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Sent: Wednesday, 13 April 2022 3:59 PM
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Subject: RE: AM2021/72 Application by Menulog Pty Ltd - s.158 [KR-PRODUCTION.FID7678]

Dear Associate

Further to the Statement made by Commissioner McKinnon on 16 March 2022, please now find ***attached*** a table outlining the terms of the *Road Transport and Distribution Award 2020*, the reasons why Menulog says that these terms are unsuitable for the on demand delivery services industry, and setting out how the proposed *On Demand Delivery Services Industry Award* would deal with such entitlements.

We look forward to receiving the interested parties' responses in due course, and otherwise discussing further at the in person conciliation listed for 18 May 2022.

Kind regards

Katie

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AM2021/72: Application by Menulog Pty Ltd for a new modern award for the On Demand Delivery Services Industry

Pursuant to the 16 March 2022 Statement issued by Commissioner McKinnon, the purpose of this document is to set out the terms of the Road Transport and Distribution Award, identify the bases on which Menulog does not consider the terms to meet the modern awards objective, and to set out Menulog's proposed alternative from its exposure draft On Demand Delivery Services Award that was filed with the Fair Work Commission on 23 August 2021.

This document is prepared in the context of consultation with parties interested in this application. Menulog does not view the terms of the proposed exposure draft *On Demand Delivery Services Award* as fixed, and it remains open to discussing reasonable variations to the proposed drafting of this exposure draft.

Schedules to the RTD Award have not been addressed in this table, taking into account that they deal either with standard Schedules across all modern awards, or set out summaries of minimum hourly rates.

Road Transport and Distribution Award 2020 Term	Feedback on RTD Award Term	Proposed On Demand Delivery Services Award Term
1. Title and commencement 1.1 This award is the Road Transport and Distribution Award 2020. 1.2 This modern award commenced operation on 1 January 2010. The terms of the award have been varied since that date. 1.3 A variation to this award does not affect any right, privilege, obligation or liability that a person acquired, accrued or incurred under the award as it existed prior to that variation.	As a standard term, Menulog takes no issue with this clause in the Road Transport and Distribution Award 2020 (**RTD Award**).	**1. Title and commencement** **1.1** This award is the *On Demand Delivery Services Industry Award 2022.* **1.2** This modern award commenced operation on [*** date to be determined by the Fair Work Commission ***].
2. Definitions In this award, unless the contrary intention appears: **Act** means the Fair Work Act 2009 (Cth). **aerodrome attendant** means an employee who is employed principally in driving and/or operating any aviation refuelling or servicing unit or equipment or hydrant dispensing system at an aerodrome to deliver aviation fuels, lubricants and/or other aviation products to aircraft and in receiving, storing and distributing such fuels, lubricants and other products at an aerodrome depot, including the performance as required of all tasks ancillary to such receipt, storage, distribution and delivery. Provided that this definition does not exclude allocation by the employer of other duties connected with the safe and efficient operation of vehicles, plant and equipment, the general tidiness of facilities at an airport depot, and the safety of personnel, or the bridging of stocks from terminals or depots to airports by an aerodrome attendant. This definition does not include coxswains or motorboat drivers operating refuelling units at a flying-boat base. **all purposes** means the payment will be included in the rate of pay of an employee who is entitled to the allowance, when calculating any penalties or loadings or payment while they are on annual leave. **ancillary vehicles and/or equipment** means mechanically powered vehicles and/or equipment (other than trucks) used by employers in the loading, unloading, stacking, moving, sorting or handling of goods and/or materials in connection with work which is part of, or ancillary to, the business of the employer.	The majority of the definitions contained in the Road Transport and Distribution Award are not relevant to the on demand delivery services industry. The definitions set out at clause 2 of the RTD Award are reflective of the traditional road transport industry which is grounded on the use of trucks and other large vehicles which operate from distribution and like facilities. By contrast, in the on demand delivery services industry, in the performance of their duties, couriers typically use a car, motorbike, scooter, ebike or bicycle. Couriers do not use vans, trucks and other large vehicles as they are inefficient having regard to the typically small size of the items being delivered (which typically comprise of one or a small number of carry bags) and the difficulty of finding convenient parking at the locations from which collections and deliveries are made, typically being busy shopping strips and the like at which restaurants are located.[1] Consistent with the modern awards objective at s134(1)(g) of the *Fair Work Act 2009* (**FW Act**) to ensure simple and easy to understand modern awards, Menulog proposes a much simpler definitions term which contains provisions relevant only to the on demand delivery services industry. These definitions are supplemented by a definition of the industry at clause 4.2 and simple definitions of "courier" at clause 12.	**2. Definitions** In this award, unless the contrary intention appears: **Act** means the *Fair Work Act 2009* (Cth). **casual employee** has the meaning given by section 15A of the Act. **default fund employee** means an employee who has no chosen fund within the meaning of the *Superannuation Guarantee (Administration) Act 1992* (Cth). **defined benefit member** has the meaning given by the *Superannuation Guarantee (Administration) Act 1992* (Cth). **employee** means a national system employee as defined by section 13 of the Act. **employer** means a national system employer as defined by section 14 of the Act. **NES** means the National Employment Standards as contained in sections 59 to 131 of the Act. **on-demand delivery services industry** has the meaning given in clause 0 . **on-hire** means the on-hire of an employee by their employer to a client, where the employee works under the general guidance and instruction of the client or a representative of the client.

[1] Witness statement of Morten Belling, 18 October 2021 at [35]

Road Transport and Distribution Award 2020 Term	Feedback on RTD Award Term	Proposed On Demand Delivery Services Award Term
articulated vehicle means a vehicle with 3 or more axles, comprising a power unit (called a prime mover, tractor truck etc.) and a semi-trailer which is superimposed on the power unit and coupled together by means of a king-pin and revolving on a turn-table and is articulated whether automatically detachable or permanently coupled. **casual employee** has the meaning given by section 15A of the Act. **courier** means an employee who is engaged as a courier and who uses a passenger car or station wagon, light commercial van, motorcycle or bicycle or who delivers on foot, in the course of such employment. **crane chaser/dogger** means a person who holds a certificate of competency as a crane chaser from an appropriate authority. **crane offsider** means an employee who has the responsibility to supervise the setting up of a mobile crane and/or carry out the work of slinging loads and to control the movement of loads when handled by lifting appliances. **defined benefit member** has the meaning given by the Superannuation Guarantee (Administration) Act 1992 (Cth). **dirty material** means bituminous products, black lead, briquettes, charcoal, coal, coke, plumbago, graphite, manganese, lime, tallite, limil, plaster, plaster of paris, red oxide, zinc oxide, Quickardo cement, superphosphate, rock phosphate, dicalcic phosphate, yellow ochre, red ochre, empty flour-bags, supercel in jute bags, stone dust, garbage, street sweepings, tar, sludge, used oil, liquid petroleum gas, shives of flax when carted as a full load. **distribution facility** means a facility from which goods are distributed by road (and at which such goods may be stored for the purposes of subsequent distribution) which is operated by an employer as part of or in connection with a road transport business of that employer. **distribution facility** employee means an employee defined in Schedule A—Classification Definitions for Distribution Facility Employees of this award. **double-articulated vehicle** means a vehicle with 4 or more axles, comprising a power unit (called tractor truck, prime mover, etc.) and semi-trailer (called dolly trailer) which is superimposed on the power unit, which in turn has a load-carrying semi-trailer superimposed upon the dolly trailer, both semi-trailers and the power unit being coupled together by means of king-pins and revolving on turn-tables and are articulated whether automatically detachable or permanently coupled. **driver-salesperson** means an employee who is entrusted by the employer with goods or articles for sale and is required to exercise sales skills in competition with other salespeople in respect of such goods or articles in the normal course of duty, and who is not in receipt of a commission upon goods or articles sold. The term ‘driver salesperson’ does not include a driver who is entrusted with goods or articles for delivery to customers in such quantities as such customers require. **employee** means national system employee within the meaning of the Act.		

