

In each of these situations, how can the Aged Care Quality and Safety Commission properly assess whether platform contractors are complying with the Aged Care Quality Standards in the Aged Care Act?

In terms of improving the system of aged care overall, the Royal Commission stated: “Regular review of performance should involve an iterative process of communication between those who deliver services, the institution that commissions them, and policymakers.”<sup>1</sup> A contracting model workforce is disparate, individualised and anonymous, with little or no service reporting. Therefore, a contracting model of care opts out of this policy improvement process by breaking the chain of performance monitoring that is so crucial to regulatory enhancement.

By contrast, where workers are employed by a provider (whether approved or not), that provider is liable for the standard of care offered and will take steps to ensure all requirements are met, to safeguard that business’s reputation and to ensure a viable service model. Employers are subject to a host of reporting and compliance requirements, providing vital data for policymakers. In the disability sector, being an NDIS-registered employer means fulfilling a variety of audit and reporting functions relevant to the operation of the NDIS, as well as meeting payroll, superannuation and other liabilities that all add to the quality of information the government receives about the way in which our disability support workforce is operating, and likely future needs.

By operating an employment-model platform, then, Hireup is contributing to not only the enhancement of service standards but also the refinement of the NDIS as a whole.

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<sup>1</sup> At 39, Vol 3A of final report

As an employer, Hireup is working hand-in-hand with government and the regulator to ensure the sustainability of the entire disability support system. A platform employer in the aged care sector would contribute in the same way.

### **Workers themselves need good working conditions in order to deliver quality care**

The Royal Commission noted that the aged care workforce is currently poorly paid for difficult and important work, and there are frequently too few workers to deliver either safe and high quality care or a good quality of life. Many workers are in stressful and sometimes unsafe workplaces; most require further training. The Royal Commission report cites how the quality of care and the quality of jobs in aged care are inextricably linked: “If workers are to provide high quality care, they must themselves be cared for by their employers.”<sup>2</sup>

The Royal Commission report concludes that, in order to deliver high-quality, person-centred care, workers need: good working conditions, supportive and visionary management, an empowering work culture, collaborative teams, high quality and relevant education and training, and high job satisfaction. To build the future aged care workforce and to improve the quality of care, attention must be paid to employment conditions, staffing levels, available career pathways, education and training, and good leadership and management.

Hireup notes that all of the above features are consistent with our platform employment model, and are inconsistent with a platform contracting model. Hireup takes care to build and nurture the career pathways of our support workers, offering training and opportunities to move laterally within our organisation, as well as opportunities for advancement. We have a highly-responsive Trust and Safety team in the event that a support worker experiences a workplace incident or injury, to monitor and support that worker’s rehabilitation and return to work. We offer training and skills development. We seek out, listen to and act on employee feedback in frequent and regular engagement surveys. We take care to comply with all the quality and safety standards of the NDIS Quality and Safeguards Commission and pay above or equal to award wages, and our leadership and management have received multiple accolades for their innovative and visionary approach to service provision in the disability support sector.

In contrast, contracting support workers may work largely without supervision and with little or no support in the event that something goes wrong. They are unlikely to be offered pathways to career development. They are literally “on their own” in nearly all respects: in providing for their future financially (no superannuation, no paid leave), in terms of a minimum rate of pay consistent with the relevant award (the award does not apply to contractors), if something goes wrong (there may be no entitlement to workers compensation nor personal insurance), and in a workplace collegiate sense

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<sup>2</sup> At 372, Vol 3A of final report



(there is unlikely to be training days, collaborative projects, conferences, skills-development seminars, mentoring, etc). In short, this is a truly precarious mode of work that has no promise of long-term stability in working conditions, and no likelihood of advancement.

### **Employees are required to follow directions about standards of care provision**

Hireup agrees with the expert evidence presented at the Royal Commission that employees, rather than contractors, are (by definition) more closely directed in the work they carry out, and thus will better achieve objectives in care quality standards. Both Commissioners agreed that employment as a mode of engagement of the workforce is more compatible with developing a well-led, skilled, career-based, stable and engaged workforce providing high quality aged care. Employees are required contractually to comply with any lawful and reasonable directions they are given about the performance of their work. Platform contractors are more difficult, if not impossible, for the platform operator to control in this regard.

In addition, recognising that contracting platforms have relatively minimal direction and control over the quality of care offered by workers, we agree with the Commissioners that an employment model will better adapt to enforcing any new statutory duties of care. The employment model offers an easier vehicle by which to monitor service provision, and to positively reinforce new care quality requirements.

## **Older people should be protected from employer-like liabilities**

Another problematic gap in the quality and safety regulation of services offered to older people through platform-contracted workers arises in the context of legal responsibilities for sham contracting, and work health and safety.

In summary, sham contracting can occur when a person or organisation purports to engage a worker as a contractor, but actually directs and controls their work to the extent that they would meet the legal requirements of an employer-employee relationship. Where a sham contracting relationship is found to exist, the deemed employer may be liable for back pay and other entitlements equivalent to employment under the relevant award.

Where an older person engages a contractor support worker using a platform business, in some circumstances that older person may be construed as an employer in a sham contracting situation. A platform employment model obviously removes this potential liability.

In addition, an older person hiring a care worker via a contracting platform may be liable under work health and safety laws for any harm suffered by the worker. In the national model work health and safety laws, the wide definition of an employer, or “person conducting a business or undertaking” (PCBU), is likely to encompass the older person in this situation.

The older person accessing care workers from a contracting platform typically is not warned of the above employer-like liabilities, and the associated risk. And evidence was presented to the Royal Commission that, even where an older person is warned that they themselves may be exposed to risk as a result of platform contracting, not all clients will understand the serious implications of these arrangements.

Again, an employment model, where relevant duties sit squarely with an easily-identifiable employer, is clearly preferable here.

## **Ensuring a sustainable future workforce**

There has been much recent media attention on the dearth of aged care workers, with significant concerns raised about declining participation in this critical workforce. It is clear that job satisfaction is key to the retention of workers in such fundamental industries as aged care. This is why an employment model is integral to building the long-term capacity of this sector, for all the reasons set out above. The Royal Commission's report also noted the interrelated nature of attraction of workers to the sector (based on superior pay and conditions) and job retention. And it is evident that building the capacity of our future aged care workforce is essential to ensure safe and quality care.

## Conclusion

An employment model is inextricably linked to quality aged care, and is possible in the context of a platform economy. Hireup shows that being an employer does not mean quashing innovation — or that using technology is incompatible with employment. We embrace new ways of working and bring our valued employees with us as we constantly strive to develop improved services to meet the sometimes complex and changing needs of our clients. We are demonstrating how the future of aged care can be bright, with the appropriate regulatory settings in place. We agree with Recommendation 87 that an employment model is the optimal way in which to achieve best practice in aged care.

The choice between an older person engaging an *employee* of a platform provider or a *contractor* through a platform provider is not always clear at the point of engaging that worker. As noted above, the principles of choice and control that Australia's aged care system aims to facilitate are based on the availability of meaningful information about the repercussions of consumer decisions. We are concerned that users of aged care services are not furnished with adequate information to enable them to engage safely in the online care marketplace. They now rely on the regulator to put in place protections to curb the liabilities that are otherwise attached to those engaging contractors through platforms. In the same way, care workers are dependent on the government to institute worker benefits and protections that will shore up the service market in years to come. An employment model presents the solution to both these problems.