

Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2024

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Committee Secretary
Education, Employment, Training and Skills Committee
Parliament House
George Street
Brisbane QLD 4000

Submission on [Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2024](#)

Dear Sir/Madam,

Thank you for the opportunity for Menulog to make a submission regarding the Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2024 (the "**Bill**").

Background to Menulog business in Australia's ever-evolving on-demand delivery industry

Menulog was founded in Australia in 2006, where it remains headquartered and employs hundreds of local staff. Historically, Menulog supported local businesses to drive additional revenue through online ordering and delivery. In 2018, leveraging local and international best practice, Menulog engaged contracted delivery couriers to service local businesses seeking to offer delivery. In order to demonstrate the demand for delivery services in Australia, prior to the commencement of Menulog's delivery service, Menulog had 10,000 partners doing their own delivery. This figure has more than tripled with the addition of a delivery service for restaurants, grocery stores, convenience retailers and more, with millions of customers accessing food and products from these businesses every year.

After three years of growing our delivery offering and taking learnings at a significant scale, in an industry first in 2021, Menulog announced it would seek to offer better benefits and protections for couriers in Australia. As a first step, Menulog increased the level of personal injury insurance coverage for contractors, launched a trial of employed couriers in the CBD of Sydney and submitted an application for a new Modern Award that would be sustainable and meet the needs of industry participants. Menulog continues to employ a small number of couriers under the Road Transport and Distribution Award 2020 ("**RTD Award**"), however, this program has proven that employment is challenging and the RTD Award is not viable for the on-demand delivery industry.

Menulog now has arrangements with more than 34,000 local partners (*confidential*) - restaurants, grocery, convenience retailers and more.

Flexibility and choice is critical and needs to be preserved

From all of Menulog's research, it's clear on-demand couriers choose this work for the unique benefits it provides, which range from lifestyle benefits, to interaction with businesses and the community, to the overwhelmingly shared benefit of flexibility, as well as the low barriers to entry.



There has been no survey or research Menulog has conducted that indicates the majority or even a large proportion of couriers rely on on-demand delivery as their main source of income. Instead, this research shows the freedom to choose when and where they work, for how long and for whom is greatly valued by couriers, who often do this work outside of 'traditional' working hours. They enjoy the ability to accept or reject any order at their discretion and to work across multiple platforms concurrently (often referred to as "multi-apping").

It is essential to preserve these benefits and the flexibility that couriers utilise with on-demand delivery by ensuring any regulation is bespoke to the industry and does not have the unintended effect of limiting flexibility. This would likely occur if traditional employment frameworks or schemes (such as workers compensation) were applied to the industry since such schemes do not permit, or are not premised on, flexible working.

According to recently commissioned research by independent research group Quantum Market Research¹:

- 86% of platform workers state it's very important/critical that reforms ensure they can continue working as an independent contractor and retaining their current benefits
- Workers are motivated by choice and independence; 87% say it's critical to maintain the ability to choose when they work and 85% state it's critical to start/stop working whenever they choose
- 82% agreed they have greater flexibility around personal needs, commitments and lifestyle than a traditional job
- Almost half of all workers would leave the industry if platforms controlled when and how they could work
- 95% of workers say it's very important/critical that government reforms are clear and do not add confusion for workers about their responsibilities and entitlements
- 88% of platform workers state it's very important/critical that government reforms do not add administrative or operational burden to workers

Courier safety and wellbeing is paramount

As an Australian-born business that was the first in the industry to advocate for better benefits and protections for on-demand delivery couriers, Menulog believes courier safety is paramount and is supportive of working closely with the Queensland Government on any improved protections that are bespoke to the industry and couriers' needs.

Menulog is constantly working to improve safety for all on the network including partnering with the industry where possible to ensure these protections are standardised for all couriers. In 2021, we were a founding signatory to the [National Safety Principles for Food Delivery Platforms](#), a joint initiative between on-demand platforms and Australian Industry Group as a means to drive action in bolstering safety for couriers.

Menulog has a number of safety programs and initiatives in place, including (but not limited to):

¹ Quantum Market Research, *On-Demand Platform Industry Research*, August 2023, 8,090 platform workers

- Detailed safety information and specific two-wheeled vehicle training is provided at the onboarding stage and is also accessible any time including via the [Health and Safety Guide](#), Menulog Courier App and Site and [The Inside Track](#) blog
- Access to industry leading delivery gear and PPE including helmets, high visibility jackets and vests, high visibility delivery backpacks and more
- Regular safety bulletins, Courier Newsletter, Courier Feedback Program and real-time communications on safety (e.g. adverse weather)
- Access to Menulog-funded Personal Accident Insurance for all couriers

Menulog provides fully-funded personal accident insurance

Menulog provides personal accident insurance for all couriers which addresses the realities of this unique industry, including the common use of multi-apping (75% of couriers on Menulog multi-app²). A summary of our tailored insurance policy for Menulog is publicly available on our [website](#) and provided to couriers on an ongoing basis.

