

Friday 5 September 2025

**Submission**

**Reform to non-compete clauses and other restraints on workers**

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**1. Executive summary**

- The Australian Competition & Consumer Commission (ACCC) has been provided with a copy of Mable's Terms of Use effective to 26 August 2025 and has indicated it does **not** consider them to be "unfair" under Australian Consumer Law.
- Mable's experience, in which it cooperated with the ACCC, demonstrates that existing legislation is sufficient to address any concerns about the treatment of avoidance conduct provisions under the Australian Consumer Law.
- Users who join the Mable platform agree via acceptance of Mable's Terms of Use that any commercial relationship formed on the platform must be billed through the platform.
- Mable contends that its right to off-board individuals that deliberately violate its Terms of Use is in the best interests of clients, support providers and the Federal Government.
- Avoidance conduct presents safety risks to clients and independent contractors, as well as posing a commercial risk to Mable's business.
- Mable has carefully considered its anti-avoidance provisions, the twelve month exclusionary period is therefore based on an actual business need and reflects the time taken for the average client relationship to return the cost to Mable of its formation.
- The average hours worked on the Mable platform is currently 8 hours per week for active support providers and most support providers have other sources of income in addition to working via Mable.
- Mable opposes any move by the Albanese Government to limit solicitation restrictions to "active" actions by independent contractors to take clients off-platform, as this would represent an unreasonable evidentiary burden on Mable and Australian business.
- NDIS clients that have departed Mable have often done so without understanding the implications of engaging off-platform including loss of insurance, greater risk of abuse and neglect and the lack of trust & safety support.
- It is essential for continuity of care that Mable is able to prevent independent contractors from engaging in unethical business practices that can cause harm to

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vulnerable consumers.

## **2. About Mable**

Mable is a health tech platform that offers a complementary approach to traditional aged care at home and disability support models. Mable gives older persons and people with disabilities more choice, control and flexibility to shape the care and support they receive in their own homes and communities. This choice is made possible by over 21,000 independent contractors providing valuable and necessary care and support services via the platform. Founded in 2014, Mable now operates at some scale with support providers on the platform providing care and support services to over 28,000 people with disability and older Australians.

## **3. Enforceable Undertaking**

On 12 June 2025, Mable entered into an enforceable undertaking with the Australian Competition and Consumer Commission (ACCC).<sup>1</sup> Mable worked closely with the ACCC regarding its Terms and Conditions. Following a voluntary process in which Mable provided extensive information to the ACCC, the ACCC raised concerns that some of its previous Terms and Conditions were "unfair" under the Australian Consumer Law. This included the longstanding clause to impose a \$5,000 fee for avoidance conduct. However, no person was ever required to pay this fee.

Mable proactively cooperated with the ACCC to address its concerns and has amended the Terms and Conditions to ensure fairness and transparency. The ACCC was provided with updated Terms of Use prior to the enforceable undertakings and has indicated it does not consider those Terms to be "unfair" within the meaning of section 23 of the Australian Consumer Law.<sup>2</sup> The enforceable undertakings to the ACCC require Mable to not impose "unfair" terms of the kind previously used, and to implement a Competition and Consumer Law Compliance Program which will be subject to independent annual review for the next three years.<sup>3</sup>

In Mable's view, this process demonstrates that existing legislation is sufficient to address any concerns about the treatment of avoidance conduct provisions under the Australian Consumer Law. As a company which has been through this process, Mable welcomes the chance to share its experience with the Government. Significantly, the ACCC did not conclude that existing provisions on the Mable platform – which ensure that clients (who are NDIS participants or older persons) cannot engage with independent contractors met on the Mable platform for twelve months after ceasing their use of the platform – were unfair.<sup>4</sup>

## **4. Avoidance conduct explained**

Avoidance conduct refers to actions undertaken by clients, support providers or third parties (such as support coordinators) to avoid paying Mable's fees. Put simply, users who join the platform agree via acceptance of Mable's Terms of Use that any commercial relationship

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<sup>1</sup> "Mable Technologies Pty Ltd", ACCC Undertakings Registers, 12 June 2025, [link](#).

<sup>2</sup> See appendix for relevant provisions in Mable Terms of Use as at 1 July 2025.

<sup>3</sup> Ibid.

<sup>4</sup> See: [Mable Support Worker Terms of Use](#) and [Mable Client Terms of Use](#), accessed: 14 August 2025.



formed on the platform must be billed through the platform. This clause exists to ensure support relationships formed on the platform continue to be protected by Mable's safeguarding measures such as insurance and access to its trust and safety team to assist with addressing incidents and complaints.

It is important to acknowledge that the average hours worked on the Mable platform is currently 8 hours per week for active support providers. Most support providers have indicated to Mable that they work via the platform in addition to other forms of income including off-platform contract work, employment at traditional care providers or even employment or contracting outside of the care economy.