Road Transport and Distribution Award 2020 Term	Feedback on RTD Award Term	Proposed On Demand Delivery Services Award Term
employee handling money means an employee who collects or pays out money, excluding non-negotiable cheques, and who is responsible for the safe custody of the amounts so collected to be paid out. **employer** means national system employer within the meaning of the Act. **exempt public sector superannuation scheme** has the meaning given by the Superannuation Industry (Supervision) Act 1993 (Cth). **fatigue management rules/regulations** means Commonwealth, State or Territory laws controlling driving and working hours of heavy vehicle operators or fatigue management. **furniture** means any article of household and/or office furniture or whitegoods which are completely manufactured and ready for use, and includes furniture being transported from a manufacturer to a retail store unless such furniture is crated, in cartons or otherwise covered. **greaser and cleaner** includes a person required to refuel motor vehicles at a depot, yard or garage. **gross combination mass or GCM** means the maximum permissible mass (whether described as the gross train mass or otherwise) for the motor vehicle and the trailer(s) or semi-trailer(s) attached to it, together with the load carried on each, as stated in any certificate of registration or other certificate that is issued in respect of the motor vehicle by the relevant authority or by the corresponding authority of another State or Territory or that is required by law to be painted or displayed on the motor vehicle. **gross vehicle mass or GVM** means the maximum permissible mass (whether described as the gross train vehicle mass or otherwise) for the motor vehicle and its load (but excluding any trailer and its load) as stated in a certificate of registration or other certificate that is issued in respect of the motor vehicle by the relevant authority or by the corresponding authority of another State or Territory or that is required by the law to be painted or displayed on the motor vehicle. **interstate operation** means an operation involving a vehicle moving livestock or materials whether in a raw or manufactured state from a principal point of commencement in one State or Territory to a principal point of destination in another State or Territory. Provided that to be an interstate operation the distance involved must exceed 200 kilometres, for any single journey. An area within a radius of 32 kilometres from the GPO of a capital city will be deemed to be the capital city. **livestock** means horses, cattle, sheep, pigs, goats or poultry. **loader** means an employee engaged in loading or unloading any goods, wares, merchandise or materials onto or from any vehicle and in work incidental to such loading or unloading; and a person engaged as a motor driver's assistant but who performs work on the waterfront of the nature usually performed by a loader will be deemed to be a loader whilst performing such work. **long distance operation** means any interstate operation, or any return journey where the distance travelled exceeds 500 kilometres and the operation involves a vehicle moving livestock or materials whether in a raw or manufactured state from a principal point of commencement to a		

Road Transport and Distribution Award 2020 Term	Feedback on RTD Award Term	Proposed On Demand Delivery Services Award Term
principal point of destination. An area within a radius of 32 kilometres from the GPO of a capital city will be deemed to be the capital city. **low loader** means a vehicle consisting of a tandem drive prime mover and a gooseneck semi-trailer (not being a drop deck semi-trailer) with a loading area of the semi-trailer a maximum of one metre off the ground. The prime mover and gooseneck semi-trailer being designed and manufactured and plated to operate at the required mass limits. **motor driver's assistant** means any employee who accompanies the driver to assist in loading or unloading or delivering. **MySuper product** has the meaning given by the Superannuation Industry (Supervision) Act 1993 (Cth). **NES** means the National Employment Standards as contained in sections 59 to 131 of the Fair Work Act 2009 (Cth). **Non-continuous afternoon or night** means work on any afternoon or night shift which does not continue for at least 5 consecutive afternoons or nights. **offensive material** means bone-dust, bones, blood, manure, dead animals, offal, fat including that which is carted from hotels and restaurants or other places in kerosene tins, tallow in second-hand casks or in second-hand iron or steel drums, green skins, raw hides and sheep-skins when fly-blown or maggoty, sausage skin casings (except when packed in non-leaky containers for consumption), salt-cake, spent oxide, hair and fleshings, soda ash, muriate of potash, sulphur ex-wharf, sheep's trotters (known as pie), sulphuric acid of a strength of 96% or 98% in cases in which the carter is required to handle individual jars, horse, cow or pig manure, meat-meal, liver meal, blood meal and TNT. **on-hire** means the on-hire of an employee by their employer to a client, where such employee works under the general guidance and instruction of the client or a representative of the client. **ordinary hourly rate** means the hourly rate for the employee's classification specified in clause 17—Minimum rates, plus any allowances specified as being included in the employee's ordinary hourly rate or payable for all purposes. **quarried materials** means any material and/or by-product of any material, excluding coal and coal-related products, which has been removed from a quarry, sand pit, or a mine, provided that such material is for use in manufacturing or construction purposes. Quarried materials also means slag and slag by-products, excluding coal slag products. **radio operator** means an employee whose major duties are staffing of a mobile two way radio system, data entry dispatch system, voice dispatch system and/or any other form of dispatch system and include all instruction relating to the movement of goods and/or freight. **road-train vehicle** means a rigid vehicle to which are coupled 2 or more trailers, or an articulated vehicle to which is coupled one or more trailer(s). **road transport and distribution industry** has the meaning given in clause 4.2. **standard rate** means the minimum weekly rate for a Transport worker grade 3 in clause 17—Minimum rates.		