Menulog is strongly in support of a minimum level of personal accident insurance for couriers that accounts for the industry's associated risks and provides appropriate coverage at a national level for all platforms. Menulog has long advocated for insurance to be a mandatory matter addressed by the federal Fair Work Commission to ensure all workers have access to cover that is designed for specific employee-like sub sectors and informed by robust consultation with the industry. It is Menulog's view that this national fit-for-purpose legislated mandatory insurance would then meet the ambition of the Queensland Government and eliminate the need for complex and resource intensive state-based schemes.

Complexities of extending workers compensation to the on-demand delivery industry

Menulog is deeply concerned with the proposed amendments in the Bill, particularly the redefined term "worker" and the unintended consequences and uncertainty this creates for the on-demand delivery industry in Queensland.

Our view is that workers compensation is not fit-for-purpose for the on-demand delivery industry, as it has been developed to cover risks associated with traditional employment. Shoehorning workers compensation for gig workers at a state-by-state level would be complex, resource intensive, time consuming and expensive for all stakeholders, particularly given the diverse elements of each sub sector of the gig economy. At a basic operational level, it would also add an unnecessary level of confusion for couriers who travel across state borders. Should a state-by-state approach be in place, couriers who travel across state lines would be required to manoeuvre different schemes in each jurisdiction they live and work in.

The following matters are just some of those that should be carefully considered, alongside the impacts (touched on below), before rushing to amend the Bill definition of "worker" to allow extension of workers compensation to gig workers.

² Just Eat Takeaway.com, Quarter 1-2 Courier Engagement Survey, July 2023, 1,065 couriers

- **Workers' compensation is not fit for purpose for the on-demand delivery industry.** Traditional employment concepts like workers' compensation cannot have sensible application in the on-demand delivery industry. The Workers' Compensation and Rehabilitation Act 2003 (the "**Act**") would require a major overhaul to address the following complexities:
 - **Rehabilitation and return to work obligations.** Traditional rehab programs designed for full-time employees are irrelevant for couriers who work intermittently with no ongoing obligation to the platform.
 - **Suitable duties.** Return to work programs often emphasise injured workers gradually resuming modified duties. However, the very nature of the work in the on-demand delivery industry - independent tasks with variable and intermittent access - makes it difficult to offer suitable modified duties. It would not be logistically possible for platform businesses to find appropriate work that matches an injured worker's restrictions.
 - **'Multi-apping' creates unclear liability.** Determining workers' compensation becomes unclear when a courier works for multiple platforms simultaneously.
- **A national approach is best fit for the industry.** From August 2024, the Fair Work Commission will have the power to set minimum standards orders ("**MSO**") for the industry under the Fair Work Act. An MSO may include insurance and other related terms. Menulog is concerned the Bill may create unnecessary additional and overlapping obligations to provide workers' compensation and insurance simultaneously.
- **Collaboration with all stakeholders is key.** The unique challenges of the on-demand delivery industry demand further consideration before creating a power that will allow it to be shoehorned into existing workers' compensation without proper, thorough consultation. Rushing changes without in-depth consultation with all stakeholders has flow on impacts to all who rely on on-demand delivery platforms, including small businesses and courier livelihoods and affordability and service availability for customers. Genuine discussions must explore all options, including alternative insurance models.

Menulog was reassured by the Minister of Industrial Relations Grace Grace's comments in her First Reading Speech on 17 April 2024, where she commits to comprehensive public consultation and Regulatory Impact Analysis to avoid unintended consequences, should there be a need for regulation. Minister Grace also states this would include consideration of any MSO and collective agreements developed as part of Federal laws; any existing insurance arrangements in that industry; and impacts on scheme sustainability, regulatory burden, compliance costs and other impacts on business and industry.

Menulog was encouraged by Minister Grace's acknowledgement that the State Government should be guided by the Fair Work Commission at a national level:

“...the Queensland government to be appropriately guided by decisions at the national level on the legal status of gig workers which will provide certainty and consistency for industry. The gig worker area is a complicated area. It manifests itself in many ways out there in industries. We need to take a balanced and serious approach. I think the Fair Work Commission’s determination in assessing where we go further by regulation is the best place for this at this point in time.”

We welcome Minister Grace’s comments. However, Menulog is concerned these commitments are not set in legislation leaving reform open to any future governments to action, with no certainty the views of the industry would be considered or the full impact of any change and cost implications understood.

