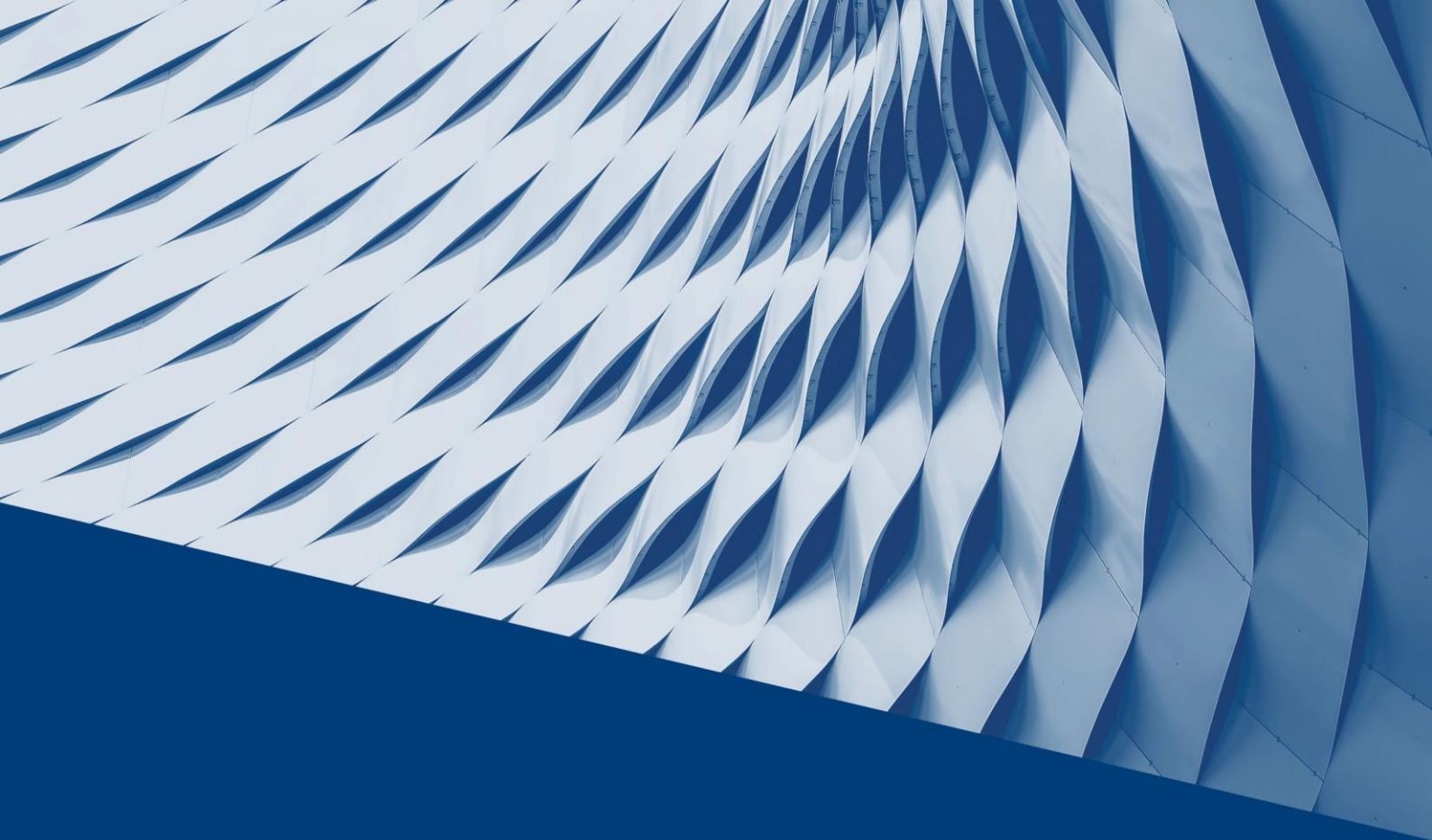




Improving WHS for workers using crowd platforms

Response to the Safe Work Australia Consultation Paper- April 2026

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About the Australian Council of Trade Unions

The Australian Council of Trade Unions (ACTU) is Australia's sole peak body of trade unions, consisting of affiliated unions and state and regional trades and labour councils. There are currently 35 ACTU affiliates, which together have nearly 2 million members who are engaged across a broad spectrum of industries and occupations in the public and private sectors. As the collective voice of Australian workers, the ACTU plays a central role in shaping national policy and advocating for improved rights, conditions, and protections at work.

