



## Royal Commission into Aged Care Quality and Service – Sydney Hearing 4

### Submissions of Mable Technologies Pty Ltd

#### INTRODUCTION

1. The Royal Commission’s Home Care Hearing (Sydney Hearing 4) has heard evidence in relation to the complex and challenging issues concerning the delivery of aged care services in the home, including enabled through online platforms. These submissions which are made on behalf of Mable Technologies Pty Ltd (**Mable**) address these issues.
2. Mable provides an online platform through which customers may connect and engage directly with care workers to contract the provision of care services for the benefit of the (often) older end user.
3. Mable is not a “gig economy” model, nor is Mable’s model similar to ride share platforms such as Uber or food delivery platforms. Mable does not set rates or allocate jobs. Rather, Mable’s platform is focussed on connecting people, not to engage in one-off “gigs”, but to build ongoing relationships that are the foundation of good human services. Unlike these “vertical platforms”, Mable operates a “horizontal platform” which directly facilitates interactions between workers and people seeking care. The important difference in platform types is acknowledged in the Report of the Inquiry into Victorian On-Demand Workforce<sup>1</sup> and in the submission of Professor Stewart.<sup>2</sup>

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<sup>1</sup> General Tender Bundle, Tab 23 page 15

<sup>2</sup> Ref: RCD.9999.0452.0004



4. As detailed below, to protect the interests and welfare of its clients and care workers (Users), Mable’s safeguarding framework operates pre, during and post the delivery of care services engaged through the Mable platform.

## **MABLE’S SAFEGUARDING FRAMEWORK**

5. A number of criticisms of the Mable model that were received in evidence during the Royal Commission do not appear to appreciate the scope of Mable’s safeguarding framework. When the functionality and capability of the Mable platform is properly understood, rather than a potential contributor to perceived industrial and care risks, it is submitted that the proper view of Mable is as an important and necessary platform through which care related risks are able to be managed within a framework tailored to ensure optimal autonomy and service outcomes for users.
6. The safeguarding procedures that Mable currently employs, by reference to Users, are identified below. As can be seen, Mable’s safeguarding framework encompasses the full extent of its platform and operations, from front line care workers to the Mable Board of Directors.

### **Mable users**

#### *Pre engagement*

- (a) Mable screens all care workers before accepting them onto the Mable platform. The screening procedures involve police checks<sup>3</sup>, Working With Children Checks (WWCC), reference and qualification checks<sup>4</sup> and COVID-19 infection control training.

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<sup>3</sup> P8886.25 and P8893.32 per Mr Scutt

<sup>4</sup> P8886.25 per Mr Scutt



- (b) To be approved to offer certain services on the Mable platform (eg personal care, nursing, allied health), workers must evidence their qualifications and experience in accordance with Mable's vetting procedures.<sup>5</sup> Within the broad category of personal care, certain higher risk services (such as Assist with Medication) requires additional evidence of qualifications. Once adequate evidence as to a care worker's qualifications has been provided, Mable's search and job post filters enable clients to engage care workers who are suitably qualified to provide the services sought.<sup>6</sup> In this way, clients can build a team of care workers tailored to both their clinical and social/daily living support needs.<sup>7</sup>
- (c) Care workers are required to operate in accordance with the platform Terms of Use and abide by a Code of Conduct,<sup>8</sup> which includes requirements to immediately report incidents.
- (d) Clients of Mable, with oversight from their care manager, create personal profiles which include care plans, emergency contact details and instructions, and other relevant information visible to the workers they engage.<sup>9</sup>

#### *Post engagement*

- (e) Users can log incidents and complaints through the Mable platform (via the website and submission of service logs (i.e. timesheets), or by way of phone and email.<sup>10</sup>
- (f) Mable routinely prompts clients of the platform to rate and review their experiences which are then visible on worker profiles. Mable's average care worker rating is 4.8

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<sup>5</sup> P8893.43 and P8894.1 per Mr Scutt

<sup>6</sup> P8883.5 per Mr Scutt

<sup>7</sup> P8896.14 per Mr Scutt

<sup>8</sup> P8885.17 per Mr Scutt

<sup>9</sup> P.8884.2 and P8886.33 per Mr Scutt

<sup>10</sup> P8899.20 per Mr Scutt



and 96% of ratings are a 4 or 5 out of 5. Any rating of a 1 or 2 is treated as a complaint and reviewed internally.

