

From: Vasuki Paul <Vasuki.Paul@aigroup.com.au>
Sent: Wednesday, 11 May 2022 3:52 PM
To: Chambers - McKinnon C <Chambers.McKinnon.C@fwc.gov.au>
Cc: 'Katie Sweatman' <katie.sweatman@kingstonreid.com>; 'Lorraine Biviano' <lorraine.biviano@twu.com.au>; 'Nigel Ward' <Nigel.Ward@ablawyers.com.au>; legal@twu.com.au; AMOD <AMOD@fwc.gov.au>; 'Catherine Flannery-Sweet' <catherine.flannery-sweet@kingstonreid.com>; Paul Ryan <paulryan@bigpond.net.au>
Subject: RE: AM2021/72 Application by Menulog Pty Ltd - Ai Group Response

Dear Associate,

Please find enclosed Ai Group's response to the Table filed by Menulog in accordance with the Statement made by Commissioner McKinnon on 16 March 2022.

I further confirm that I will need to attend the conference on the 18th May 2022 by Teams.

Regards



Vasuki Paul
National Manager – Construction Utilities and Mining

Level 2, 441 St Kilda Road, Melbourne, 3004

T: 03 98670244

M: 0407654090

E: vasuki.paul@aigroup.com.au



Australian Industry Group

Proposed On Demand Delivery Services Award

Response to Menulog Table (AM2021/72)

11 May 2022

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GROUP

AM2021/72 – PROPOSED ON DEMAND DELIVERY SERVICES AWARD - CONCILIATION

1. On 16 March 2022, Commissioner McKinnon, by Statement, confirmed the ‘without prejudice’ agreement of the parties as follows:
 - a) Menulog Pty Ltd will file and serve a table setting out:
 - i) the terms it seeks in a modern award that are different from the terms of the *Road Transport and Distribution Award 2020*;
 - ii) comparable terms in the *Road Transport and Distribution Award 2020*; and
 - iii) the reason for each term that it seeks.
 - b) Interested parties are to file and serve any response to the table prepared by Menulog Pty Ltd
2. Menulog filed and served the relevant table on 13 April 2022. In the table, Menulog highlighted the lack of flexibility in many terms of the *Road Transport and Distribution Award 2020* when compared to its proposed Award.
3. The scope of Menulog’s proposed award seeks to cover:

“the collection and delivery of food, beverages, goods or any other item, that are ordered by a consumer from third party businesses that offer food, goods and other items for immediate collection and delivery on an online or application-based platform.”
4. The proposed award excludes:
 - the collection and delivery of an employer’s own food, beverages, goods or any other item offered by it for sale; and
 - employers that are in the primary business of providing general transport or delivery services at large of food, beverages, goods or any other item that has not been purchased on its online platform.

5. Such scope extends far beyond the delivery of prepared meals.
6. The effect of such a scope is to exclude all employers undertaking similar courier/delivery services as Menulog unless they are conducting their primary business on an online or application-based platform. This would have the apparent unintended consequence of ensuring a commercial advantage for Menulog against other traditional courier/delivery operators.
7. Ai Group notes that the *Road Transport and Distribution Award 2020* applies to employers who have a delivery function as part of their business, regardless of whether such function is the primary business of that employer.
8. Ai Group supports proposals which provide for greater flexibility in the terms of the *Road Transport and Distribution Award 2020* but such flexibility should apply to all employers undertaking the relevant activities.
9. Further, it appears that Menulog has re-drafted various model clauses which appear across numerous awards. Consistent with the Commission's longstanding approach, changes to model clauses should only be made if there is a good reason why such a change is warranted in a particular award.