The ACTU is committed to advancing work health and safety for all Australian workers through a rights-based, participatory approach. The ACTU has two member positions for SafeWork Australia, representing the interests of workers and ensuring that the voices and experiences of working people are central to national WHS policy and regulatory development.

The ACTU's strategy is focused on supporting unions to actively organise workers around healthy and safe work. This includes winning and embedding new health and safety rights at work and building the capacity of unions to use both new and existing rights to organise. By empowering unions and their members to take collective action, the ACTU seeks to ensure that work health and safety is not just a matter of compliance, but a fundamental right that is actively realised in every workplace.

The ACTU acknowledges the Traditional Owners of Country throughout Australia and recognises their continuing connection to land, waters, and community. We pay our respects to Elders past and present. The ACTU's office in Melbourne is located on the lands of the Wurundjeri people of the Kulin Nation. We honour their custodianship and acknowledge that sovereignty was never ceded.

In making this submission, the ACTU acknowledges and supports the submissions made by our affiliates, including the Australian Nursing and Midwifery Federation and the Australian Services Union.

Introduction: The shifting of WHS responsibility in home-based work

For generations, when workers entered private homes to provide care, support, or services, they did so as employees. The PCBU had the primary duty to ensure safety, so far as is reasonably practicable. This meant having policies and procedures that outline safe work processes; providing suitable information, training, and instruction to workers about risks that may arise and

the corresponding control measures; investigating hazard reports and taking corrective action; and regularly consulting with workers about health and safety.

The nature of the work itself has not changed, yet an increasing proportion of care is now delivered in the home. The hazards—manual handling, violence and aggression, psychosocial risks, fatigue and isolation—remain the same. What has changed is that, as crowd platforms increasingly structure work arrangements to avoid traditional employing responsibilities, the primary duty for health and safety is shifted away from those best placed to manage risk and onto individual workers themselves

Crowd platforms often present themselves as neutral technology providers, distancing themselves from what happens at the workplace level. Platforms such as Mable require workers to take responsibility for their own workplace health and safety policies and procedures.¹ Yet, through their algorithmic systems and platform design, these businesses can materially direct and control the way work is organised, allocated and performed.

The result? The responsibility for health and safety is shifted away from those best placed to manage risks systematically and onto individual workers. Workers are left to navigate complex risks alone, often without the information, support, or authority to ensure their own safety.

Where a crowd platform exercises control over entry to work, the structuring of engagements, and the systems through which work is arranged and monitored, it should bear corresponding responsibilities for managing foreseeable health and safety risks arising from that work.

Consultation questions

Question 1 Do you have any comments on how WHS duties apply to crowd platforms

Who owes a duty currently?

The model WHS Act was intentionally designed to be broad and flexible, encompassing a variety of work situations. In direct employment relationships, the law provides clear responsibilities for employers and employees—regardless of whether the worker is engaged through a provider, agency, or platform. However, the challenge arises with crowd platforms that facilitate matches between workers and consumers but do not directly hire workers themselves. This creates ambiguity about who is responsible for WHS duties and leaves gaps in protection for platform workers.

¹ Mable Platform Terms, 26 September 2025.

The lack of clear, enforceable duties on those who operate crowd platforms has been highlighted by several inquiries, including the *Senate Select Committee on Job Security 2021*,² NSW *Legislative Council Select Committee 2022*³ and *Inquiry into the Victorian On-Demand Workforce 2020*.⁴

The allocation of work health and safety duties in crowd platform arrangements is highly ambiguous, creating significant uncertainty for all parties involved:

1. Whether the crowd platform operator is a PCBU owing duties

Platform operators often dispute that they owe WHS duties to crowd platform workers, arguing that the platform itself is separate and distinct from the place where services are delivered. For example, Mable's Platform Terms¹ state that support workers are independent and responsible for their own workplace health and safety policies and procedures.

This position was reiterated in evidence provided to the Fair Work Commission in *Hatmane Elezaj v Baldwin Care Group Pty Limited trading as Baldwin Living*,⁵ where Mable stated that:

Independent support workers are not employed or engaged by Mable, as clearly set out in our Terms of Use. These Terms were accepted by the Applicant when she created an account on the Mable platform. The 'Terms of Use' state repeatedly that the Independent Support Worker is not an employee of Mable nor does Mable in any way control or dictate the way in which the independent support worker chooses to provide his or her services.