Road Transport and Distribution Award 2020 Term	Feedback on RTD Award Term	Proposed On Demand Delivery Services Award Term
transport rigger means a person engaged in the movement of plant or equipment as part of the transport task who holds a certificate of competency from an appropriate authority. **truck loading crane** means a crane which is mounted on a truck or trailer and which is used for the purpose of loading or unloading loads from the truck or trailer on which the crane is mounted. **yardperson** means an employee not otherwise specified, employed in, or in connection with a depot, yard or garage, but does not include any person exclusively employed as a skilled tradesperson.		
3. The National Employment Standards and this award 3.1 The National Employment Standards (NES) and this award contain the minimum conditions of employment for employees covered by this award. 3.2 Where this award refers to a condition of employment provided for in the NES, the NES definition applies. 3.3 The employer must ensure that copies of this award and the NES are available to all employees to whom they apply, either on a notice board which is conveniently located at or near the workplace or through accessible electronic means.	As a standard term, Menulog takes no issue with this clause in the RTD Award.	**3. The National Employment Standards and this award** **3.1** The National Employment Standards (NES) and this award contain the minimum conditions of employment for employees covered by this award. **3.2** Where this award refers to a condition of employment provided for in the NES, the NES definition applies. **3.3** The employer must ensure that copies of this award and of the NES are available to all employees to whom they apply, either on a notice board conveniently located at or near the workplace or through accessible electronic means.
4. Coverage 4.1 This industry award covers employers throughout Australia in the road transport and distribution industry and their employees in the classifications listed in Schedule A—Classification Definitions for Distribution Facility Employees and Schedule B—Classification Structure to the exclusion of any other modern award. **4.2 The road transport and distribution industry** means: (a) the transport by road of goods, wares, merchandise, material or anything whatsoever whether in its raw state or natural state, wholly or partly manufactured state or of a solid or liquid or gaseous nature or otherwise, and/or livestock, including where the work performed is ancillary to the principal business, undertaking or industry of the employer; (b) the receiving, handling or storing of goods, wares, merchandise, material or anything whatsoever whether in its raw state or natural state, wholly or partly manufactured state or of a solid or liquid or gaseous nature or otherwise in a distribution facility; (c) the storage and distribution of goods, wares, merchandise, materials or anything whatsoever whether in its raw state or natural state, wholly or partly manufactured state or of a solid or liquid or gaseous nature or otherwise, and/or livestock where the storage	The definition of the road transport and distribution industry goes far beyond what is relevant to the on demand delivery services industry, in conflict with the modern awards objective to provide for simple and easy to understand modern awards. Examples of coverages that will be entirely irrelevant to the on demand delivery services industry and which is prone only to cause confusion include: • The cartage and distributions in tankers of petrol or bulk petroleum products; • The transport of quarried materials, crude oil or gas, and meat from abattoirs and slaughterhouses. The decision of the road transport and distribution industry in the RTD Award does not address the inherent involvement of an online or app-based platform which is a distinguishing feature of this app-based work.[2] Menulog proposes a coverage definition which provides clarity to readers as to the coverage of the proposed On Demand Delivery Services Award, which makes clear that the employer is not in the primary business of providing general transport and delivery services, making clear the intention not to encroach upon the road transport and distribution industry as it has traditionally been conceived. As to a variation to the RTD Award that Menulog considers *would* be necessary upon the making of a new On Demand Delivery Services Industry Award is the inclusion of this award in the awards carved out of coverage at clause 4.3 of the RTD Award.	**4. Coverage** **4.1** This industry award covers employers throughout Australia in the on demand delivery services industry and their employees in the classifications listed in clause 0 to the exclusion of any other modern award. **4.2** The **on demand delivery services industry** means 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, provided that: **(a)** the collection and delivery is not of the employer's own food, beverages, goods or other items offered by it for sale; and **(b)** the employer is not 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. **4.3** This award covers any employer which supplies labour on an on-hire basis in the on demand delivery services industry in respect of on-hire employees in classifications covered by this award, and those on-hire employees, while engaged in the performance of work for a business in that industry. Clause 0 operates subject to the exclusions from coverage in this award. **4.4** This award does not cover:

[2] Witness statement of Morten Belling, 18 October 2021 at [24]

Road Transport and Distribution Award 2020 Term	Feedback on RTD Award Term	Proposed On Demand Delivery Services Award Term
and distribution activities are carried out in connection with air freight forwarding and customs clearance; (d) the wholesale transport and delivery by road of meat from abattoirs, slaughterhouses, and wholesale meat depots; (e) mobile food vending; (f) the cartage and/or distribution, in tankers, of petrol or bulk petroleum products (in the raw or manufactured state) from refineries, terminals or depots of oil companies and/or distributors; the cartage and/or distribution on road vehicles of packaged petroleum products (in the raw or manufactured state) from refineries, terminals or depots of oil companies and/or distributors and the transport and/or distribution of petrol and petroleum products (in the raw or manufactured state) for distributors of oil companies or for contractors or sub contractors to such distributors; (g) the road transport of crude oil or gas condensate; (h) the transport on public roads of milk and cream in bulk, and the transport, vending and distribution of milk, cream, butter, cheese and their derivatives (including fruit juices, yoghurt and custard); (i) the cartage by road of quarried materials; and/or (j) the distribution and/or relocation by road of new or used vehicles as described in the classifications within this award where the vehicle itself is required to be driven from one location to another for the purposes of delivery and/or relocation of the vehicle.		**(a)** employees excluded from award coverage by the Act; **(b)** employees who are covered by a modern enterprise award, or an enterprise instrument (within the meaning of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)), or employers in relation to those employees; or **(c)** employees who are covered by a State reference public sector modern award, or a State reference public sector transitional award (within the meaning of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)), or employers in relation to those employees. **4.5** Where an employer is covered by more than one award, an employee of that employer is covered by the award classification which is most appropriate to the work performed by the employee and to the environment in which the employee normally performs the work. NOTE: Where there is no classification for a particular employee in this award it is possible that the employer and that employee are covered by an award with occupational coverage.
4.3 This award does not cover employers and employees covered by the following awards: • Mining Industry Award 2020; • Road Transport (Long Distance Operations) Award 2020 whilst undertaking long distance operations; • Transport (Cash in Transit) Award 2020; and • Waste Management Award 2020. 4.4 This award covers any employer which supplies labour on an on-hire basis in the road transport and distribution industry in respect of on-hire employees in classifications covered by this award, and those on-hire employees, while engaged in the performance of work for a business in that industry. Clause 4.4 operates subject to the exclusions from coverage in this award. 4.5 This award covers employers which provide group training services for trainees engaged in the road transport and distribution industry and/or parts of that industry and those trainees engaged by a group training service hosted by a company to perform work at a location where the activities described in clauses 4.1 and 4.2 are being performed. Clause 4.5 operates subject to the exclusions from coverage in this award.		

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4.6 This award does not cover: (a) employees excluded from award coverage by the Act; (b) employees who are covered by a modern enterprise award, or an enterprise instrument (within the meaning of the Fair Work (Transitional Provisions and Consequential Amendments) Act 2009 (Cth)), or employers in relation to those employees; or (c) employees who are covered by a State reference public sector modern award, or a State reference public sector transitional award (within the meaning of the Fair Work (Transitional Provisions and Consequential Amendments) Act 2009 (Cth)), or employers in relation to those employees.		
4.7 Where an employer is covered by more than one award, an employee of that employer is covered by the award classification which is most appropriate to the work performed by the employee and to the environment in which the employee normally performs the work.		
NOTE: Where there is no classification for a particular employee in this award it is possible that the employer and that employee are covered by an award with occupational coverage.		
5. Individual flexibility arrangements 5.1 Despite anything else in this award, an employer and an individual employee may agree to vary the application of the terms of this award relating to any of the following in order to meet the genuine needs of both the employee and the employer: (a) arrangements for when work is performed; or (b) overtime rates; or (c) penalty rates; or (d) allowances; or (e) annual leave loading.	As a standard term, Menulog takes no issue with this clause in the RTD Award.	**5. Individual flexibility arrangements** **5.1** Despite anything else in this award, an employer and an individual employee may agree to vary the application of the terms of this award relating to any of the following in order to meet the genuine needs of both the employee and the employer: **(a)** arrangements for when work is performed; or **(b)** overtime rates; or **(c)** penalty rates; or **(d)** allowances; or **(e)** annual leave loading.
5.2 An agreement must be one that is genuinely made by the employer and the individual employee without coercion or duress.		**5.2** An agreement must be one that is genuinely made by the employer and the individual employee without coercion or duress.
5.3 An agreement may only be made after the individual employee has commenced employment with the employer.		**5.3** An agreement may only be made after the individual employee has commenced employment with the employer.
5.4 An employer who wishes to initiate the making of an agreement must: (a) give the employee a written proposal; and (b) if the employer is aware that the employee has, or reasonably should be aware that the employee may have, limited understanding of written English, take reasonable steps (including providing a translation in an appropriate language) to ensure that the employee understands the proposal.		**5.4** An employer who wishes to initiate the making of an agreement must: **(a)** give the employee a written proposal; and **(b)** if the employer is aware that the employee has, or reasonably should be aware that the employee may have, limited understanding of written English, take reasonable steps (including providing a translation in an appropriate language) to ensure that the employee understands the proposal.