(g) When an incident is registered on the platform, Mable commences an internal review<sup>11</sup> involving the following processes:

- (i) Automated notification to Mable's investigation team to review and respond to the incident or complaint.
- (ii) Notification to the Approved Home Care package provider regarding the incident.
- (iii) The data relating to the incident is recorded and tracked using Mable's platform analytic tools. The risk type and severity of the incident is rated to enable analysis of trends and reporting. Serious incidents are escalated on the same day to Mable's Incidents and Complaints Committee, which includes Mable's Chief Executive Officer, Chief Operating Officer, General Manager Sector, Policy & Government, and Manager Quality, Safety & Risk.
- (iv) The monthly Incidents and Complaints Committee meetings have a standing agenda item relating to the making of recommendations to procedures, policies and platform changes on account of lessons learned from incident and complaint reviews.
- (v) Incidents and complaints, with associated recommendations, comprise a monthly agenda item at Mable Board meetings.

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<sup>11</sup> P8899.20 per Mr Scutt



- (h) Separately to incidents and complaints, Mable conducts regular user suitability reviews based on platform analytics to identify users who may not be suitable for the platform or are not using the platform to effectively provide or receive services. Outcomes of such reviews include (but are not limited to) removal of care workers from the platform, and the transition of clients to other services in consultation with the client and their care manager.
- (i) The functionality offered through Mable's Care Manager feature offers a further safeguard and supports an Approved Provider in meeting regulations by providing the client's care manager with oversight and direct access to a client's platform activities<sup>12</sup>, including:
- (i) reviewing service logs and notes and incident reports
  - (ii) being able to have direct contact (phone, email, and in app messaging) with each care worker engaged by the client;
  - (iii) can directly manage the client's account (if required) including reviewing and approving service logs and notes;
- Importantly should the care manager not be satisfied with the quality of care being provided or form the view that the quality and safety standard obligations of the provider are not being met, the care manager can:
1. Work with the client to terminate the arrangement; and
  2. Ultimately decide to remove the client's access to the platform and withdraw approval to pay for services engaged via the platform.
- (j) Via the Care Manager feature, the Care Manager can upload each client's individual care plan to the platform.

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<sup>12</sup> P8885.2 per Mr Scutt



### Care workers

- (k) Mable provides opportunities for care workers on its platform to upskill and further develop their career paths, and actively communicates with care workers in relation to training opportunities and offers.<sup>13</sup>
  
- (l) Care workers have access to Mable’s online learning hub at no cost, which contains materials relevant to over 100 training courses in areas ranging from core essentials (e.g. “safe at work”, “duty of care/dignity of risk”, Covid-19 infection training, “preventing and responding to violence, abuse, neglect and exploitation”) to opportunities to upskill in specific modules such as dementia, autism, capacity building and person centredness.<sup>14</sup>
  
- (m) When a training module is completed through Mable’s online learning hub, care workers can include reference to the completed training courses on their profiles, which in turn enables them to appeal to a broader range of clients and negotiate higher prices based on their improved skill set.
  
- (n) Outside of the platform, Mable works with TAFE and other registered training organisations to promote accredited training, including state subsidised opportunities, to care workers. The following are examples of these opportunities:
  - (i) Mable has arranged for 500 free places with TAFE NSW for care workers to complete a new six week infection control skill set.<sup>15</sup> A similar offer is expected to be agreed shortly with TAFE Victoria.<sup>16</sup>

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<sup>13</sup> P8897.1 per Mr Scutt

<sup>14</sup> P8897.1 and P.8897.5 per Mr Scutt

<sup>15</sup> P8897.11 per Mr Scutt

<sup>16</sup> P8897.15 per Mr Scutt



- (ii) Mable recently arranged for care workers the opportunity to commence their Certificate III in Individual Support, Disability or Aged Care by completing four modules at no charge. These modules then act as credits towards the care worker obtaining a Certificate III, meaning that the qualification is obtained at a discounted price.<sup>17</sup>
  
- (iii) Mable recently organised with TAFE NSW for sixty fully subsidised medication assistance courses to be offered to workers.<sup>18</sup>
  