2. Whether workers are 'at work' in the platforms operator's business or undertakings

While a crowd platform may facilitate or cause a worker to be engaged, it is often unclear whether the worker is considered to be 'at work' in the platform operator's business or undertaking.

² Senate Select Committee on Job Security, *First interim report: on-demand platform work in Australia* (Parliament of Australia, 2021) <https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/024635/toc_pdf/Firstinterimreporton-demandplatformworkinAustralia.pdf>.

³ NSW Legislative Council Select Committee on the Impact of Technological and Other Change on the Future of Work and Workers in New South Wales, *The gig economy: First report* (New South Wales Parliament, 2022) <<https://www.parliament.nsw.gov.au/lcdocs/inquiries/2591/Report%20No%201%20-%20Select%20Committee%20-%20The%20gig%20economy%20-%20First%20report.pdf>>.

⁴ Industrial Relations Victoria, *Report of the Inquiry into the Victorian On-Demand Workforce* (Victorian Government, 2020) <<https://oia.pmc.gov.au/sites/default/files/posts/2023/09/3%20Report%20of%20the%20Inquiry%20into%20the%20Victorian%20On-Demand%20Workforce%20%28PDF%29.pdf>>.

⁵ *Hatmane Elezaj v Baldwin Care Group Pty Limited trading as Baldwin Living* [2025] FWC 2159 (24 July 2025), [12].

3. Whether the end user/client is a PCBU (particularly in domestic settings)

In most jurisdictions, care and support clients may be considered the PCBU,⁶ and hence the primary duty of care would rest with them. However, there is considerable uncertainty as to whether this applies under all conditions, and the nature of a platform's duty of care to a worker remains unclear.⁷ In the absence of clear duties on platforms, the primary responsibility for WHS may fall to the client/householder. This is problematic because discharging WHS duties requires access to specialist knowledge of legal obligations, risk management processes, and applicable standards, as well as the practical capacity to identify, assess and control workplace risks.

Expecting clients to assume and discharge the primary duty of care in these circumstances may be unrealistic. It risks placing individuals in a position where they bear legal responsibility for managing workplace hazards without the structural support, guidance or systems ordinarily associated with WHS compliance.

4. Whether the crowd platform worker is a PCBU

Becoming an independent contractor is often a requirement to seek work through a platform. Independent contractors do not have access to most employment protections and entitlements. They are expected to manage their own WHS risks, training, and professional development, often without support or clear guidance.

While workers are nominally self-employed, crowd platforms impose a range of constraints and controls that make platform work distinctly different from traditional independent contracting arrangements.

Aspects of crowd platform work that are distinctly different from work as an independent contractor

While platform providers argue that they are merely an intermediary and that workers using these sites are independent, platforms provide several constraints on a worker's autonomy, which makes platform work distinctly different from work as an independent contractor.

Examples include:

- Requiring the worker to pay for entry and participation in the marketplace

⁶ Horton, J. A. Cameron, D. Devaraj, R.T. Hanson, S. A., and Hajkiewicz, S.A. (2018). *Workplace Safety Futures: The impact of emerging technologies and platforms on work health and safety and workers' compensation over the next 20 years*. Canberra, CSIRO.

⁷ Fiona Macdonald, *Unacceptable Risks: The Dangers of Gig Models of Care and Support Work* (The Centre for Future Work at the Australia Institute, May 2023), p. 37.

- Platforms taking a percentage of the agreed hourly rate (for example, 10% from the worker and 7.5% from the patient/client)
- Imposing restrictions on providing services to a client met through the site for a period of time (usually 12 months)
- Payments made directly through the platform
- Platforms providing a template contract that people must use (but are not party to the contract)
- Ensuring appearance is in keeping with the Family Dress Code Policy requirements (set out by the platform)
- Platforms being able to, at any time, immediately modify, limit, suspend or terminate a worker's account, access and use of the site if they consider workers to be in breach of the platform user agreement
- Imposing fees for certain actions, such as charging workers \$15 if they clock in 10 minutes or more after the shift starts, \$15 if the shift is cancelled within 4 days, \$25 if 1 to 3 days' notice is provided and \$50 if the shift is cancelled within 24 hours. To avoid these fees, workers are required to apply for a waiver with supporting documentation
- Directing that all communications between clients and carers be made through the platform
- Reports must be provided by the worker to the platform after each period of work

Question 2 Are there gaps in protections for workers who use crowd platforms? If so, what are they?

