

## **Industrial Relations and Other Legislation Amendment Bill 2022**

**Submission No:** 10  
**Submitted by:** Menulog Pty Ltd  
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8 July 2022

Committee Secretary  
Education, Employment and Training Committee  
PARLIAMENT HOUSE QLD 4000  
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### **SUBMISSION ON INDUSTRIAL RELATIONS AMENDMENT BILL 2022**

Menulog thanks the Committee for the opportunity to provide feedback on the Industrial Relations and Other Legislation Amendment Bill (**Bill**).

We ask that the Committee considers all aspects of our attached 24 March 2022 submission.

Building on the learnings from our employed courier trial launched in June 2021, Menulog supports:

- A national dispute resolution mechanism for food delivery platform independent contractors (**ICs**);
- Transparency around entitlements for ICs;
- Discussion on industry wide, minimum standards for ICs provided that the critical principles of **national** consistency, **flexibility, fairness** for ICs and **continued viability of the industry** are preserved.

It is because the Bill does not preserve several of these critical principles, that Menulog cannot support it. In particular, the Bill:

1. introduces a state versus national approach. 8 different sets of entitlements across the nation would create unnecessary regulatory burden and complexity for industry as well as the courier workforce
2. does not spell out how flexibility or continued viability of the food delivery sector will be ensured. Flexibility is something that both couriers and consumers demand. As the learnings from our employee trial and award application (below) demonstrate, when flexibility is removed (whether under an employee or IC model), all stakeholders lose.

Menulog would welcome the opportunity to brief the Committee in more detail on these matters.

### **Feedback from couriers in Menulog's employee trial**

In conjunction with our employed courier trial launched June 2021, Menulog filed an application for a new fit-for-purpose Modern Award for the industry. In February 2022 the Federal Fair Work Commission found that, of the existing modern awards, the Road Transport and Distribution Award (**RTD Award**) could apply to On-Demand Food Delivery couriers (including those in our trial), but not necessarily that it should apply, which is why we continue to pursue a new modern award through ongoing conciliation with the FWC and industry.

Unfortunately, the RTD Award does not meet the evolving needs of food delivery couriers, or provide the higher level of flexibility they seek. Feedback from our participating couriers is that the adjustment to shifts and hours (required to align the trial with the RTD Award) does not suit them. As a result, it has required significant compromise from both Menulog and the employed couriers to continue with the trial.

This feedback is equally relevant as the Bill and any model seeking to regulate the entitlements of contracted couriers is considered, with the key learning being that flexibility must be maintained.

Issues and impacts of inflexibility highlighted by our employed couriers (with the RTD Award, but applying to any similar decision on IC entitlements) include:

- The RTD Award requires four-hour minimum shifts, bans split shifts and sets ordinary hours of work between 5.30am and 6.30pm, with penalties for peak times such as nights and weekends
- These shift requirements and hours are not in keeping (and are in fact quite opposite) to the peak demand time for food delivery – which is evening and weekends – and is out of kilter with when many trial (and other) couriers want to work. It is important to understand that for many couriers, this work is a secondary source of income to their day job or secondary to other priorities like tertiary study (i.e. they cannot work conventional hours)
- As paying penalty rates during peak order times is not sustainable in the long run Menulog has not been able to continue offering trial employees work on Sundays and has had to restrict evening shifts on weekdays
- This lack of flexibility has seen many participants having to accept fewer hours
- The inability to split shifts and minimum four hour shift requirement have both been significant impediments to couriers who want to work for short split periods, as is often the case with this workforce

These issues of inflexibility around ordinary hours, shifts and penalty rates present enormous barriers for couriers joining our trial, and for any scaled employment model.

If introduced into the current IC model, they would equally present issues for couriers and all stakeholders in the sector – threatening the continued viability, if not existence, of the sector and the many courier and small restaurant business livelihoods that rely on it. There would also be flow on effects to consumers who would no longer have access to food delivery services they rely on.

There are various overseas examples which also highlight these same negative impacts for all stakeholders where inflexibility is imposed in the food delivery sector. For example, in Switzerland and Spain, the introduction of inflexible conditions (as a result of reclassification) resulted in loss of work/ income/revenue for thousands of independent contractors and small business restaurants as well as a loss of services to consumers.

These are critical considerations as discussions on regulation of minimum wages and entitlements for independent contractors progresses.

Deep consultation with the food delivery sector is needed to ensure a fair, flexible, national approach which ensures continued viability of the sector and all participants.

### More Information

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Menulog looks forward to continuing to be part of the consultation process.

Menulog contact details are:

Morten Birk Belling  
Managing Director



Simone Prideaux  
Head of Communications



We look forward to working with you.

Your sincerely,

A handwritten signature in black ink, appearing to read 'M. Belling'.

