

Australian Industry Group

Proposed On Demand Delivery Services Award

Reply submission
(AM2021/72)

19 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. AWARD COVERAGE

2. In their submissions, the following organisations express the views that, firstly, the *Road Transport and Distribution Award 2020* (**RTD Award**) covers the work that Menulog proposes should be covered by an On Demand Delivery Services Award, and, secondly, that the *Fast Food Industry Award 2020* (**FF Award**) does not cover the work:
 - National Road Transport Association (**NatRoad**); and
 - Transport Workers Union (**TWU**).
3. In its submission, the Australian Road Transport Industrial Organisation (**ARTIO**) expresses the view that the RTD Award covers the work. It does not express a view on whether the FF Award also covers the work.
4. In their submission, the Australian Chamber of Commerce and Industry and Australian Business Industrial submit that the RTD Award covers the work and that the FF Award arguably also covers the work.
5. In its submission, Menulog argues that neither the RTD Award or the FF Award covers the work.

¹ [2021] FWCFB 4053.

6. For the reasons set out in Ai Group’s submission of 9 August 2021, we maintain the view that the FF Award would cover a substantial proportion of the work that would be covered by the proposed definition of the “on demand delivery services industry”, i.e. 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”*.
7. The application of the RTD Award to employees engaged in the above types of work would potentially disturb the award coverage and award entitlements for thousands of employees engaged in the delivery of food and beverages, at great cost to employers. This can be seen in the following comparison of just a few key conditions in the two awards:

Entitlement	FF Award	RTD Award
Delivery classification	Level 1 - \$848.50	Transport Worker Grade 2 - \$838.90
Day work	No penalty up to 10pm	No penalty up to 6.30pm
Evening work	10% penalty from 10pm until midnight	A shift finishing after 6.30pm is an afternoon shift and the entire shift attracts a loading of 15%
Saturday penalty rate	125% for permanent employees 150% for casual employees (inclusive of casual loading)	150% for permanent employees 175% for casual employees (inclusive of casual loading)
Sunday penalty rate	125% for permanent employees 150% for casual employees (inclusive of casual loading)	200% for permanent employees 225% for casual employees (inclusive of casual loading)

8. The spread of hours in the FF Award is far more closely aligned with the work patterns of those who deliver meals in the proposed “on demand delivery services industry” than the spread of hours in the RTD Award.

3. Ai GROUP’S POSITION ON THE PROPOSED AWARD

9. As stated in Ai Group’s submission of 9 August 2021, Menulog’s 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.
10. 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.