

Wednesday 7 June 2023

Senator Tony Sheldon
Chair
Education and Employment Legislation Committee
By email: eec.sen@aph.gov.au

RE: Senate Budget Estimates 2023-24, Opportunity to respond to evidence provided at a public hearing

Dear Senator Sheldon

Thank you for your letter of 1 June. Last week, I wrote to all of the Senators who had witnessed your disparaging remarks regarding our company. We have provided you with submissions and direct correspondence, I have previously testified before you and we have even resorted to responding to your tweets in an effort to ensure you are informed with regard to how our platform works. I hope in inviting us to respond you will take the time to review our response rather than continuing to disregard the facts.

As I reflected to your colleagues, since before he was elected, Prime Minister Albanese has encouraged the business community to engage with Labor in the “spirit of consensus” that characterised the time of Prime Minister Bob Hawke. Mable has engaged in good faith with you for some three years. Yet when Senators use Parliamentary privilege to make false claims about Australian companies and the people that work at them, I struggle to understand how this fits with a “spirit of consensus”.

I also hope that the choice and control, and views and experience, of people with disability, older Australians and independent contractors remain front and centre in this debate regarding industrial relations.

About Mable

Mable is an advanced digital health tech marketplace that offers a complementary approach to traditional aged care at home and disability support models. Mable gives older Australians and people with disabilities more choice, control and flexibility to shape the care and support they receive in their own home and community. This choice is made possible by over 12,000 support providers offering valuable and necessary services via the platform. Founded in 2014, Mable now operates at some scale, facilitating care and support services for over 16,000 people with disabilities and older Australians.

Mable employs 300 Australians, many of whom have come from successful careers in the corporate sector or community advocacy, drawn to Mable by our profit for purpose approach and desire for social impact. In our recent Mable staff *Diversity, Equity, Inclusion and Belonging Survey*, 13 per cent of staff respondents identify as having a disability and 29 per

cent responded as having a close family member who has a disability. Mable is an Australian innovation, only nine years old and has been operating at a loss this entire time as we continue to invest in building the digital platform, safeguards and operations – we aim to break even in the near future.

Responding to claims by Senator Sheldon

For the record your statements that Mable is a “fundamental rip off” and that our company is “stealing from workers” are false and offensive to the 300 employees of Mable, and the 12,000 support providers and 16,000 clients who use the platform, many of whom no doubt align with Labor values and voted for Labor candidates at the last election.

As we have sought to explain to you, more than once, your argument is specious for a number of reasons. Not only do independent contractors on the Mable platform on average earn more than employed workers elsewhere, but also **Mable does not set rates charged for services**. It is a false characterisation to state that it is Mable that “pays workers” or that “Mable actually pays its workers as little as \$32 an hour, or \$28.80 after platform fees”. On the Mable platform, clients and support providers (who are independent contractors) directly negotiate with each other to determine the services and the terms of those services, including the appropriate contractual rate.

The minimum contractual rate of \$32 is there as a minimum only, and exceeds the minimum casual wage allowing for platform fees. It is false to state that independent contractors are receiving only half the hourly rate in comparison to employees, when on average they are receiving considerably more including when accounting for superannuation, casual entitlements and platform fees.

Mable’s customers are both people who need support services and independent contractors who offer support services. If independent contractors do not value what Mable offers, they can easily and viably choose to be employed in the sector by a traditional provider, be casually employed by Hireup, choose another platform or contract with clients absent a platform. All of these options are available in the care sector.

You told the Committee that Mable “hires its disability and aged care workers as independent contractors” to “circumvent the National Employment Standards”. This is false and relies on a fundamental misunderstanding and mischaracterisation of the way that independent contracting works in Australia and on Mable. Mable does not provide support services nor “hire independent contractors” on its platform to provide support services. Instead the contractors use the platform to connect with and enter into contractual agreements with their clients directly. They also may enter into contractual arrangements with their clients independent of a platform.¹ Mable does not direct any work, nor assign shifts or exercise control over these independent contractors in any form, let alone in any way that would constitute an employment relationship. Our role is to offer a safeguarded

¹ Our research has suggested that as many, if not more, independent contractors now engage off-platform as on-platform.

marketplace for parties to connect, ensure the provision of insurance and provide tools to the small businesses operating on the platform.

