

Australian Industry Group

Proposed On Demand Delivery Services Award

Submission
(AM2021/72)

9 August 2021

Ai
GROUP

AM2021/72 – PROPOSED ON DEMAND DELIVERY SERVICES AWARD

1. INTRODUCTION

1. This submission is made by the Australian Industry Group (**Ai Group**) in accordance with the Statement¹ issued by the Fair Work Commission (**FWC**) on 12 July 2021 relating to an application filed by Menulog Pty Ltd (**Menulog**) (**Application**) for the making of a modern award to cover the on demand delivery services industry.
2. The Application does not include any wage rates or other terms for the proposed award except for a proposed definition of the “on demand delivery services industry”. Accordingly, at this stage Ai Group is unable to identify whether or not we support the making of the proposed award. We will be able to express our position on this once a proposed award has been filed by Menulog accompanied by appropriate reasons why the making of that award would be consistent with the modern awards objective, and we have had time to consider these materials.

2. THE FWC’S *PROVISIONAL* VIEWS

3. The FWC’s Statement sets out a number of *provisional* views which parties have been invited to comment upon. Our comments are below.

Paragraph [11] – The *provisional* view that the *Fair Work Act 2009* (Act) requires the FWC to consider the following initial matters before deciding whether or not to make a new modern award covering the on demand delivery services industry:

1. **Whether employers and employees in that industry are currently covered by a modern award.**

¹ [2021] FWCFB 4053.

2. If there is current award coverage, whether the current award coverage of employers and employees in the industry meets the modern awards objective.
3. If the current award coverage does not meet the modern award objective, whether, instead of making a new award, the FWC should vary an existing award to cover the relevant employers and employees (including considering whether any such existing award is appropriate for employers and employees in the industry).

4. We agree with the above *provisional* view.

Para [23] – The *provisional* view that the *Fast Food Industry Award 2020* (Fast Food Award) does not currently cover employers and their courier employees in the on demand delivery services industry.

5. We are not convinced that the above *provisional* view is correct for a substantial proportion of the work that would be covered by the proposed definition of the “on demand delivery services industry”. The delivery of food and beverages which are “*primarily to be consumed away from the point of sale*” or are “*packaged, sold or served in such a manner as to allow their being taken from the point of sale to be consumed elsewhere should the customer so decide*”, would appear to be covered by the Fast Food Award for the following reasons:

- The Fast Food Award covers employers and employees in the *fast food industry*, which is defined as follows: (emphasis added)

fast food industry means the industry of taking orders for and/or preparation and/or sale and/or delivery of:

- meals, snacks and/or beverages, which are sold to the public primarily to be consumed away from the point of sale;
- take away foods and beverages packaged, sold or served in such a manner as to allow their being taken from the point of sale to be consumed elsewhere should the customer so decide; and/or
- food and/or beverages in food courts and/or in shopping centres and/or in retail complexes, excluding coffee shops, cafes, bars and restaurants providing primarily a sit down service inside the catering establishment.

- The above categories of food and beverages would appear to cover a large proportion of meals, snacks and beverages that are delivered to consumers at their homes.
- The Fast Food Award’s coverage of employers whose employees are engaged in the “*delivery of*” fast food does not appear to be limited to employers who prepare or offer for sale fast food.
- The classification of “Fast Food Employee Level 1” applies to an employee engaged in the delivery of fast food: (emphasis added)

An employee engaged in the preparation, the receipt of orders, cooking, sale, serving or delivery of meals, snacks and/or beverages which are sold to the public primarily to take away or in food courts in shopping centres.

- The Fast Food Award covers a large number of employees who deliver fast food (e.g. pizza).

Para [35] – The *provisional* view that if no other modern award covers employers and their courier employees in the on demand delivery services industry, then the *Miscellaneous Award 2020* covers them.

6. We agree with the above *provisional* view.

Para [43] – The *provisional* view that if the *Miscellaneous Award 2020* does cover employers and their courier employees in the on demand delivery services industry, then the award does not provide a fair and relevant safety net for that industry.

7. We agree with the above *provisional* view.