Federal process demonstrates consultation results in better legislation

Menulog, both individually and collectively with other industry platforms, has worked pragmatically and constructively to develop and support industry standards and enact fit-for-purpose reform for the on-demand delivery industry. This was never more evident than in the significant consultation with the Federal Government as part of the Closing Loopholes Bill. The Federal Minister for Industrial Relations, Tony Burke, has [publicly recognised](#) on numerous occasions that, as a result of effective consultation with platforms, an improved Bill was passed with amendments that both improved the Bill and made it fit-for-purpose reforms for workers and the industry. That is, the consultation process demonstrated to all stakeholders involved, including the Minister, that consultation is critical to understanding all potential impacts and avoiding catastrophic consequences for couriers, customers, small businesses and industry viability.

Menulog strongly argues that an approach similar to this Federal one must be replicated with the Queensland Government to understand and avoid such impacts. As a first step, we recommend not progressing the current proposed amendment for the moment and that the Queensland Government instead await the development and implementation of MSOs under the Closing Loopholes Bill, then consider the impacts of that implementation, as well as the work currently underway by Safe Work Australia.

Following this, should any changes still be required, Menulog recommends the Queensland Government conduct genuine consultation with all industry stakeholders (including couriers). Existing insurance arrangements cannot be ignored. A thorough assessment of the application of MSOs is required. Adapting workers compensation to independent contractors would be highly complex and would result in further unintended consequences should it overlap with any potential MSO.

Menulog strongly believes mandatory platform funded insurance tailored to industry and courier needs implemented at a federal level would be the best course of action. This ensures uniform protection of workers across platforms, regardless of location. A patchwork of State regulations simply will not achieve this.

Cost implication of extending workers compensation to gig workers

The on-demand delivery industry continues to provide a significant contribution to the wider Australian economy and a means for additional, flexible work for a range of people. It is increasingly



important in the current economic climate and as a supplementary/second source of income given the cost of living crisis being felt across the nation. This rise in the cost of living has also seen a surge in demand for sign ups to the Menulog platform.

It is well documented that on-demand delivery is a low margin business and that the Australian market is one of the most competitive in the world. A requirement for any on-demand delivery platform to survive in this market is to operate with increasing efficiency and at scale. The on-demand delivery industry is a highly complex, fast-evolving and dynamic industry, with several different stakeholders participating and benefiting from the growth of this industry. Platforms must also be able to carefully balance the financial expectations of all involved - competitive customer pricing, fair restaurant/business costs and attractive earnings for couriers.

Menulog holds significant concerns about the current lack of understanding regarding the cost implications of what the proposed amendment could allow for in the future. Menulog believes any potential cost increase as a result of future regulation would likely be passed on and balanced between all industry participants, resulting in a likely reduction in consumer demand (due to consumer fee increases) and a further drop in courier opportunities. The network effect of this significant drop in consumer demand (i.e less orders for businesses, less businesses then offering delivery, less opportunities for couriers, less couriers to service delivery etc) could have an irreparable impact on the on-demand delivery industry in Queensland, as well as a significant impact on market competition (noting the limited number of participants). 86% of workers say it's very important/critical that reforms do not constrain the industry by creating fewer customers and work opportunities and more than a third of workers would leave the industry if this was the case³. Therefore it is critical any implications of regulation to the viability of the industry in Queensland are carefully considered.

Menulog Recommendations

Menulog strongly recommends the Queensland Government works closely with the on-demand delivery industry to:

1. Reconsider the proposed amendment to the definition of "worker" and hold such amendment until after consideration of the implementation effects of Federal MSOs and completion of the work currently underway by Safe Work Australia
2. Should changes still be required, conduct robust consultation with workers, platforms, unions to understand the complexity of extending workers compensation and implications of regulation to the viability of the industry in Queensland, as well as consideration of platform-funded insurance already in place

Conclusion

States and Territories play a crucial role in ensuring the health and safety of workers and Menulog is committed to working constructively with the Queensland Government on improvements that are tailored to the industry.


³ Quantum Market Research, *On-Demand Platform Industry Research*, August 2023, 8,090 platform workers



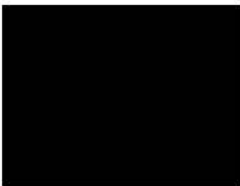
However, rushing amendments to the Act before understanding the impact of Federal MSOs is a flawed approach. This piecemeal legislation creates uncertainty and could have unintended consequences.

Granting the power to extend workers compensation to the on-demand delivery (or wider gig) sector without proper industry consultation could have devastating consequences. At a minimum, the Bill should mandate thorough consultation with all industry stakeholders before any such power can be exercised.

Menulog would welcome further certainty for the industry about the Government's commitment to mandating such consultation. We would appreciate the opportunity to participate in further consultation with workers, unions and the Queensland Government to assess all viable options including insurance, to ensure couriers are protected while working.

Please don't hesitate to get in contact with our Head of Communications and Government Relations, Fran Gallardo via  should you require any additional information.

Kind regards,



Morten Belling
Menulog Managing Director