In a similar vein, it is hard to imagine how precisely you think that our company is “stealing from workers”, when the platform’s role in finance is to collect payment for the contractors’ invoices based on terms that contractors and clients have directly agreed with each other. In independent surveys, support providers on Mable rate their satisfaction with their experience as support workers, hourly rates, reliability of working hours and job security higher on Mable than people who are employed by traditional providers, including Hireup. Moreover, Mable financially benefits when independent contractors on its platform earn more, not less. We are aligned with their success.

Mable’s only intervention into the marketplace is to set a minimum contractual rate. This is currently set at \$32 per hour, ensuring the support provider receives at least \$28.80 after platform fees, but as you know from prior correspondence, is reviewed annually. The reality is that the vast majority of people choose to charge far more than this minimum rate and the average rate for the lowest paid category on our platform (social and domestic assistance) is now \$44 per hour Monday to Friday after platform fees. In fact, in the past three months 99.4 per cent of services had a rate above \$32 and 90.2 per cent had a rate above \$40.

I note that the Fair Work Commission set down its *Annual Wage Review* on Friday 2 June. Following this decision and as part of its annual review, Mable has reviewed the minimum contractual rate on the platform, and will be increasing the minimum contractual rate to ensure that after platform fees, independent contractors are not at risk of earning less than the new minimum wage inclusive of casual loading and superannuation. As communicated above, independent contractors on Mable already earn on average considerably more than this rate. We hope and expect that based on this information you will refrain from making false statements and mischaracterisations.

Responding to claims by Hireup

As you noted, last week an op-ed I authored was published in *Canberra Times* which explained how support providers that work on the Mable platform are paid, on average, \$6.65 more per hour, Monday to Friday, than casually employed workers on our competitor platform Hireup, and that is *including* casual loading and superannuation.² We used Monday to Friday rates to enable a like for like comparison. Normally, I wouldn’t make such a comparison in the public domain, but I felt I should reply to an earlier op-ed by the Health Services Union (HSU) where it was claimed that casuals on our competitor’s platform were better off even though they were paid less on average, because they received mandatory superannuation. We welcome a robust debate on this matter. That being said, it’s disappointing that Jordan O’Reilly of Hireup only feels he can respond with the benefit of parliamentary privilege.

² Peter Scutt, “Contractors are giving NDIS clients more choice”, *Canberra Times*, 29 May 2023, [link](#).

Mr O'Reilly acknowledges the high rates on Mable but then vaguely alludes to other factors. In relation to Mr O'Reilly's claims that people on our platform do not receive penalty rates, it is important to note that independent contractors decide whether to provide services on a weekend or public holiday and what they charge. Not surprisingly, the reality is that support providers on Mable choose to charge more on weekends and public holidays.

To further elucidate this point, Hireup documents that its employees earn \$60.47 plus superannuation on Sundays, equating to \$66.82 inclusive of superannuation. Independent contractors offering personal care services via Mable on Sunday earn on average \$69.40 after platform fees.

Hireup likes to argue that it has greater business costs than Mable because of some decisions that it has made. For instance, it likes to suggest that Mable has an unfair advantage as Hireup is a registered NDIS provider and Mable is not. This ignores the fact that enabling NDIS participants to access non-registered providers is a specific design feature of the NDIS. Further by choosing to become a registered provider, Hireup is able to service a larger pool of NDIS participants than independent contractors on the Mable platform.³ But it is important to remember that in exchange for the differences in its business model, **Hireup takes a much larger share of what its clients pay**. On Hireup, 33 per cent of everything a client pays goes back to its business, and only 67 per cent goes to their worker. On Mable, 16.6 per cent of what the client pays goes to our business and 83.4 per cent of the funds go to the independent contractor. Importantly, the independent contractor – not Mable – determines the services they provide, to whom, when and what they charge.

Contrary to Hireup's claims, our model is complementary to employment in the care sector. It is quite clear that people who work in the sector have different needs and preferences. Mable caters to a subset of people who prefer to be self employed, increasing workforce participation in the care economy. Hireup caters to people who prefer to be casually employed, even though they offer no minimum hours. Traditional providers cater to people who prefer employment, both permanent or casual, often with minimum guaranteed hours.

Recent research undertaken by YouGov confirms that independent contractors are exercising the choice to work as independent contractors and are a complementary rather than competing workforce. In a recent YouGov study:

- 87 per cent of independent contractors on Mable, preferred to be an independent contractor while only 13 per cent would prefer to be employed.
- 88 per cent of people employed directly by traditional registered provider prefer to be employed, with only 12 per cent preferring to be self employed.