Yes, there are significant gaps in WHS protections for crowd platform workers. These gaps arise primarily from uncertainty about who is responsible for WHS duties, as outlined in Question 1. Although crowd platform operators exert substantial influence over work, many explicitly disclaim responsibility for WHS in their terms of use.⁸

Who has influence and control?

Crowd platforms are not passive intermediaries, but exercise meaningful control over how work is arranged, accessed and governed. Crowd platforms exert significant influence over how work is conducted by shaping working conditions through their design choices, algorithms, terms of service and policies, such as Codes of Conduct, and through rules used to operate the platform.

⁸ Mable doesn't control the engagement of Support Workers, including regulating or managing any ... occupational health and safety laws, as per Mable Platform Terms as at 18/5/26, accessible [Platform Terms and Conditions: Usage Policy | Mable – Find Local Support Workers | Mable](#)

For example, platforms may require responses within strict timeframes, or there may be a competition aspect to work, contributing to fatigue and stress. Rating systems can place pressure on workers to accept unsuitable or unsafe jobs to maintain reputational standing.

Contractual terms may unintentionally promote risk-taking or reduce a worker's ability to make autonomous decisions about their safety. In the care sector, platforms may prescribe uniforms, contractual requirements, or specific service protocols - all of which influence work environments and potential hazards.

When a platform engages individual workers to provide support under the NDIS or similar schemes, its control over how work is undertaken is clearly demonstrated by its alignment with the NDIS Practice Standards. This includes requirements for worker screening, onboarding processes, platform rules, and mechanisms for managing conduct and disputes. These features show that the platform has significant capacity to influence who performs work, what information is available before engagement, and the systems through which services are delivered.

However, this control is not consistently extended to core workplace health and safety protections, such as developing procedures for risk assessment of client environments, structured communication of known hazards, or robust incident reporting and response. In circumstances where risks are well recognised within the NDIS regulatory framework governing the same work, it is neither appropriate nor sustainable for platforms to disclaim responsibility for workplace health and safety.

Consistent with the broad, control-based approach to duty holders under Australian work health and safety laws, crowd platforms should owe clear duties to workers to identify, manage, and mitigate foreseeable risks arising from the work they facilitate—so far as is reasonably practicable and to the degree they have influence.

Question 3 Do you have comments on a potential new duty for crowd platform operators?

A new duty is necessary and appropriate to close identified gaps and provide clarity. The proposed duty should align with existing WHS principles:

- It should apply so far as is reasonably practicable;
- It should be based on the degree of influence and control, not the employment status or contractual arrangement of the worker;
- And it should operate alongside, not instead of, other existing duties.

Importantly, the duty should recognise that crowd platform operators:

- Operate systems that fundamentally shape work processes;

- Influence work behaviour through algorithms, ratings and contractual settings;
- And are well placed to manage many of the risks their systems create.

Without a clear statutory duty, there is a real risk that platforms will continue to externalise WHS risk onto those least able to manage it— workers and clients.

The ACTU supports the core elements of the proposed new duty in the consultation paper under section 5.1.

Question 4 Do you have comments on the possible impacts of a new duty on PCBUs, workers and others?

Demographic profile of crowd platform workers

A significant proportion of digital labour platform workers belong to groups considered vulnerable, including young workers, Aboriginal and Torres Strait Islander people, people living with disability, and temporary or permanent residents.⁹ These groups often have less power and fewer resources to manage systemic WHS risks.

Personal care and disability-related work—core sectors for crowd platforms—are among the highest-risk occupations. Safe Work Australia data shows nursing and support/personal care workers have a workers' compensation injury frequency rate of 38 claims per million hours worked, and aged and disability carers 12.9 claims per million hours worked—both far above the national serious claims benchmark of 6.8.¹⁰ These roles are predominantly performed by women, with approximately 74% of personal care and aged/disability carers being female.¹¹

Workers using the Mable platform are generally low- to moderately-paid, providing essential care and support. Entry barriers to crowd platform work are low; while some workers have formal qualifications, many do not.

