national children's and youth
law centre
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Senior Lawyer, Legal Section
Australian Human Rights Commission

By email: legal@humanrights.org.au
CC: ████████████████████████████

Dear ████████████

National Children's and Youth Law Centre's submission in response to application for temporary exemption from the *Age Discrimination Act 2004* (Cth) by Uber

Thank you for the opportunity and time extension to make a submission to the Australian Human Rights Commission ("the Commission") regarding Uber's application for a temporary exemption to the *Age Discrimination Act 2004* ("ADA").

1. About the National Children's and Youth Law Centre

The National Children's and Youth Law Centre ("NCYLC") is Australia's only national legal centre dedicated to working for and in support of children and young people, their rights and access to justice. NCYLC advances this mission by providing young Australians with meaningful advice and information about the law and their rights and responsibilities; advocating for changes to laws, policies and practices to advance their rights; creating opportunities for their participation in decision making; and promoting the implementation of the United Nations Convention on the Rights of the Child.

NCYLC actively promotes legal information for children and young people through Lawstuff (www.lawstuff.org.au), provides legal advice to them through Lawmail (https://www.lawmail.org.au) and conducts research, law reform and policy development aimed at increasing young people's access to legal assistance and improving the legal status of children and young people in Australia.

NCYLC gives more children a voice, and the knowledge that they have rights and access to services that can help them.

2. The application is unnecessary in whole or in part

Uber's application is unnecessarily broad. It applies to all people under 18 generally, cyclists who are under 18 and learner or provisional drivers who are under 18 (the targeted group).

Importantly, Uber can already directly and lawfully discriminate against any members of the targeted group that fall under the legal age of employment as specified in each state or territory.

Uber can also justify indirectly discriminating against those members of the target group in at least 5 jurisdictions that regulate the ability of learner drivers and provisional licence drivers to drive while using mobile phones for navigational or other purposes.

2. The application is incomplete

Uber's proposed terms of exemptions (on page 7) would exempt Uber of all provisions of the ADA. However, Uber's submissions have only addressed its application for exemption from the terms of section 28 of the ADA.

We submit that it is open to the Commission to request that Uber provide further detailed legal submissions as to why sections 18 to 20 and section 39 of the ADA do not apply to its application for exemption, before finally considering the matter.

In support of this proposition, we note that the Fair Work Ombudsman has recently commenced legal action against Foodora Australia Pty Ltd ("Foodora"), (a corporation that also provides food delivery services via an App) in order to ensure that Foodora's "delivery partners" are not being denied their Award conditions as employees of Foodora. The case against Foodora brought by the Fair Work Ombudsman alleges that "Foodora breached sham contracting laws by misrepresenting to them they were independent contractors when they were in fact employees of Foodora" (see: https://www.fairwork.gov.au/about-us/news-and-media-releases/2018-media-releases/june-2018/20180612-foodora-litigation).

The Foodora case is relevant to Uber's submission because Uber similarly claims that their delivery partners are "other persons" and are not employees. However, Uber has not provided sufficient information for the Commission to make the decision that only section 28 of the ADA is applicable to Uber's application.

3. The application is made in bad faith

As indicated in my email dated 15 June 2018, Uber is already discriminating against all potential "delivery partners" aged under 18, irrespective of their status as a lawfully permitted employee, bicycle rider or licence holder. It is apparent, therefore, that Uber is merely seeking to formalise and reduce liability risk for its present discrimination after the event, rather that permission and approval for its planned future discriminatory policy. In this regard, Uber is already non-compliant with Commonwealth, State and Territory anti-

discrimination laws and State and Territory laws regulating the employment of young people.

Further, Uber notes that there are inherent dangers for delivery partners "as part of its business model". Specifically Uber notes that driving or riding while using mobile phones can be inherently dangerous. In their application however, Uber provides no evidence as to its systems or practices directed to ensuring safety for *all* its delivery partners or employees, let alone those under 18 years of age.

4. Conclusion

In summary, Uber's application is neither necessary nor sufficient. Far more significantly however, Uber has demonstrated a disregard for the fundamentals of doing business across the various jurisdictions of Australia. Specifically, Uber's application attempts to obtain a commercial advantage over other service providers by simplifying its compliance regulations as they relate to young employees in different jurisdictions. It is noteworthy that to the best of our knowledge, no other transport company, food delivery service or restaurant operating nationally has sought or required such an exemption.

As suggested above, we respectfully suggest that the Commission give serious consideration to requesting that Uber provide further detailed legal submissions as to why sections 18 to 20 and section 39 of the ADA do not apply to its application for exemption before finally considering the matter.

Thank you for considering our submission. Should you have any questions or require further information, please do not hesitate to contact our Principal Solicitor, ███████████ at ███ .

Yours sincerely,

███████████
Director