As a non-employer, independent contractors working via the Mable platform have a high authority over their work, so Mable's ability to exercise control over independent contractors is limited to:

1. *Education* – In the first instance, Mable seeks to provide information to both clients and support providers about the safety risks of taking work off platform and reminds them of their obligations in line with Mable's Terms of Use.
2. *Offboarding* – Mable has the ability to remove or suspend clients or support providers from its platform over breaches of Government regulations or of its Terms of Use, including for the issue of avoidance conduct.

As outlined above, Mable does not and would not seek to prevent a support provider from undertaking work elsewhere with clients they have not met via the Mable platform. To the contrary, Mable understands that the majority of independent contractors work both on Mable and off-platform.

Mable contends that its right to off-board individuals that deliberately violate its Terms of Use is in the best interests of clients, support providers and the Government.

## 5. Why is avoidance conduct a problem?

There are two main reasons why avoidance conduct is a significant issue to Mable. Firstly, there is safety; relationships which move off platform lose the protections available including, most significantly, Mable's insurances<sup>5</sup> and Trust & Safety processes<sup>6</sup>. Secondly, Mable has invested significantly in building its platform, and its revenue is limited to the fees charged to both support providers and clients. Avoidance conduct creates a threat to Mable's sustainability and the benefit it provides to support providers and clients that utilise its platform.

There are a number of behaviours which have occurred on the platform which should be of concern to the Government. This includes people with disabilities who have their services moved off platform *without their consent*. Mable has had multiple former clients approach its Trust & Safety teams for assistance only for the client to learn that they had been off-boarded from Mable. This has occurred because the independent contractor has chosen to bill directly

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<sup>5</sup> For more information see - "HMD Insurance and Mable: Working Together, accessed: 15 August 2025, [link](#).

<sup>6</sup> For more information see - "Incidents and Complaints Management Policy", accessed: 15 August 2025, [link](#).



to the client's plan manager, and the plan manager has agreed to pay invoices without consulting the client. Mable has had such clients attempt to make claims against insurance or seek redress through Mable's Trust & Safety processes only to learn that the supports had been provided off-platform without their knowledge and were, as such, uninsured nor subject to the protections offered through the platform.

Mable has also been the victim of anti-competitive behaviour by bad actors who have impersonated independent contractors or clients but appear to have had no intention to ever conduct commerce through the platform. Instead, such individuals have sought access to the Mable marketplace for the sole purpose of harvesting clients or harvesting independent contractors to build their own businesses without paying fees to Mable for usage of the platform's functionality

## 6. Further restrictions on avoidance conduct

Treasury's discussion paper poses the question of whether further restrictions are necessary on non-solicitation clauses in order to protect consumers.<sup>7</sup> Specifically, Treasury poses the question of whether a three, six or twelve month limit on non-solicitation clauses might be appropriate.

The ACCC Enforceable Undertaking demonstrates that sufficient safeguards exist within Australian Consumer Law to protect consumers. Mable has carefully considered the reasons for its anti-avoidance provisions. Mable's only source of revenue is through low fees charged on services delivered through the platform.<sup>8</sup> Mable absorbs the upfront cost of onboarding each independent contractor and client, and maintaining the systems for them to engage safely. The twelve month exclusionary period is therefore based on an actual business need and reflects the time taken for the average client relationship to return the cost to Mable of its establishment.

Similarly, Mable opposes any move by the Albanese Government to limit solicitation restrictions to "active" actions by independent contractors to take clients off-platform. This would represent an unreasonable evidentiary burden as any independent contractors could claim that their client had simply *chosen* to leave the platform. NDIS clients that have departed Mable have often done so without understanding the implications of engaging off-platform including loss of insurance, greater risk of abuse and neglect and the lack of trust & safety support. It is essential for continuity of care that Mable is able to prevent independent contractors from engaging in unethical business practices that can cause harm to vulnerable consumers.

Mable contends it is in the interests of all parties – Government, clients and support providers – that it retains the right to prevent anti-competitive and dishonest conduct through its platform. Mable is grateful for the opportunity to participate in this important discussion.

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<sup>7</sup> *Reform to non-compete clauses and other restraints on workers*, Australian Treasury, 25 July 2025, [link](#), pp. 29-30.

<sup>8</sup> NB: Mable fees amount to 16.6 per cent of the total paid by the client, in comparison to much higher margins across the care economy. This low fee is only sustainable with appropriate protections to prevent avoidance conduct.