Road Transport and Distribution Award 2020 Term	Feedback on RTD Award Term	Proposed On Demand Delivery Services Award Term
5.5 An agreement must result in the employee being better off overall at the time the agreement is made than if the agreement had not been made.		**5.5** An agreement must result in the employee being better off overall at the time the agreement is made than if the agreement had not been made.
5.6 An agreement must do all of the following: (a) state the names of the employer and the employee; and (b) identify the award term, or award terms, the application of which is to be varied; and (c) set out how the application of the award term, or each award term, is varied; and (d) set out how the agreement results in the employee being better off overall at the time the agreement is made than if the agreement had not been made; and (e) state the date the agreement is to start.		**5.6** An agreement must do all of the following: **(a)** state the names of the employer and the employee; and **(b)** identify the award term, or award terms, the application n of which is to be varied; and **(c)** set out how the application of the award term, or each award term, is varied; and **(d)** set out how the agreement results in the employee being better off overall at the time the agreement is made than if the agreement had not been made; and **(e)** state the date the agreement is to start.
5.7 An agreement must be: (a) in writing; and (b) signed by the employer and the employee and, if the employee is under 18 years of age, by the employee's parent or guardian.		**5.7** An agreement must be: **(a)** in writing; and **(b)** signed by the employer and the employee and, if the employee is under 18 years of age, by the employee's parent or guardian.
5.8 Except as provided in clause 5.7(b), an agreement must not require the approval or consent of a person other than the employer and the employee.		**5.8** Except as provided in clause 0, an agreement must not require the approval or consent of a person other than the employer and the employee.
5.9 The employer must keep the agreement as a time and wages record and give a copy to the employee.		**5.9** The employer must keep the agreement as a time and wages record and give a copy to the employee.
5.10 The employer and the employee must genuinely agree, without duress or coercion to any variation of an award provided for by an agreement.		**5.10** The employer and the employee must genuinely agree, without duress or coercion to any variation of an award provided for by an agreement.
5.11 An agreement may be terminated: (a) at any time, by written agreement between the employer and the employee; or (b) by the employer or employee giving 13 weeks' written notice to the other party (reduced to 4 weeks if the agreement was entered into before the first full pay period starting on or after 4 December 2013).		**5.11** An agreement may be terminated: **(a)** at any time, by written agreement between the employer and the employee; or **(b)** by the employer or employee giving 13 weeks' written notice to the other party (reduced to 4 weeks if the agreement was entered into before the first full pay period starting on or after 4 December 2013).
NOTE : If an employer and employee agree to an arrangement that purports to be an individual flexibility arrangement under this award term and the arrangement does not meet a requirement set out in section 144 then the employee or the employer may terminate the arrangement by giving written notice of not more than 28 days (see section 145 of the Act).		NOTE: If an employer and employee agree to an arrangement that purports to be an individual flexibility arrangement under this award term and the arrangement does not meet a requirement set out in section 144 then the employee or the employer may terminate the arrangement by giving written notice of not more than 28 days (see section 145 of the Act).
5.12 An agreement terminated as mentioned in clause 5.11(b) ceases to have effect at the end of the period of notice required under that clause.		**5.12** An agreement terminated as mentioned in clause 0 ceases to have effect at the end of the period of notice required under that clause.
5.13 The right to make an agreement under clause 5 is additional to, and does not affect, any other term of this award that provides for an agreement between an employer and an individual employee.		**5.13** The right to make an agreement under clause 0 is additional to, and does not affect, any other term of this award that provides for an agreement between an employer and an individual employee.

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6. Requests for flexible working arrangements 6.1 Employee may request change in working arrangements Clause 6 applies where an employee has made a request for a change in working arrangements under section 65 of the Act. NOTE 1: Section 65 of the Act provides for certain employees to request a change in their working arrangements because of their circumstances, as set out in section 65(1A). Clause 6 supplements or deals with matters incidental to the NES provisions. NOTE 2: An employer may only refuse a section 65 request for a change in working arrangements on 'reasonable business grounds' (see section 65(5) and (5A)). NOTE 3: Clause 6 is an addition to section 65. **6.2 Responding to the request** Before responding to a request made under section 65, the employer must discuss the request with the employee and genuinely try to reach agreement on a change in working arrangements that will reasonably accommodate the employee's circumstances having regard to: (a) the needs of the employee arising from their circumstances; (b) the consequences for the employee if changes in working arrangements are not made; and (c) any reasonable business grounds for refusing the request. NOTE 1: The employer must give the employee a written response to an employee's section 65 request within 21 days, stating whether the employer grants or refuses the request (section 65(4)). NOTE 2: If the employer refuses the request, then the written response must include details of the reasons for the refusal (section 65(6)). **6.3 What the written response must include if the employer refuses the request** (a) Clause 6.3 applies if the employer refuses the request and has not reached an agreement with the employee under clause 6.2. (b) The written response under section 65(4) must include details of the reasons for the refusal, including the business ground or grounds for the refusal and how the ground or grounds apply. (c) If the employer and employee could not agree on a change in working arrangements under clause 6.2, then the written response under section 65(4) must: (i) state whether or not there are any changes in working arrangements that the employer can offer the employee so as to better accommodate the employee's circumstances; and	As a standard term, Menulog takes no issue with this clause in the RTD Award.	**6. Requests for flexible working arrangements** **6.1 Employee may request change in working arrangements** Clause 0 applies where an employee has made a request for a change in working arrangements under section 65 of the Act. NOTE 1: Section 65 of the Act provides for certain employees to request a change in their working arrangements because of their circumstances, as set out in section 65(1A). Clause 0 supplements or deals with matters incidental to the NES provisions. NOTE 2: An employer may only refuse a section 65 request for a change in working arrangements on 'reasonable business grounds' (see section 65(5) and (5A)). NOTE 3: Clause 0 is an addition to section 65. **6.2 Responding to the request** Before responding to a request made under section 65, the employer must discuss the request with the employee and genuinely try to reach agreement on a change in working arrangements that will reasonably accommodate the employee's circumstances having regard to: **(a)** the needs of the employee arising from their circumstances; **(b)** the consequences for the employee if changes in working arrangements are not made; and **(c)** any reasonable business grounds for refusing the request. NOTE 1: The employer must give the employee a written response to an employee's section 65 request within 21 days, stating whether the employer grants or refuses the request (section 65(4)). NOTE 2: If the employer refuses the request, then the written response must include details of the reasons for the refusal (section 65(6)). **6.3 What the written response must include if the employer refuses the request** **(a)** Clause 0 applies if the employer refuses the request and has not reached an agreement with the employee under clause 0. **(b)** The written response under section 65(4) must include details of the reasons for the refusal, including the business ground or grounds for the refusal and how the ground or grounds apply. **(c)** If the employer and employee could not agree on a change in working arrangements under clause 0, then the written response under section 65(4) must: **(i)** state whether or not there are any changes in working arrangements that the employer can offer the employee so as to better accommodate the employee's circumstances; and

