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# Alert

NDIS, Health & Aged Care

## NDIS and Aged Care sectors on notice from ACCC: NDIS sector online platform gives court enforceable undertaking to ACCC to amend unfair contract terms

By William Rees

Mable Technologies Pty Ltd, which provides an online platform for NDIS clients and support workers to coordinate services, has [admitted to breaches](#) of Australian Consumer Law by using unfair contract terms in its standard terms of use.

In summary, the unfair contract terms were as follows:

1. When NDIS clients did not review and accept service logs of services provided by support workers within 24 hours of submission by the support worker, the service logs were deemed accepted and payments processed;
2. Mable was entitled to vary fees and amend terms of service at any time without a reasonable period of notice to users of its platform;
3. Mable was entitled to a minimum penalty fee of \$5,000 from users of the platform who failed to pay fees when due – and in particular, support workers were required to pay this fee when found to be attempting to provide services to clients outside the Mable platform, and all users were required to pay this fee when found to be soliciting support workers to do so or failing to notify Mable of such conduct;
4. Mable would not be liable for any loss incurred by a user relating to that user's use of, access to, or transactions involving Mable's platform;

5. Mable's liability in all other circumstances was limited to a refund of amounts paid by a user in the 12 months preceding the liability;
6. Mable did not provide equivalent limitations of liability for users;
7. Users were required to indemnify Mable against all third party claims incurred by Mable in connection with a user's use of Mable's platform;
8. Mable required users to reimburse Mable for reasonable costs incurred by Mable in enforcing its rights under its terms of use.

Mable has given a court enforceable undertaking to amend or remove these terms, to prominently communicate the material terms of its terms of use to users before users sign up on its website, and to otherwise maintain a program of compliance with Australian Consumer Law for three years.

You can read the full Undertaking [here](#).

This is the first instance of an undertaking from a company to amend unfair contract terms since the ACCC made substantial changes to its unfair contract terms regime in November 2023.

ACCC Deputy Chair Catriona Lowe has said “We remind businesses who have not yet reviewed their contracts and removed or amended unfair terms that **we are continuing to monitor the disability and aged care sector** and will take appropriate action when warranted”.

For more information regarding the operation of the ACCC’s new unfair contract terms regime, DW Fox Tucker Lawyers provided guidance in [our article from 2023](#) when the changes took effect. In brief, all NDIS and Aged Care businesses are now on notice that if their standard form contracts include any provisions along the lines of those listed above, the ACCC has significant powers to fine, and counterparties to those standard form contracts now have strong grounds to sue, for each contravening provision in each contract issued to each counterparty during the period commencing from November 2023.

It is encouraging that the ACCC appears to be speaking softly with court enforced undertakings while holding unused (so far) the large stick of these significant powers to fine, but no NDIS or Aged Care business can now sit complacently in relation to standard form contract terms.

*If you would like to discuss a review of your standard form contracts with an expert, please contact DW Fox Tucker Lawyers team via email [info@dwft.au](mailto:info@dwft.au) or phone 08 8124 1811.*



MORE INFO

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