

Director
Consumer Policy and Product Safety Unit
Market Conduct and Digital Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email: consumerlaw@treasury.gov.au

Dear Director,

Hireup appreciates the opportunity to provide input on Treasury's consultation over unfair trading practices. Hireup is Australia's largest NDIS-registered platform, with around 12,000 support workers providing disability services to a similar number of clients nationwide. We are proud to be a registered NDIS provider and, unlike almost all other online platforms, we directly employ every one of our workers on the platform.

We recognise over the last decade there have been significant changes in the way work is organised, this is particularly notable with the rapid growth in the use of digital platforms to find and organise work. The prominence of digital platforms as a means for organising labour is a trend we have seen explode in the care sector. There are now more than 15 digital platforms operating in the care sector and over 50,000 workers engaged via these platforms. The vast majority of these platforms do not employ their workers, engaging them as independent contractors, requiring workers to obtain and operate under their own ABN.

With this change in the way labour is organised comes the need to ensure appropriate regulatory settings that protect both workers and consumers. To this extent there is a need to review the regulation of unfair trading practices with a focus on the way the digital platforms in the care sector operate.

The consultation paper identifies a number of unfair trading practices, some of which are present in the interactions between digital platforms in the care sector, workers and clients.

The most prevalent include:

- *Exploiting bargaining power imbalances in supply chain arrangements, including by unilaterally varying supply terms at short notice.*
 - We have observed instances where digital platforms in the care sector have altered the contractual terms for non-employee workers, often with little notice and limited to no opportunity for negotiation. On one occasion a digital platform emailed their ABN workers to advise of significant changes to the terms of the platform's insurance coverage for workers. This change resulted in workers' maximum weekly injury benefit

being reduced by \$300 per week. With platforms holding a significant power imbalance over their ABN-workers, it is unlikely a worker will challenge the changes for fear of being deactivated on the platform.

- *Omitting or obfuscating material information which distorts consumers' expectation or understanding of the product or service being offered.*
 - There are two main instances where unfair practices of this nature occur in the care sector, the first being digital platforms that, via their marketing content, give consumers the impression the platform accepts responsibility for the workers' conduct and the service quality. However in the platforms' terms and conditions for workers and consumers it is made clear the platform does not accept responsibility for the conduct of the worker or the quality of the service received by consumers. The extent to which platforms push liability back to clients is particularly concerning given the lack of clarity over who is the Person Conducting a Business or Undertaking (PCBU): is the PCBU the platform or the client that's engaging a worker via the worker's ABN? Clarity is needed from digital platforms about where liability lies, in plain and accessible language. The current maze of legal language that clients, often people with disability, need to read through to understand their obligations is unreasonable. Digging into the legal detail often turns up information that is in contrast to the information provided and perception intended in digital platforms' marketing, surprising many consumers with the level of liability they have unknowingly assumed.
 - The second instance where this occurs in the care sector is digital platforms that engage workers as independent contractors making statements in marketing materials that the platform provides insurance for workers. Only when a worker has an injury or reads the fine print of the terms and conditions is it clear the insurance would not provide the level of coverage it was purported to. One non-employing platform's website states, '*we have Public Liability and Group Personal Accident Insurance in place with an A-rated insurer.*' From this statement, workers are directed to the platform's help centre, where it advises they are responsible for confirming their own workers compensation insurance/personal accident insurance. The care sector workforce has a high prevalence of workers from CALD backgrounds, and for many English is a second language. Requiring these workers to find their way through jargonistic and legal language amounts to an unfair trading practice.
- *Adopting business practices or designing a product or service in a way that dissuades a consumer from exercising their contractual or other legal rights*
 - This element of unfair conduct is present in the interactions between digital platforms and workers in the care sector. In the care sector

workers are hesitant to make a complaint or raise concerns about the work due to a fear their account on the platform will be deactivated. The possibility of a worker's account being deactivated would mean losing access to their livelihood. This looming threat acts as a deterrent for workers to raise concerns or issues that they should be within their rights to raise.

The unfair trading practices exhibited by a number of non-employing platforms in the care sector can harm workers and consumers, while also creating an uneven playing field for other businesses. For digital businesses that operate an employment model, it is increasingly difficult to compete against non-employing platforms with lower costs, which are supported by engaging in unfair trading practices.

As regulation of unfair trading practices is reviewed we encourage a thorough analysis of the conduct of non-employing platforms in the care sector and the unique ways which they operate that provide examples of unfair trading practices. In line with the policy options outlined in the consultation paper we strongly encourage the adoption of option 2 or option 3 and a more thorough examination of the unfair trading practices common amongst non-employing platforms in the care sector.

As part of the reform of unfair trading practices regulation Hireup can see a strong need for all digital platforms being required to provide information in plain language for both clients and workers. Having clear, easy to understand information for both clients and workers would reduce the frequency with which digital platform users have a distorted expectation about what a platform offers.

Hireup's Policy Team welcomes the opportunity to provide additional information and a briefing about the way platforms in the care sector operate and the nuances of the sector. To organise a time please contact Grace Nankivell, Policy and Public Affairs Manager, on [redacted] or [redacted].

Yours sincerely,

Neil Pharaoh
Director of Corporate Affairs
Hireup