Research led by Professor Paula McDonald (QUT)¹² found that while care workers on platforms like Mable are technically 'self-employed', their work is highly precarious and lacks real autonomy. These workers are 'very much beholden to the platform itself and its technological functions in order to be able to access work,' and the work is highly fragmented.

⁹ McDonald P et al. (2019), *Digital Platform Work in Australia: Preliminary findings from a national survey*, report to the Victorian Department of Premier and Cabinet, 13.

¹⁰ Safe Work Australia, Workers' compensation injury frequency rates dashboard, [Workers' compensation injury frequency rates | dataswa](#), accessed 4/5/26.

¹¹ ABS data for ANZSCO 4223 Nursing and Support and Personal Care Workers and ANZSCO 4131 Aged and Disabled Carers.

¹² McDonald P et al. (2019), *Digital Platform Work in Australia: Preliminary findings from a national survey*, report to the Victorian Department of Premier and Cabinet, 13.

The average worker using a crowd platform is not a highly paid professional with significant control or resources to manage complex WHS risks.

WHS hazards arising from crowd platform work

Crowd platform work exposes workers to a range of WHS hazards due to several key characteristics:

- Insecure and precarious work arrangements
- Competition for jobs based on cost and ratings
- Algorithmic rating systems that drive behavior

Without an 'employer' and with payment on a fee-for-service basis, workers face additional risks:

- No paid time for training or risk assessments
- Lack of access to WHS equipment (such as patient lifters in the disability care setting)
- Absence of established safety systems (e.g. Infection Prevention and Control, Management of Cytotoxic medications, etc.)
- No paid rest breaks

Workers must maintain high ratings to maximise their opportunity for ongoing work. This design of the platform potentially increases the risk of workers being exposed to a range of physical and psychological hazards.

High job demands and risks include:

- Working long hours and skipping breaks, leading to fatigue
- Unsociable hours and isolation
- Pressure to always be on-call or logged in
- Unpaid effort to build relationships or enhance profiles, contributing to emotional strain

Competitive pressures may drive workers to:

- Tolerate harmful behaviours (e.g., sexual harassment, racism or violence and aggression) or exploitive behaviour from patients
- Accept hazardous tasks, undertake work they are unqualified for or are unable to do safely, or without necessary equipment
- Enter unsafe environments, including not taking safety precautions to complete work faster.

Workers may also be reluctant to decline unsafe work or report safety concerns due to fear of ratings repercussions.

As a result, workers are often the only party present at the point of risk, yet the least equipped to manage it systemically. The current situation leaves workers without:

- Clear mechanisms to raise safety concerns without penalty
- Effective consultation processes around platform-driven changes affecting health and safety
- Accountability from platforms whose systems create or exacerbate risk
- Consistent WHS information and training

How this duty would benefit crowd platform workers:

The impact would be positive, improving safety, predictability and confidence. Workers would be better protected from systemic risks created by platform design and would gain clearer avenues for consultation and accountability. It should ensure that workers have access to consistent information, training, and mechanisms for raising safety concerns without penalty. Ultimately, this duty would provide workers with protections equivalent to those in more traditional employment arrangements.

For platforms:

The duty would provide greater legal clarity, support more effective risk control, and promote a more sustainable and responsible operating model

- Provide consistency across platforms (a level playing field- not a race to the bottom)

For end users:

- A new duty would also apply to others (customers, clients) and therefore give greater confidence to the community in the provision of high-quality, safe service. It would remove risks of a 'race to the bottom' and ensure clear standards of service are provided.
- The duty would not require intrusive oversight of private homes, but rather provide safer work situations and support better outcomes for workers and clients
- It would also provide clarity that clients/end users are not expected to take on the primary responsibility for WHS.

Question 5 Are there alternative (legislative or non-legislative) approaches that could be taken?

We are firmly of the view that non-legislative approaches are insufficient to resolve the uncertainty or close the protection gap for crowd platform workers. Reliance on guidance alone would perpetuate inconsistent practices, place the burden on workers to navigate unclear protections, and leave regulators without a clear enforcement basis.

Guidance, such as a Code of Practice, may be useful as a complement to legislative reform, but it cannot substitute for a clear statutory duty. Introducing a specific duty in the model WHS Act is

the most effective way to provide certainty, future-proof WHS protections as technology evolves, and ensure crowd platform workers receive the same protections as other workers.

Conclusion

Thank you to Safe Work Australia for the opportunity to provide input on this important consultation to improve protections for crowd platform workers.

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