## 7. Appendix - Mable Terms of Use

### *Extract - Support Worker Terms, Section 3*

#### **Taking arrangements off of the Platform (Avoidance Conduct)**

- a. *The conduct referred to in clauses 3(c) and 3(d) is Avoidance Conduct, which constitutes Prohibited Conduct under this Agreement.*
- b. *You acknowledge and agree that:*
  - i. *the Platform is not a platform developed to introduce Support Workers to Members for them to then continue their arrangements off the Platform;*
  - ii. *the Platform has various safety measures in place that will no longer apply if Support Workers and Members are merely introduced and then engage off the Platform; and*
  - iii. *Our model has been developed to charge smaller fees on an ongoing basis rather than a large upfront fee that would apply if we were to provide a recruitment or referral service.*
- c. *During the Term of this Agreement:*
  - i. *You are only entitled to use the Platform for the purposes described in this Agreement. You must not access or make use of the Platform for the purpose of developing a competing business, or for recruiting any other Member to provide or receive Care Services outside of the Platform;*
  - ii. *You must only book and receive payment for Care Services through the Platform; and*
  - iii. *You must not encourage or solicit any Member to avoid making payments through the Platform or avoid paying the fees that are due to Us under their agreement with Us (including the Support Engagement Fee or Client Platform Fee).*
- d. *For a period of 12 months from the date You last accessed the Platform, in relation to Clients or Client Managers You met on the Platform, You must not:*
  - i. *arrange or provide services similar to or the same as the Care Services to that Client, or to that Client Manager's clients or customers other than through the Platform; or*
  - ii. *directly invoice that Client (or their nominated funding party), or that Client's representative (including a Provider Customer or Coordinator), or accept any payment from that Client (or their nominated funding party), or that Client's representative (including a Provider Customer or Coordinator) other than through the Platform for the provision of services similar to or the same as the Care Services.*
- e. *The restrictions set out in clause 3(d) survive termination of this Agreement, unless We terminate this Agreement under clause 24(a), in which case the restrictions set out in clause 3(d) cease to apply as at the date of termination.*
- f. *You agree to immediately notify Us if a Client, Provider Customer or Coordinator requests that You be involved in any Avoidance Conduct.*
- g. *You acknowledge and agree that if You engage in Avoidance Conduct, or otherwise fail to comply with this clause 3:*

- i. such conduct will constitute a material breach of an essential term of this Agreement, and a Material Breach Event pursuant to clause 24(f);
- ii. We will suffer Loss as a result of such conduct; and
- iii. We will be entitled to remedies as a result of such conduct, including:
  - 1. pursuant to the indemnity by You under clause 16.1(a)(ii);
  - 2. suspension of Your Account under clause 24(g)(i);
  - 3. investigating Your conduct under clause 24(g)(ii);
  - 4. termination of Your Account (and this Agreement) under clause 24(h)(i);
  - 5. damages as a result of breach of contract; and/or
  - 6. any other remedies that may be available to Us under this Agreement or at Law.<sup>9</sup>

### *Extract - Client Terms, Section 3*

#### **Taking arrangements off of the Platform (Avoidance Conduct)**

- a. The conduct referred to in clauses 3(c) and 3(d) is Avoidance Conduct, which constitutes Prohibited Conduct under this Agreement.
- b. You acknowledge and agree that:
  - i. the Platform is not a platform developed to introduce Support Workers to Members for them to then continue their arrangements off the Platform;
  - ii. the Platform has various safety measures in place that will no longer apply if Support Workers and Members are merely introduced and then engage off the Platform; and
  - iii. Our model has been developed to charge smaller fees on an ongoing basis rather than a large upfront fee that would apply if we were to provide a recruitment or referral service.
- c. During the Term of this Agreement:
  - i. You are only entitled to use the Platform for the purposes described in this Agreement. You must not access or make use of the Platform for the purpose of developing a competing business, or for recruiting any other Member to provide or receive Care Services outside of the Platform;
  - ii. You must only book and pay for Care Services through the Platform; and
  - iii. You must not encourage or solicit any Member to avoid making payments through the Platform or avoid paying the fees that are due to Us under their agreement with Us (including the Support Engagement Fee or Client Platform Fee).
- d. For a period of 12 months from the date You last accessed the Platform, in relation to a Support Worker that you met on the Platform, You must not:
  - i. arrange or receive services similar to or the same as the Care Services from that Support Worker other than through the Platform; or
  - ii. pay a Support Worker other than through the Platform for the provision of services similar to or the same as the Care Services.

<sup>9</sup> Section 3, "Mable Support Worker Terms of Use", accessed: 21 August 2025, [link](#).



- e. *The restrictions set out in clause 3(d) survive termination of this Agreement, unless We terminate this Agreement under clause 23(a), in which case the restrictions set out in clause 3(d) cease to apply as at the date of termination.*
- f. *You acknowledge and agree that if You engage in Avoidance Conduct, or otherwise fail to comply with this clause 3:*
  - i. *such conduct will constitute a material breach of an essential term of this Agreement, and a Material Breach Event pursuant to clause 23(e);*
  - ii. *We will suffer Loss as a result of such conduct; and*
  - iii. *We will be entitled to remedies as a result of such conduct, including:*
    - 1. *pursuant to the indemnity by You under clause 16.1(a)(ii);*
    - 2. *suspension of Your Account under clause 23(f)(i);*
    - 3. *investigating Your conduct under clause 23(f)(ii);*
    - 4. *termination of Your Account (and this Agreement) under clause 23(g)(i);*
    - 5. *damages as a result of breach of contract; and/or*
    - 6. *and any other remedies that may be available to Us under this Agreement or at Law.*<sup>10</sup>

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<sup>10</sup> Section 3, "Mable Client Terms of Use", accessed: 21 August 2025, [link](#).