Morten Birk Belling



Menulog Pty Ltd  
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24 March 2022

Rhett Moxham  
Office of Industrial Relations Queensland  
Email: [REDACTED]

Dear Rhett,

### **Submission on Working Draft of Industrial Relations Amendment Bill 2022 (Bill)**

Menulog welcomes the opportunity to comment on the Bill that was extended to us on 22 March 2022. However, given there has been no public or industry wide consultation and we have only become aware of it in recent days (with a tight timeframe for submissions by today), we request a further opportunity for thorough review and comment.

This is particularly important given the Bill's fundamental impact on the operating models under which Menulog and other on demand food delivery platforms operate.

The on demand delivery industry continues to play an important role in keeping Australians fed in a COVID safe way, helping restaurants drive revenue and creating alternative income sources for those who have lost jobs as a result of the pandemic.

Without thorough consultation to understand the realities and complexities of our industry, and the benefits and burdens to all stakeholders, the Bill will have unintended consequences and will not achieve important regulatory objectives. Unintended consequences may include the loss, or significant contraction, of a sustainable industry supporting jobs, the economy and important services to the public.

Menulog has at all stages sought to proactively and constructively engage with governments across Australia on conditions, protections and regulation for food delivery couriers. In doing this we have sought to align to our philosophies and values and those of our European parent group, Just Eat Takeaway.com.

It was in this context, and recognising the evolving needs of couriers, that Menulog launched our **employed courier trial** in Sydney in June 2021 and filed an application in the Fair Work Commission for it to make a **suitable modern award for employed on-demand delivery workers**. Our ambition here was to create a fit-for-purpose employment model for on demand food delivery couriers; understand the limits and challenges of utilising employed on-demand food delivery workers, and for a modern award to provide the higher level of flexibility required and sought by workers, alongside employment guarantees, protections and entitlements.

Given this and proactive engagement across all other jurisdictions on both the employed courier trial/award and protections for independent contractors, we would appreciate the opportunity for similarly detailed consultation with the Queensland Government on the Bill.

In the meantime we provide the following high level comments on:

- principles we propose should guide the Bill and regulation generally, and
- important aspects of the industry and Menulog which need to be understood and the subject of thorough consultation before a Bill is introduced.

## **Principles which should guide regulation**

### **Regulation should be national not state based**

Individual state regulation exacerbates existing uncertainties and adds complexity, inconsistency and cost for gig economy workers, businesses, restaurants and consumers.

Most on demand delivery platforms (including but by no means limited to Menulog) operate nationally and also work within a framework of international models, platforms and operations. Different regulation across eight jurisdictions is cumbersome, adds administrative burden, operational complexity and cost to food delivery platform businesses. It will materially impact operations. In particular, requiring different conditions across different parts of Australia requires the creation of different technology and smartphone apps.

These complexities and the additional costs associated with them have a trickle down effect of increased costs and fees to the small businesses using delivery services from on demand food ordering and delivery platforms, and the individual consumers that use them.

This is especially problematic where there are no offsetting benefits - i.e. where existing Commonwealth legislation already offers a high standard of protection for workers - and

where there is no evidence (that we are aware of) showing a systemic deployment of unfair contracts to platform workers (see next heading).

The same burdens of different state regulation will also be experienced by the majority of Menulog food delivery platform restaurant partners who are small, independently operated businesses.

Menulog accordingly submits that regulation of the on-demand delivery workforce is a matter for national action.

As a related point, we also understand the Bill is constitutionally invalid unless an amendment to the *Independent Contractors Act 2006* (Cth) (**ICA**) is passed through Parliament to provide for an exemption to s7 of the Act which currently prevents any State law from conferring or imposing workplace rights, entitlements, obligations or liabilities in respect to independent contractors, including the independent couriers proposed to be covered by this Bill.

### **Regulation should be necessary and deliver benefits**

Further regulation is only necessary where current legislation, regulation, Standards, Codes and Principles are not working to appropriately protect workers. Even then, it is important to ensure that any further regulation does not simply create further processes and administrative complexity without delivering on its intended benefits.

In relation to whether the Bill is necessary or will deliver benefits, there are already existing laws covering engagement and conditions of couriers and clarification of worker status. These include, but are not limited to, the ICA, the *Australian Consumer Law* (**ACL**) and state WHS laws. Our experience is that these laws have been working appropriately to ensure independent contractor protections.

### **Regulation should incorporate the following principles**

Any regulation should ensure **fairness, safety, flexibility, choice, transparency and certainty** of working arrangements/ conditions for all on-demand food delivery workers, as well as **ongoing viability** of the food delivery industry.