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(ii) if the employer can offer the employee such changes in working arrangements, set out those changes in working arrangements. **6.4 What the written response must include if a different change in working arrangements is agreed** If the employer and the employee reached an agreement under clause 6.2 on a change in working arrangements that differs from that initially requested by the employee, then the employer must provide the employee with a written response to their request setting out the agreed change(s) in working arrangements. **6.5 Dispute resolution** Disputes about whether the employer has discussed the request with the employee and responded to the request in the way required by clause 6, can be dealt with under clause 32—Dispute resolution.		**(ii)** if the employer can offer the employee such changes in working arrangements, set out those changes in working arrangements. **6.4 What the written response must include if a different change in working arrangements is agreed** If the employer and the employee reached an agreement under clause 0 on a change in working arrangements that differs from that initially requested by the employee, then the employer must provide the employee with a written response to their request setting out the agreed change(s) in working arrangements. **6.5 Dispute resolution** Disputes about whether the employer has discussed the request with the employee and responded to the request in the way required by clause 0, can be dealt with under clause 0 - 29. Dispute resolution .
7. Facilitative provisions **7.1 Agreement to vary award provisions** (a) This award contains facilitative provisions that allow agreement between an employer and employees on how specific award provisions are to apply at the workplace or enterprise level. (b) The specific award provisions establish both the standard award conditions and the framework within which agreement can be reached as to how the particular provisions should be applied in practice. Facilitative provisions are not to be used as a device to avoid award obligations nor should they result in unfairness to an employee or employees covered by this award.	As a standard term, Menulog takes no issue with this clause in the RTD Award.	**7. Facilitative provisions** **7.1 Agreement to vary award provisions** **(a)** This award contains facilitative provisions that allow agreement between an employer and employees on how specific award provisions are to apply at the workplace or enterprise level. **(b)** The specific award provisions establish both the standard award conditions and the framework within which agreement can be reached as to how the particular provisions should be applied in practice. Facilitative provisions are not to be used as a device to avoid award obligations nor should they result in unfairness to an employee or employees covered by this award.
7.2 Facilitation by individual agreement (a) The following facilitative provisions can be utilised upon agreement between an employer and an employee: (i) clause 13.4—Hours of work—ordinary hours 13.1(a) and 13.1(b), days of the week; (ii) clause 13.6(b)—Hours of work—spread of hours; (iii) clause 13.7—Hours of work—normal rostered day off; (iv) clause 14.6(a)—Hours of work—rostered days off; (v) clause 21.5—Time off instead of payment for overtime; (v) clause 22.7(a)—Shiftwork—transfer to or from shiftwork;	The nature of app based work does not readily lend itself to individual arrangements for the rates paid for particular hours of work. Rates are set at a system level and are not able to be readily configured for individual arrangements other than on an exceptions basis (such as the payment of incentives where there is an insufficient supply of couriers at a particular time). There is accordingly no reasonably foreseeable circumstances in which facilitation around what is regarded as ordinary time hours of work would reasonably be utilised. As addressed further below in respect to the arrangement of hours of work, a broad span of ordinary hours taking into account that the peak times for work occur across traditionally unsociable hours (being when consumers utilise on demand services the most). Menulog accordingly proposes a facilitative clause which is focused on *how* a courier may be paid rather than *what* a courier may be paid.	**7.2 Facilitation by individual agreement** **(a)** The following clauses have facilitative provisions: **Table 1—Facilitative provisions** **Clause** / **Provision** / **Agreement between an employer and:** 0 / Payment of wages / an individual employee 0 / Time off instead of payment for overtime / an individual employee 0 / Annual leave in advance / an individual employee 0 / Cashing out of annual leave / an individual employee

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(vi) clause 24.5—Agreement to take annual leave in advance; (vii) clause 24.10—Agreement to cash out annual leave; and (viii) clause 29.3—Substitution of public holidays by agreement. (b) The agreement reached must be recorded in writing and kept as a time and wages record.		**(b)** The agreement reached must be recorded in writing and kept as a time and wages record.
7.3 Facilitation by majority agreement (a) The following facilitative provisions can be utilised upon agreement between the employer and the majority of employees in the workplace or part of the workplace. Once such an agreement has been reached the particular form of flexibility agreed upon may be utilised by agreement between the employer and an individual employee without the need for the majority to be consulted: (i) clause 13.4—Hours of work—ordinary hours, days of week; (ii) clause 13.6(b)—Hours of work—maximum number of hours, spread of hours; (iii) clause 14.5—Hours of work—rural distribution operations; and (iv) clause 22.2(b)—Shiftwork—shiftwork hours and rosters. (b) The agreement reached must be recorded in writing and kept as a time and wages record.	Extending upon the above comments relating to individual facilitative provisions, Menulog does not foresee circumstances in the on demand delivery services industry in which an employer may seek to utilise facilitation by majority agreement.	*No equivalent term proposed*
Part 2—Types of Employment and Classifications **8. Types of employment** 8.1 Employees will be employed in one of the following categories: (a) full-time; (b) part-time; or (c) casual. 8.2 At the time of engagement, an employer will inform each employee of the terms of their engagement and, in particular, whether they are to be full-time, part-time or casual. This decision will then be recorded in a time and wages record.	As a standard term, Menulog takes no issue with this clause in the RTD Award. Menulog notes that, taking into account that Regulation 3.32 of the *Fair Work Regulations 2009* requires an employer to record whether an employee is full time, part time or casual as a record, sub-clause 8.2 sets out an unnecessary duplication of this obligation. In this regard, Menulog notes further that other modern awards such as the *Miscellaneous Award 2020* do not contain a term expressly providing for the written confirmation of an employee's type of employment.	**Part 1—Types of Employment and Classifications** **8. Types of employment** **8.1** An employee covered by this award must be one of the following: **(a)** a full-time employee; or **(b)** a part-time employee; or **(c)** a casual employee.
9. Full-time employees A full-time employee is engaged to work an average of 38 ordinary hours per week.	As a standard term, Menulog takes no issue with this clause in the RTD Award.	**9. Full-time employees** The ordinary hours of full-time employees are an average of 38 per week.