- (o) Mable protects care workers on the platform by setting user terms to ensure their services cannot be engaged for less than minimum wage, taking into account superannuation and Mable platform fees.<sup>19</sup> Mable's statistics show that the average hourly rate for personal care and social support (Monday to Friday daytime) is above \$36 per hour **after platform fees**. This average hourly rate of pay has been rising approximately 8% year on year.<sup>20</sup>
  
- (p) Mable provides information to its care workers to assist them in appropriately setting and agreeing their rates, so as to take into account a range of factors relevant to their working conditions, including:
  - (i) Travel time;
  - (ii) Ordinary work expenses;
  - (iii) Duration of the care session;
  - (iv) Superannuation, taxation, holiday and sick pay;
  - (v) The value of the services, qualifications and experience required.

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<sup>17</sup> P8897.15 per Mr Scutt

<sup>18</sup> P8897.15 per Mr Scutt

<sup>19</sup> P8891.21 per Mr Scutt

<sup>20</sup> P8891.25 per Mr Scutt



- (q) Mable offers care workers the use of a closed Facebook group and other opportunities to connect to discuss issues and share experiences relating to their delivery of care services through the Mable Platform.
  - (r) Mable’s analytics tools look to identify users who may not be suitable to receive care via the Mable platform, or only receive certain types of care.
  - (s) When care workers join Mable, they are automatically covered by a range of insurances covering service delivery at clients’ homes.<sup>21</sup> This suite of cover includes public liability, personal accident and professional indemnity insurances.
7. Mable’s statistics suggest that its safeguarding framework is appreciated and valued by both users and care workers. This is demonstrated by the following:
- (a) Mable is presently receiving around 1000 care worker applications per week, of which around 220 are being approved to use the platform. This shows (i) the extent of care worker demand for the Mable platform and (ii) the robustness of Mable’s screening processes. These care worker statistics take on greater significance in light of the widely reported challenges of attracting workers to the aged care sector.
  - (b) Mable is attracting a more diverse workforce, including 25% of Mable’s care workers being male, as opposed to an industry wide male care worker participation rate of 11%.
  - (c) Mable’s survey of care workers conducted in May 2019 found that 96% of care worker respondents rated their experience “very good” or “quite good” compared with only 76% rating their experience prior to Mable “very good” or “quite good”. When

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<sup>21</sup> P8895.10 per Mr Scutt



indicating their reasons for choosing to offer services through Mable, 60% of care worker respondents indicated they were attracted by better working conditions.

(d) In the May 2019 survey, consumers also rated their experience with Mable very highly compared to their pre Mable experience<sup>22</sup>.

(e) Across more than 200,000 hours of care delivered per month, the data confirms the high level of user satisfaction from services facilitated via the platform with a Net Promoter Score among active clients above 60 for calendar year 2020.

8. It is submitted that this data reliably reflects the views of Mable’s customers in so far as platforms such as Mable are viewed as efficient in the delivery of care services,<sup>23</sup> and satisfy the needs and wishes of users by allowing them to exercise autonomy and control over the selection of their own workers.<sup>24</sup>

## RESPONSE TO CRITICISMS OF PLATFORMS

9. By reference to the above, Mable takes issue with the following criticisms that have been made of platforms, including the Mable platform, recognising the important differences between platforms characterised as “vertical” or “horizontal” ([3] above), during the Royal Commission’s Sydney Hearing 4:

(a) **Criticism:** Mable does not have oversight or supervision of home care work, and does not have responsibility for the delivery of care,<sup>25</sup> and does not have to deal with

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<sup>22</sup> RCD.9999.0453.0031

<sup>23</sup> See also Dr Fiona Macdonald’s response to the Royal Commission’s draft propositions dated 7 August 2020, pages 5-6

<sup>24</sup> See also P8970.14 per Dr Macdonald

<sup>25</sup> Dr Fiona Macdonald’s response to the Royal Commission’s draft propositions dated 7 August 2020, pages 3-4



workers' performance.<sup>26</sup> There is no oversight, direction or direct support offered by the model and therefore no ability to assess the effectiveness of the measures.<sup>27</sup>

**Response:** While Mable does not have a physical presence at the client's home or location while care services are being delivered and is not itself a provider of care services, Mable's safeguarding framework contains layers of oversight and supervision aimed at protecting both clients and care workers in the delivery of care. Mable's risk analytics capabilities also act to minimise safety and care vulnerabilities in respect of both users and workers: see [6(h)], [6(r)] above.