In each case their preference was based on differing motivations. The growth in independent contracting in the care sector is in response to individualised funding and consumer choice and control rather than the evolution of digital platforms. Independent contracting is

³ Hireup, unlike Mable, is able to provide supports to Agency Managed NDIS Participants who, while comprising a minority of the scheme have a larger share of NDIS funds, due to their – on average – higher need for supports.

attracting a more self directed workforce, many of whom would otherwise not participate in the care sector. The ability of these independent contractors to evolve their business offering, to be more innovative in the services they offer and more responsive to their clients needs will be critical to the sustainability of the NDIS and aged care at home. It is reductive to suggest independent contractors in the care economy are not skilled, not capable of working with autonomy and not capable of making informed decisions.

Unlike Hireup, Mable does not advocate for a one size fits all solution for people who need support or who offer support. A vibrant and diverse marketplace of large providers, small providers, registered and non-registered providers, sole traders and digital platforms will be critical for a sustainable care economy and attracting the necessary workforce in communities everywhere. Different models of giving and getting support appeal to different people for different reasons. It's disappointing that Hireup thinks the only way it can advance its business is through regulatory intervention seeking a one size fits all casual employment solution and particularly disappointing that its behaviour has now been enabled by the Senate. A singular solution will reduce workforce participation in the care economy and negatively impact outcomes for people who rely on support.

In relation to the issue of workers compensation insurance, Mable agrees that independent contractors should be permitted by state governments to enter their state based schemes. It's worth keeping in mind that the Employee Like reforms proposed by the Federal Government will make absolutely no difference to this issue, as it is state governments who generally decide who is eligible for their schemes. We would welcome your advocacy to encourage state governments to allow independent contractors to access workers compensation insurance schemes. You are likely aware from our prior communications that Mable arranges a comprehensive set of insurances for independent contractors operating via its platform, including public liability, professional indemnity and personal accident cover, which includes income protection.

Hireup's letter is littered with inaccuracies and intentionally confusing and misleading language, applying gig economy language to all digital platforms, scaremongering with suggestions of deemed employment risk, inaccurately implying that all platforms operate the same way and that they misclassify the status of service providers. The fact is that horizontal marketplace platforms like Mable enable genuine independent contractors to directly engage with and contract with their clients on their terms. Mable enables those who choose to be independent contractors to be better off financially. We operate the platform with safeguards and minimum standards to benefit all of users including service providers.

I challenge the reference to the non peer-reviewed "research" produced by the Centre for Future Work that states "All care and support platforms exert control over workers, work and pay." That statement is categorically false. Mable champions independence, not dependence.

I am particularly concerned by Mr O'Reilly's criticism of the longevity of relationships on our platform and his attempt to frighten people with disability and older people with misleading

arguments about liability of deemed employment. His self serving remarks completely ignore last year's High Court decisions which confirmed that where an appropriate written contract exists, then there is no question that independent contractors are independent contractors.⁴ For the avoidance of all doubt, all services procured through Mable are subject to a detailed agreement between the client and support provider.

I also challenge Hireup's view that Employee Like reforms "will end decades of debate and confusion as to the working status and entitlements of many hundreds of thousands of workers". As mentioned, the High Court has settled any confusion. The Employee Like reforms reintroduce confusion by confusing contract law with employment law. Mable is supportive of minimum standards for independent contractors on its platform and has taken a leading role in this matter. This is very different from arguing that independent contractors are Employee Like, simply because they leverage a digital platform in their business.

The Hireup position, echoed by you, assumes that people on platforms lack the capacity to make decisions for themselves. But the evidence shows that while running a small business isn't for everyone, a growing number of people in the care economy want the flexibility of being able to choose their own clients, the services they offer, when and where they provide services and negotiate their own rates of pay and terms of service.

I would encourage you to correct the record and desist from your attacks on Mable. Mable is a company of more than 300 Australian employees who care deeply about the work we do. Employees and independent contractors both play vital and complementary roles in a successful care economy.

Yours sincerely

Peter Scutt
Executive Director & Co-Founder

⁴ "High Court changes direction on independent contractors", Gilbert & Tobin, 21 February 2022, [link](#).