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To the Manager Policy and Legislative Services,

Thank you for the opportunity to make a submission to the consultation paper, *Implementation Consultation 1 – Deemed Workers & Excluded Workers*. We are very pleased that NDIS support workers are proposed to be recognised as ‘deemed workers’ for the purposes of eligibility for workers compensation in WA.

I write on behalf of Humdrum, a registered NDIS provider and online platform based in WA, with our office located in Perth. We are an innovative digital platform that employs all platform workers casually and provides flexibility and choice in service delivery for NDIS participants, while providing a fully registered, clinically supported administration for all workers and NDIS participants for when things go wrong, as they do.

Our main interest in the consultation about workers compensation is addressing a gap that has been left by the current proposal, which is that only NDIS support workers who are directly engaged by an individual NDIS participant are proposed to be made eligible for workers compensation, but not workers directly engaged using a platform.

We note that the consultation paper points out the key criteria for deeming NDIS support workers as eligible include that “the NDIS participant has ultimate control over support workers, the hours they work, the tasks that they perform, and the payments to be made.”

The fact is, these criteria are also found when a participant directly engages a support worker through a platform. When engaging a support worker through a platform, the NDIS participant has ultimate control over support workers, the hours they work, the tasks that they perform, and the payments to be made (with the financial transaction made by the platform, with the participant’s approval).

There is no complex intermediary in any of those decisions or directions — it’s very clear, workers are at the direction, choice and control of the NDIS participants. On the platforms, the worker and the participant enter into a direct contract of service or service agreement, and this is a contract to which the platform is not a party. It is a direct contract between only the participant and the worker, identical to the situation which WorkCover WA intends to capture outside of platforms.

In fact, independent contractor platforms exist so that people can directly engage their own support workers. That is the entire point, according to those platforms.

The only perceived difference between a direct platform engagement and a non-platform engagement could be viewed as the payment being made through the platform, making the financial transaction. However, the same process could be carried out by an NDIS support

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worker who uses accounting software to charge an NDIS participant for support work as part of a non-platform engagement. There is no real, practical difference in the work or the final outcome.

The facts of the ultimate control that the participant has over the payments, tasks, and hours of work of the support worker are identical, regardless of whether a platform is involved.

(1) We recommend that NDIS support workers directly engaged through platforms should also be included in the deemed worker category for the purposes of workers compensation eligibility.

In addition, WorkCover WA should include NDIS support workers directly engaged *plan-managed* NDIS participants, not limited to self-managed participants only.

Plan-managed participants demonstrate an identical ability to choose their own support workers, engage them directly, have ultimate control over the tasks and hours, and set or agree on the pay rate for the worker. The only practical difference is a plan-managed participant engages a 'plan manager' to deal with the financial transaction of paying the worker's invoice.

The arrangements of the work itself, those key critical determinants discussed above, are identical. The choice and control of the plan-managed participant directly engaging support workers through platforms, in relation to the worker and the work performed, is identical to the self-managed participant.

A salient fact in the context of the NDIS is that, while the proportion of self-managed participants has remained steady, the proportion of plan-managed participants has grown substantially, from 51% just two years ago to 61% today. This is a significant cohort of participants engaging an equally significant cohort of support workers.

The consequence, if WorkCover WA ignores this vast cohort of NDIS participants and their support workers, is that the majority of directly engaged, independent contractor support workers in WA will be left without any workers compensation insurance.

(2) We recommend that NDIS support workers directly engaged by *plan-managed* NDIS participants should be included as deemed workers.

As an employer, we know how important workers compensation is to NDIS support workers. We also know that injury rates in these roles are far higher than the average across all sectors, so there is every reason to ensure as many support workers as possible have workers compensation coverage in WA.

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Further, there are benefits to the disability sector as a whole. The number of direct contracting online platforms has grown substantially in recent years, and the number of workers using them has grown even faster. Not only are these workers unprotected by adequate insurance, but in situations where workers are offering to work on platforms without the cost of workers compensation or other elements like superannuation built into their price, it means these workers are providing a cut-price, but high-risk service.

Understandably, people are attracted to lower prices in order to get as many hours of support services from their limited budget as they can. The result of this is that directly engaged workers through platforms are undercutting the broader provision of services by responsible workers and employers in both the NDIS and aged care, which is undermining the ability of the sector as a whole to remain viable. Further, where there are loopholes available to exploit, it incentivises people to *avoid* costs such as workers compensation in order to offer similar services to others but at a lower price.

This results in an uneven competitive playing field in care sector markets in Australia, which is an unsustainable trend. The mandatory requirement to provide workers compensation to support workers directly engaged through platforms will thus not only benefit those workers (and their clients), but also help to maintain a level competitive market in which service providers face roughly equivalent costs. This will help the care sector to maintain viability and compete on the more valuable proposition of service quality, not the lowest prices.

Again, thank you for the opportunity to contribute to this important consultation.

We would welcome any questions you may have or further discussion about this topic in the future.

Yours sincerely

Tim Zafir,

Co-Founder, Humdrum