- (b) **Criticism:** Care workers on Mable are likely to have gained their experience and training as employees of service providers and organisations in the past.<sup>28</sup> Mable does not have to deal with workers' development.<sup>29</sup>

**Response:** This is not accurate in so far as concerns the training and development offers and initiatives provided by Mable: see [6(k)]-[6(n)] above.

- (c) **Criticism:** When workers are engaged on a casualised or independent contractor basis, the ability to ensure workplace health and safety is limited and too dependent on the capacity of the individual worker to tackle problems. This will further erode attraction and retention of a suitable, high quality, sustainable workforce to the sector.<sup>30</sup>

**Response:** See Response at [6(c)] above. Further, Mable is attracting an appropriately skilled workforce that otherwise might not enter the sector, and retaining workers who might otherwise choose to exit: see [7(b)]-[7(c)] above.

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<sup>26</sup> P8983.24 per Dr Macdonald; Further submission of the Australian Nursing and Midwifery Federation at [28]

<sup>27</sup> Further Submission of the Australian Nursing and Midwifery Federation in relation to Home Care at [42]

<sup>28</sup> Dr Fiona Macdonald's response to the Royal Commission's draft propositions dated 7 August 2020, page 4

<sup>29</sup> P8983.24 per Dr Macdonald

<sup>30</sup> Further Submission of the Australian Nursing and Midwifery Federation in relation to Home Care at [40]



(d) **Criticism:** The engagement of care workers through platforms such as Mable puts at risk that the service providers are paid the minimum wage and some of the other basic requirements of a labour standard.<sup>31</sup>

**Response:** This is not reflective of the statistics derived from the Mable platform: see [6(o)] above.

(e) **Criticism:** When consideration is given to the relevant award rate for social support and domestic assistance with loading in lieu of annual and sick leave and superannuation, and allowing for platform fees, a contractor would need to be charging \$33.43 per hour on a week day to not be worse off than an employee.<sup>32</sup>

**Response:** The average agreed rate **before fees** for social support and domestic assistance care workers is above \$40 per hour Monday to Friday, (comparable to the \$33.43 figure), a more than \$6.50 per hour or 20% difference: see [6(o)] above.

(f) **Criticism:** There is very little scope for independent contractors to bargain collectively or equally as they do not have the same supports, advice or forms of assistance as employees.<sup>33</sup>

**Response:** This is not reflective of the information and supports offered by Mable to care workers, or of the Mable model by which the care worker is responsible for setting and agreeing their own rates of pay directly with consumers: see [6(o)]-[6(p)] above.

(g) **Criticism:** There is an absence of employee supports including for on the job decision making, access to training and peer support mechanisms. This leads to isolation of the worker.<sup>34</sup>

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<sup>31</sup> P8968.20 per Dr Stanford; P8982.36 per Dr Macdonald; Further submission of the Australian Nursing and Midwifery Federation at [36]

<sup>32</sup> P8969.28 per Dr Macdonald

<sup>33</sup> Dr Fiona Macdonald's response to the Royal Commission's draft propositions dated 7 August 2020, page 5

<sup>34</sup> P8968.41-P8969.6 per Dr Macdonald; Further submission of the Australian Nursing and Midwifery Federation at [35]



**Response:** This is not reflective of the support offerings Mable provides its care worker base on the platform: see [6(k)]-[6(n)], [6(o)]-[6(q)] above. Care workers can also contact their client's care manager, or the client's close contacts, for on the job assistance.

(h) **Criticism:** Through Mable there is an absence of employee benefits and protections.<sup>35</sup>

**Response:** Although not including worker's compensation insurance, Mable arranges a range of insurances on behalf of care workers: see [6(s)] above. Other relevant information as to workplace conditions and protections is provided by Mable to its care workers so that they can factor these considerations into their agreed terms of engagement: see [6(p)] above.