Menulog contends that to ensure these principles are preserved, a hybrid model is needed. The solution is not to add unnecessary processes, complexity, delay and regulation to an independent contractor model which has worked well in Australia (including, importantly, for couriers). Rather, the solution is to offer an alternative

employment model allowing couriers to choose from both employment and independent contracting to suit their needs. This preserves the choice and flexibility that couriers themselves demand.

A final and important consideration when it comes to preserving these principles and assessing the need for further regulation is that no independent courier on the Menulog platform is bound to accept any job. There is 100% transparency with couriers ahead of accepting a job on what amount they will receive (with rates depending on time of day, location and other complex algorithmic factors). Couriers are free to make their own commercial decision as to whether to accept or reject a job at their absolute discretion. They are also provided with a link through to a Courier Agreement and guides prior to selecting their acceptance and proceeding with their onboarding.

### **Fair and transparent independent dispute resolution**

Menulog supports fair and transparent independent dispute resolution at a national level requiring access to a clear and accessible procedure or mechanism for resolving performance management concerns or disputes. Our couriers are entitled to legal representation, where requested.

## **Other important industry/Menulog background**

### **Further support for independent contractors**

In addition to complying with all relevant laws, Menulog has implemented measures to do more for our on demand contractor workforce. This includes increasing support under our insurance cover for independent contractors couriers so that it is more in line with the benefits offered by Workers Compensation cover. Our ambition here is to bring our independent couriers to parity with employees when it comes to appropriate injury insurance cover, in a way that is fit-for-purpose for the gig economy.

However, as Workers Compensation is a complicated system that varies across states, it has been necessary to take out a policy that seeks to reflect an average of relevant benefits for independent couriers, given our independent couriers operate across 93% of the addressable population in Australia. This is in line with our maintained position that any regulation or program introduced relating to contracted couriers should be done at a national level (see below). We believe this approach will provide the greatest benefit to couriers across the country.



## **Commitment to continuous improvement initiatives on workplace health and safety (WHS)**

Menulog is committed to continuous improvement on WHS for all workers, no matter how they are engaged. We are a signatory to and supports the Food Delivery Platform National Safety Principles. We have and continue to actively participate in various state initiatives including the NSW Taskforce consultations leading to the Industry Action Plan and Guideline for Managing WHS in the Food Delivery Industry; consultations on NSW WHS regulations, and consultations in Victoria and WA.

### **Earnings factors**

While Menulog provides and supports fair and decent remuneration and conditions across the industry, it is important to recognise that earnings on one platform does not reflect overall earnings. This is because most on demand food delivery couriers perform work across multiple platforms during a particular hour, day or other time period. This practice -called "multi-apping" – involves an on-demand food delivery courier being logged into several apps at one time and is prevalent amongst on-demand food delivery workers.

There are a number of factors that are considered in calculating offered job payments. The payment per delivery considers a number of factors including the expected distance and estimated time to complete the delivery. On-demand food delivery workers are notified of the payment attached to a delivery opportunity and are able to make their own commercial decision as to whether to accept or reject the delivery opportunity offered to them at their absolute discretion.

From time to time on-demand food delivery workers are offered other ad hoc fees and incentives which are not directly related to a specific delivery. These include new courier and peak period incentives such as completing your first X deliveries and receiving \$Y and courier referring courier incentives. We note incentives are not offered to decrease delivery times. There is no fixed per delivery or per kilometre fee that is paid. On-demand food delivery workers will be paid the payment attached to the delivery opportunity offered to them, even if a shorter or more efficient route is taken by them.

### **Impacts of Bill**

There would be significant resources/costs for platforms if the Bill reforms were introduced. There would need to be negotiation across the entire courier fleet and there would be a slow down to operations and knock on effects to consumers, restaurants and

others in the supply chain. Platforms, technology and algorithms that are a fundamental part of industry operating models would likely need to be changed.

## Closing comments

In the current COVID environment where economic recovery and job creation are of utmost importance, extra cost and administrative burden on food delivery platform businesses is not justified. Menulog and other businesses in our industry operate in a competitive environment and, in many cases, these businesses are cost intensive while operating on the basis of low margins.

The Bill and other regulatory settings should aim to preserve the sustainability of these businesses (where they are operating fairly, transparently and lawfully) and to incorporate the wishes of couriers themselves around continued flexibility and choice.

In order to do that and to avoid any misunderstandings about the nature or operational realities of the industry, Menulog requests that the Queensland Office of Industrial Relations hold further detailed and meaningful consultations with on-demand delivery workers and platforms (including Menulog) and allow a further reasonable period for submissions.

We look forward to hearing on further opportunities to comment on the Bill in detail.

More Information

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We would be pleased to provide you with a briefing on any aspect of this submission if required. Please contact:

Simone Prideaux, Head of Communications

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[REDACTED]

We look forward to working with you.

Yours sincerely,

Morten Birk Belling