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10.	**Part-time employees**	The provisions for the arrangement of part time hours of work under the RTD Award are premised upon an assumption that part time hours of work will remain static on an ongoing basis, and that the prospect of additional hours of work being performed being on an exceptional basis, rather than on a regular foreseeable basis. Taking into account that employees in the on demand delivery services industry work an average of 14.5 hours per week[3], provisions for part time work need to reflect that this will be the dominant type of work, supplemented by casual employees.	**10.** **Part-time employees** **10.1** An employee who is engaged to work for fewer than 38 ordinary hours per week and whose hours of work are reasonably predictable, is a part-time employee. **1.1** **10.2** An employer may employ part-time employees in any classification defined in clause 0—12. Classifications . **10.3** This award applies to a part-time employee in the same way that it applies to a full-time employee except as otherwise expressly provided by this award. **10.4** A part-time employee is entitled to payments in respect of annual leave and personal/carer's leave on a proportionate basis. **10.5** **Regular pattern of work** **(a)** At the time of engaging a part-time employee, the employer must agree in writing with the employee on a regular pattern of work that must include all of the following: **(i)** the number of hours to be worked on each particular day of the week (the guaranteed hours); and **(ii)** the times at which the employee will start and finish work each particular day; and **(iii)** when meal breaks may be taken and their duration. NOTE: An agreement under clause **Error! Reference source not found.** could be recorded in writing including through an exchange of emails, text messages or by other electronic means. **(b)** For the purposes of a part-time employee's guaranteed hours, the minimum daily engagement for a part-time employee is 30 minutes. **(c)** An employee's regular pattern of work may be changed by the employer giving the employee 7 days written notice of the change, or at any time by agreement between the employer and the employee in accordance with clause 0.
10.1	A part-time employee is engaged to work less than 38 ordinary hours per week.		
10.2	Before commencing part-time employment, the employee and employer must agree upon: (a) the hours to be worked by the employee; (b) the days upon which they will be worked; (c) the starting and finishing times for the work; and (d) the classification applying to the work to be performed.		
10.3	The terms of the agreement in clause 10.2 may be varied by consent.		
10.4	The terms of the agreement or any variation to it must be in writing and retained by the employer. The employer must provide a copy of the agreement, and any variation to it, to the employee.		
10.5	A part-time employee must be paid per hour the minimum hourly rate prescribed by clause 17—Minimum rates for the classification in which the employee is engaged.		
10.6	Except as otherwise provided in this award, a part-time employee is entitled to be paid for the hours agreed upon in accordance with clauses 10.2(a) to 10.2(c).		
10.7	A part-time employee must receive a minimum payment of 4 hours for each day they are engaged.	A minimum engagement period for an employee is not suitable in the on demand delivery services industry as there needs to be flexibility regarding the length of shift(s). The type of employees who work in the on demand delivery services industry seek flexibility in relation to when they can start and when they can finish a shift, often choosing to work short shifts, as opposed to longer regular hours.[4] This is driven equally by the preferences of workers as by sporadic consumer demand.	A shorter and more appropriate minimum engagement is provided at the proposed clause 10.5(c) set out above.

[3] Witness statement of Morten Belling, 18 October 2021, at [102(h)]

[4] Witness statement of Morten Belling, [111] – [113].

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10.8	All time worked in excess of the agreed hours referred to in clauses 10.2(a) to 10.2(c) will be paid at the appropriate overtime rate.	Taking into account that employees in the on demand delivery services industry has a higher proportion of students and other workers seeking flexible work than the traditional road transport industry[5], there is a need to provide part time employees with appropriate safety protections to preserve their agreed guaranteed hours of work, but also provide scope to flex and change their hours of work when convenient and desirable to them. The scope to flex up hours is not available in any capacity under the RTD Award, with the RTD Award requiring the payment of overtime loadings for additional hours of work. The requirement to pay overtime loadings is prohibitive to employers offering additional hours of work to part time employees in the on demand delivery services industry, with the effect that these employees miss out on opportunities for additional earnings that would otherwise be desirable to them. The proposed On Demand Delivery Services Award accordingly provides a framework for the performance of additional hours of work with appropriate safety net protections built in.	**10.6 Changes to regular pattern of work by agreement** The employer and the employee may agree to vary the regular pattern of work agreed under clause **Error! Reference source not found.** on a temporary or ongoing basis, with effect from a future date or time. Any such agreement must be recorded in writing: **(a)** if the agreement is to vary the employee's regular pattern of work for a particular rostered shift – before the end of the affected shift; and **(b)** otherwise – before the variation takes effect. NOTE 1: An agreement under clause 0 could be recorded in writing including through an exchange of emails, text messages or by other electronic means. NOTE 2: An agreement under clause 0 cannot result in the employee working 38 or more ordinary hours per week. EXAMPLE: Sonya's guaranteed hours include 5 hours work on Mondays. During a busy Monday shift, Sonya's employer sends Sonya a text message asking her to vary her guaranteed hours that day to work 2 extra hours at ordinary rates (including any penalty rates). Sonya is happy to agree and replies by text message confirming that she agrees. The variation is agreed before Sonya works the extra 2 hours. Sonya's regular pattern of work has been temporarily varied under clause 10.6. She is not entitled to overtime rates for the additional 2 hours. EXAMPLE: Simon's guaranteed hours include 4 hours on Fridays. Simon is allocated a delivery job which is unable to be completed before the end of his rostered shift end time. Simon is happy to complete the order and confirms by message or through his employer's app that that he has collected the order from the restaurant or retailer. The variation is agreed, and Simon's regular pattern of work has been temporarily varied under clause 0 for the extra time it takes him to complete delivery of the order. He is not entitled to overtime rates for the additional time. **10.7** The employer must keep a copy of any agreement under clause **Error! Reference source not found.**, and any variation of it under clause 0, and, if requested by the employee, give another copy to the employee. **10.8** For any time worked in excess of their guaranteed hours agreed under clause **Error! Reference source not found.** or as varied under clause 0, the part-time employee must be paid at the overtime rate specified at clause 0—Overtime. See also clause 13.4 below
10.9	The terms of this award apply pro rata to part-time employees on the basis that ordinary weekly hours for full-time employees are 38.	As a standard term, Menulog takes no issue with this clause in the RTD Award.	See clause 10.4 set out above

[5] Witness statement of Morten Belling, 18 October 2021, at [102]