## RESPONSE TO PRELIMINARY SUBMISSIONS OF COUNSEL ASSISTING

10. Mable hopes and expects that its safeguarding framework, details of which are provided at [6] above, and its relationship based approach, are sufficient to satisfy the Royal Commission that, within the scope and functionality of the platform, Mable proactively upholds the quality and safety of services delivered to Mable users. Further, the Mable model provides a proper and adequate solution to the perceived tensions as between autonomy, preference and respect for personal choice on the one hand, and ensuring proper accountability for the expenditure of public funds and the quality and safety of care for aged people, including those with complex conditions.<sup>36</sup>
11. Mable's safeguarding framework provides for an environment in which the platform's users can be confident in the mechanisms for safeguarding as enabled by the platform. If further supervision is required, including in connection with team based care in cases of complex needs, the involvement of care managers or a user's close contacts may be required to support

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<sup>35</sup> P8969.8 per Dr Macdonald

<sup>36</sup> P9067.10 per Counsel Assisting



the user with the management of their team and/or services.<sup>37</sup> The evidence at Sydney Hearing 4 shows that a suitably qualified care team can be arranged through Mable,<sup>38</sup> and was specifically used with overwhelming success by Eileen Kramer.<sup>39</sup>

12. Any necessary regulation as between the approved provider and the care worker can be implemented through acceptance by these parties of appropriate terms and conditions on the Mable platform in conjunction with Mable's screening and filtering capabilities.<sup>40</sup> Beyond this, Mable is capable of facilitating the application of duties of care and other responsibilities that the Approved Provider has under the Aged Care Quality Standards and sets out the obligations of Mable in this regard in a commercial agreement that can be entered into by Mable with providers.<sup>41</sup>
13. In so far as concerns foreseeable risks of harm to the user, Mable's safeguarding framework already operates to the extent possible to limit the scope of safety and care risks arising on account of candidate unsuitability, including as to fitness and propriety (police checks and WWCC), skill and temperament (reference checks) and qualifications. Should risks materialise during the delivery of care services, Mable's Incident and Complaints procedures involving timely investigation and reports with improvement measures implemented where appropriate, automatically commence.
14. Regulation of the type contemplated may also stymie aged care innovation, especially in the digital arena. In this context, as Counsel Assisting has acknowledged, a one size fits all approach may not be appropriate.<sup>42</sup>

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<sup>37</sup> P8895.32 per Mr Scutt

<sup>38</sup> P8883.28, P8887.12 per Mr Scutt

<sup>39</sup> Statement dated 22 April 2019, page 1

<sup>40</sup> P8898.19 per Commissioner Pagone; see also Professor Stewart at P8982.513

<sup>41</sup> cf statement of Paul Versteeg dated 30 June 2020 at [27], [35]: Mable is not attempting to take the provision of care outside of the aged care quality framework

<sup>42</sup> P9069.44 per Counsel Assisting



15. By reference to its statistics and survey responses, the attributes of the Mable platform are offering value to Mable clients and care workers. Through its operations, Mable is facilitating the delivery of important services to the aged care home sector, respectful of the human rights and choices of older people, and importantly putting the older person at the centre of the care model. If there is to be a recommendation that regulation should be considered for platforms such as Mable, it would need to take close account of the platform's operating environment, which in Mable's case does not involve the delivery of care services to users, and has voluntarily assumed an extensive safeguarding framework.
16. Given these factors, and the legal guidance for and in respect of analogous circumstances, the extension of a duty of care to Mable would be inappropriate. However, this does not mean that Mable could not facilitate the implementation of enhanced regulation through the Mable platform.

#### **RESOLVING TENSIONS BETWEEN AUTONOMY AND CLINICAL QUALITY AND SAFETY**

17. Counsel Assisting referred several times to the tension that exists in evidence between autonomy and clinical quality and safety. Similar tensions seem to exist between a medical model of care and a psychosocial model of care, and between duty of care and dignity of risk. This tension is perhaps the cause of proposition HC3 to "shift from self management (which we assert has not been effectively implemented across home care) to shared management" with the provider.
18. It is important for the future of home care that Commissioners resolve these apparent tensions.
19. Dr Laragy and Professor Lee in their evidence both advocate strongly for self management and urge a shift from giving care to supporting people to live a good life, incorporating both medical and psychosocial models of care.