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11. Casual employees 11.1 An employer must wherever practicable, notify a casual employee if their services are not required the next working day. **11.2 Casual loading** (a) For each ordinary hour worked, a casual employee must be paid: (i) the ordinary hourly rate; and (ii) a loading of 25% of the ordinary hourly rate, for their classification.	The on demand delivery services industry must be able to respond to changes in customer demand on a minute by minute basis.[6] It will accordingly never be practicable to notify a casual employee if their services are not required on a day by day basis. As a standard term, Menulog takes no issue with the casual loading prescribed in the RTD Award.	**11. Casual employees** **11.1 Casual loading** **(a)** For each ordinary hour worked, a casual employee must be paid: **(i)** the minimum hourly rate in clause 0 for the classification in which they are employed; and **(ii)** a loading of **25%** of the minimum hourly rate. **(b)** The casual loading will not be paid for overtime hours worked.
11.3 A minimum payment of 4 hours per engagement is to be paid.	A minimum engagement for an employee is not suitable in the on demand delivery services industry as there needs to be flexibility regarding the length of shift. The type of employees who work in the on demand delivery services industry seek flexibility as to when they can start and when they can finish a shift, often choosing to work short shifts, as opposed to longer regular hours.[7]	*No equivalent term proposed*
11.4 A casual employee must be paid for all overtime worked at the overtime rates specified in clause 21.1. For each hour of overtime worked a casual employee must also be paid 10% of the minimum hourly rate specified for their classification in clause 17—Minimum rates. A casual employee will not receive the 25% casual loading referred to in clause 11.2 whilst working overtime. Example: Assuming the rate is $20 per hour, a casual employee would be paid $25 per hour for ordinary hours of work and would be paid according to the following methodology when working overtime: • Time and a half—a payment of $30 plus 10% of $20, as the hourly rate, giving a total payment of $32. • Double time—a payment of $40 plus 10% of $20, as the hourly rate, giving a total payment of $42.	The additional 10% payment in addition to the overtime loading is cost prohibitive in the on demand delivery services industry, and will have the effect that casual employees will be denied the opportunity to perform overtime hours of work.	See clause 19 – overtime below, which should be read together with clause 11.1(b) above.
11.5 Offers and requests for casual conversion Offers and requests for conversion from casual employment to full-time or part-time employment are provided for in the NES. NOTE: Disputes about offers and requests for casual conversion under the NES are to be dealt with under clause 32—Dispute resolution.	As a standard term, Menulog takes no issue with this clause in the RTD Award.	**11.2 Offers and requests for casual conversion** Offers and requests for conversion from casual employment to full-time or part-time employment are provided for in the NES. NOTE: Disputes about offers and requests for casual conversion under the NES are to be dealt with under clause 0—Dispute resolution.
12. Classifications The classifications under this award are set out in Schedule A—Classification Definitions for Distribution Facility Employees and Schedule B—Classification Structure.	Employees in the on demand delivery services industry do not use trucks, vans and other large vehicles as they are inefficient having regard to the typically small size of the items being delivered as well as the difficulty of finding convenient parking at the locations from which	**12. Classifications** A description of the classifications under this award is set out below. **12.1 Level 1 Courier**

[6] Witness statement of Morten Belling, 18 October 2021, at [80] – [91]

[7] Witness statement of Morten Belling, 18 October 2021, at [111] – [113].

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	collections and deliveries are made, typically being busy shopping strips where restaurants are located. The classifications contained in the Road Transport and Distribution Award are therefore irrelevant to the on demand delivery services industry. For example, level 2 onwards provides for the operation of trucks, and overall, are not descriptive of the duties an employee would undertake in the on demand delivery services industry.[8]	An employee at this level is an employee employed as a courier, driver or rider (howsoever described). **12.2 Level 2 Courier** An employee at this level an employee employed as a courier, driver or rider (howsoever described) who has delegated responsibility for the supervision of at least two employees.
Part 3—Hours of Work **13. Ordinary hours of work and roster cycles—employees other than oil distribution workers** 13.1 The ordinary hours of work for a full-time employee are an average of 38 per week to be worked on one of the following bases: (a) 38 hours within a work cycle not exceeding 7 consecutive days; (b) 76 hours within a work cycle not exceeding 14 consecutive days; (c) 114 hours within a work cycle not exceeding 21 consecutive days; or (d) 152 hours within a work cycle not exceeding 28 consecutive days. 13.2 The ordinary hours of work for a part-time employee shall be determined in accordance with clauses 10.1 and 10.2. 13.3 The ordinary hours of work for a casual employee will be up to 38 hours per week.	As a standard term, Menulog takes no issue with this clause in the RTD Award, and it has proposed a term which takes different drafting but provides for substantially the same effect.	**Part 2—Hours of Work** **13. Ordinary hours of work and rostering** **13.1 Ordinary hours of work and roster cycles—full-time employees** **(a)** Ordinary hours may be worked on any day of the week. **(b)** Full-time employees work an average of 38 ordinary hours per week in one of the following ways: **(i)** working 5 days of 7.6 hours each per week; or **(ii)** working 152 hours per 4 week cycle in workplaces at which employees work on a rostered day off basis in accordance with clause 0; or **(iii)** working 19 days of 8 hours each per month; or **(iv)** working up to 10 hours on any day or days by agreement between the employer and the majority of employees concerned (therefore enabling a weekday to be taken off more frequently than would otherwise apply). **(c)** An employee who works on a rostered day off basis over a 4 week cycle is entitled to up to 12 rostered days off over each 12 month period. **(d)** Subject to clause 0 (Consultation about changes to rosters or hours of work), an arrangement agreed by the employer and employee under clause 0 may be changed at any time by agreement.
13.4 The ordinary hours of work may be worked on any day Monday to Friday. The days on which ordinary hours are worked may include Saturday and Sunday by agreement between the employer and the majority of employees concerned. Agreement may also be reached between the employer and an individual employee. 13.5 The ordinary hours of work must not exceed 8 hours per day and must be worked continuously (except for meal breaks or any breaks taken for the purpose of complying with fatigue management rules/regulations).	The spread of hours in the RTD Award is entirely unworkable for the on demand delivery services industry, considering that the peak delivery time, which is when people are ordering dinner falls outside the ordinary spread of hours.[9] Ordinary hours of work must be able to be worked every day of the week due to the nature of the on demand delivery services industry being subject to significantly more volatile trends in consumer demand, which rise and fall by the hour and by the minute, affected not only by	**13.2 Ordinary hours of work and roster cycles—part-time and casual employees** **(a)** A part-time or casual employee may work their ordinary hours by working periods of duty of up to 10 ordinary hours per day on up to 5 days per week. **(b)** Ordinary hours may be worked on any day of the week.

[8] Witness statement of Morten Belling, [35].

[9] Witness statement of Morten Belling, figure 7.

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13.6 Spread of hours (a) The ordinary hours of work are to be worked between 5.30 am and 6.30 pm. (b) The spread of ordinary hours may be altered in any depot, yard or garage by one hour at each end by agreement between the employer and the majority of employees concerned or between the employer and an individual employee. (c) The times within which ordinary hours of work may be performed will not apply to: (i) newspaper deliveries, where for the sole purpose of transport and delivery of daily newspapers; (ii) meat deliveries, where for the sole purpose of loading, transport and delivery of butcher's meat from abattoirs or meat works and where such meat is to be used for human consumption; (iii) live poultry, where for the sole purpose of loading, transport and delivery of live poultry from poultry farms to poultry processing plants; or (iv) a driver employed at a fish, fruit or vegetable store. Provided that instead of the times in clauses 13.6(a) and 13.6(b), an employer may require an employee to commence ordinary hours of work between 12.01 am and 6.00 am (Monday to Friday inclusive) but not otherwise and, in which case, the weekly rate of the employee must be increased by 30% of the ordinary hourly rate for each ordinary hour worked. **13.7 Method of working ordinary hours** Ordinary hours of work may be worked by either of the following methods: **(a) Providing for rostered days off (RDOs)** A roster implementing the work cycle at the depot, yard or garage will provide for RDOs, which may be either taken in accordance with the roster or accumulated. (i) A scheduled normal RDO may be changed by agreement between the employer and employee. In the absence of agreement, 48 hours' notice of such alteration must be given to the employee. (ii) RDOs may be accumulated to a maximum of 10 days and taken or paid out at the applicable ordinary hourly rate in any combination agreed in writing between the employer and employee. **(b) Providing for other than a rostered day off** Ordinary hours may be worked over 5 days, Monday to Friday inclusive, of not more than 7 hours and 36 minutes	the time, lunch and dinner rush, public holidays and events, but also by weather and other external factors.[10] The requirement for hours of work to be performed continuously is antithetical to the on demand delivery services industry, taking into account that employees in the on demand delivery services industry work flexibly, opting to log on and off for work when its suitable to them. On demand delivery couriers demand the capacity to work broken shifts, and Menulog proposes a term which places reasonable boundaries around their capacity to do so to ensure safety. Menulog accordingly proposes terms for the arrangement of work which places a high degree of flexibility in the hands of employees. Clause 13.6(c) provides a carve out from the limitations on ordinary hours of work for particular types of transport work, but only to permit the earlier commencement of work in the morning. This is not relevant to the on demand delivery services industry which sees its peak hours in the later part of the day.	**13.3** An employee may be rostered to work a broken shift on any day provided that: **(a)** except in the case of an employee flex shift, the shift is not broken into more than 2 parts; **(b)** the total length of the shift is not less than 1 hour, exclusive of meal breaks; and **(c)** the span of hours from the start of the first part of the shift to the end of the second part of the shift is not more than 12 hours. **13.4 Employee flex shifts** **(a)** The employer may advertise to its employees extra shifts for which it seeks employees to perform work to respond to unexpected customer demand (employee flex shift). **(b)** A part-time or casual employee may elect to perform any number of employee flex shifts provided always that the span of hours from the start of the first part of the shift to the end of the last part of the shift on any given day is not more than 12 hours. **(c)** An employer may not direct an employee to perform an employee flex shift. **(d)** An employee who elects to perform an employee flex shift will be taken to have agreed to a variation to their regular pattern of work pursuant to clause 0.