20. One way of resolving the tension between the approved provider's duty of care and the consumer's dignity of risk is to move toward the quality and safeguarding framework of the NDIS.
21. It is submitted that the tensions identified by Counsel Assisting can be resolved by:
- (a) ensuring consumers have a right to self management;
  - (b) that concepts of shared management focus more on the relationship between a consumer and their care manager, rather than the consumer and a provider;
  - (c) separately funding care management and care management being independent from the provision of other services;
  - (d) an assessment process which would consider the vulnerability of an individual and whether self management is a reasonable risk (if the consumer desires to self manage), seeking to support their preference and mitigate risks where possible;
  - (e) recognising that relationship based platforms like Mable balance autonomy and safeguards, and accommodate both medical models and psychosocial models of care.
22. It is also important to note that these tensions have been largely resolved in the design of the NDIS, allowing for the noted challenges in implementation during the roll-out phase.

### **RESPONDING TO CLOSING PROPOSITIONS**

**For the most part in aged care, there should be a predominantly direct employment model (i) to address poor worker pay and conditions and (ii) as quality and safety is dependent on the provider being able to exert control over workers**

23. Mable's platform model does not lead to poor outcomes for care workers. See [6(k)]-[6(n)], [6(o)]-[6(p)] above.
24. We submit that there is scant evidence to support a finding that quality and safety are a function of a predominantly employed and controlled workforce. In fact, much more relevant



is the values, motivations and training of the workers, which can be equally found in people that choose to be self employed, supplemented with oversight and safeguards.

25. Further, such an approach will have practical limitations in a consumer directed care model. The more than 900 approved home care providers have little likelihood of being able to respond to dispersed and diverse consumer needs and preferences from just their pool of available employees. As a result, many services are currently brokered to other providers. In a brokered relationship, quality and safety are often a function of a contract and an annual audit. Contrast this with Mable where there are similar undertakings in relation to worker screening, but much greater day to day visibility via the Care Manager feature and the direct connection care managers can have with the workers providing the support. In addition, Mable can leverage the power of technology and data.
26. Finally, Professor Stewart argues “there be a general rule that workers who are performing services on behalf of providers, whether they are engaged directly or not, should be employees and then to articulate exceptions to that proposition”. He gives the example of exceptions being highly skilled allied professionals such as physiotherapists and occupational therapists saying “it might well be considered that there is no particular value to be gained by insisting that those kinds of workers be should be employed.”<sup>43</sup>
27. The challenge is in practice determining (without being patronising) who can and can’t be self employed? Gardeners? Nurses? The community member who supports someone to go to church on a Sunday, but who quite likely, won’t want to be employed by the provider for other clients? Such an approach risks excluding from the sector (a) a large number of workers who are attracted to the option of being self-employed due to flexibility, empowerment and the opportunity to better their pay and conditions and (b) people who are willing to support people in their community socially and with community access (e.g. attend church) as they may not be offered an employment opportunity and (c) independent disability support workers. This will impact consumer choice and control and the supply of workforce, particularly in thin markets. There needs to be the flexibility of employment and self

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<sup>43</sup> P8975.20-25



employment, and there isn't any compelling evidence to suggest self employed people deliver poor quality services.

**Regulation of platforms raised by Counsel Assisting in his closing statement:**

**“Commissioners, in our proposition 6(b) [HC6 (b)], we raised the possibility of regulation of platforms by which clients, that is care recipients, can directly engage care workers of their choosing. It may be that we need to explore the possibility of extending the general duty that is postulated un HC7, to platforms of that kind”**

28. Mable is not an aged care provider and we are not funded to provide services. We are a platform that enables consumers to choose what is right for them within a safeguarding framework.
29. The Mable model is focussed on quality of life and enabling consumers to access aged care and support that is of high quality and safe.
30. Regulation needs to allow for and encourage different models that are responsive to consumers' needs and preferences. It would not be beneficial to create barriers to innovative, responsible, consumer and worker centric models to become like traditional providers. Today, there is already too little choice for consumers or workers.
31. While there is no “one size fits all approach” that will work, it is submitted that the Commission should not be persuaded that all older people are incapable of managing their own care, either completely or with some level of assistance.
32. It does not make any sense to regulate a platform or marketplace or impose a duty of care as if it were an aged care services provider as is contemplated by HC7. Mable's duty of care relates to duties as the builder and operator of the platform, which incorporate all of the safeguards that form part of the platform.
33. In our written responses to HC6(b) we acknowledge the benefits of proportionate regulation at a worker level, irrespective of whether a worker is employed or self-employed, consistent with the approach of the NDIS. Mable takes into account this worker level regulation in the operations of its platform.