[10] Witness statement of Morten Belling, [84].

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continuously (except for meal breaks or any breaks taken for the purpose of complying with fatigue management rules/regulations) in the following circumstances: (i) where an employer either engages 20 employees or less or operates 15 vehicles or less pursuant to the provisions of this award at a particular yard, depot or garage; (ii) where an employer has entered into arrangements with a client for the provision of transport services on a permanent basis extending over each of the 5 days of each week Monday to Friday inclusive and where these arrangements would be prejudiced by the requirement that rostered days off be taken on any day or all such days of the week; (iii) where the operations being performed by the employer require particular employees to work 5 days of each week Monday to Friday inclusive and where these operations would be prejudiced by the requirement that rostered days off be taken on any or all days; or (iv) where written agreement has been reached between the employer and the majority of employees. Written agreement under clause 13.7(b) must not be unreasonably withheld by the employees and must not be unreasonably requested by the employer.		
14. Ordinary hours of work and roster cycles—oil distribution workers 14.1 Clause 14 applies to employees engaged in the transport and/or distribution of raw or manufactured petroleum products. 14.2 The ordinary hours of work are: (a) 35 hours per week; or (b) 70 hours per two-week period. 14.3 Ordinary hours are worked between 6.30 am and 5.30 pm, Monday to Friday. 14.4 Ordinary hours of work must not exceed 8 hours per day. 14.5 By agreement between an employer and the majority of affected employees, the ordinary working hours for employees engaged in rural distribution operations may be rostered over any 3 consecutive days, Monday to Saturday inclusive unless some other mutually satisfactory arrangement is made between the employer and employees concerned. All work performed in excess of 35 hours in any such 3 days must be paid at 150% of the ordinary hourly rate for the first 2 hours and 200% of the ordinary hourly rate thereafter. **14.6 Method of working ordinary hours** Ordinary hours of work may be worked by either of the following methods: **(a) Providing for rostered days off (RDOs)**	This clause is irrelevant as there are no oil distribution workers in the on demand delivery services industry.	*No equivalent provision*

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(i) Rostered days off must be provided by a roster drawn up in each workplace providing for 9 days each of 7 hours and 47 minutes, and one rostered day off over a continuous two-week period. (ii) Where an employee's rostered day off falls on a public holiday, the employee is entitled, at the discretion of the employer, to either: • 7 hours of pay at the ordinary time rate; or • 7 hours extra annual leave; or • a substitute day off on an alternative week day. **(b) Providing for other than a rostered day off** Ordinary hours may be worked over 5 days each of 7 hours, but only where: (i) the employer either engages 20 employees or less or operates 15 vehicles or less pursuant to the provisions of this award at a particular yard, depot or garage; (ii) the employer has entered into arrangements with a client for the provision of transport services on a permanent basis extending over 5 days of each week, Monday to Friday inclusive, and where these arrangements would be prejudiced by the requirement that rostered days off be taken on any day or all such days of the week; or (iii) the operations being performed by the employer require particular employees to work 5 days of each week, Monday to Friday inclusive, and where these operations would be prejudiced by the requirement that rostered days off be taken on any or all days.		
15. Start times 15.1 A regular starting time for each employee is to be fixed by the employer. 15.2 Where an employer varies or changes the regular starting time of an employee the employer must give one week's notice of such variation or change to the employee concerned.	The on demand delivery services industry must be able to respond to changes in customer demand on a minute by minute basis.[11] A requirement to provide one weeks' notice of a change to start times is accordingly unworkable, and also inhibits the capacity for employees to seek to change their start time for their own convenience.	See clause 10.5 above **10.5 Regular pattern of work** **(a)** At the time of engaging a part-time employee, the employer must agree in writing with the employee on a regular pattern of work that must include all of the following: **(i)** the number of hours to be worked on each particular day of the week (the guaranteed hours); and **(ii)** the times at which the employee will start and finish work each particular day; and **(iii)** when meal breaks may be taken and their duration.

[11] Witness statement of Morten Belling, 18 October 2021, at [80] – [91]

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		NOTE: An agreement under clause **Error! Reference source not found.** could be recorded in writing including through an exchange of emails, text messages or by other electronic means. **(b)** For the purposes of a part-time employee's guaranteed hours, the minimum daily engagement for a part-time employee is 30 minutes. **(c)** An employee's regular pattern of work may be changed by the employer giving the employee 7 days written notice of the change, or at any time by agreement between the employer and the employee in accordance with clause 0.
16. Breaks **16.1 Regular meal break** (a) An employee must be allowed a regular unpaid meal break during the ordinary hours of work except where unforeseen extraordinary circumstances arise. (b) The meal break must: (i) be of a regular duration of not more than one hour or less than 30 minutes; and (ii) start no earlier than 3 and a half hours and no later than 5 and a half hours after the fixed starting time of the employee's ordinary hours of work; and (iii) where reasonable and practical, be taken at a time to coincide with any requirement to take a break under fatigue management rules/regulations, or as otherwise required by the employer. (c) If the meal break is not allowed, all time worked after the starting time of the regular meal break until a break without pay for a meal time is allowed must be paid for at 200% of the applicable minimum hourly rate in clause 17.1.	The on demand delivery services industry differs to the road transport and distribution industry which is ordinarily made up of drivers who work in a structured way and can plan the taking of breaks. Employees in the on demand delivery industry cannot reasonably take a break in the course of completing an order[12], but instead receive periodic rest breaks due to the nature of their work. Couriers often have periods of time where they are waiting for orders to accept and food to be prepared, which provides 'ad hoc' breaks which assist with fatigue management and allow couriers an opportunity for refreshments.	**14. Breaks** **14.1 Unpaid meal breaks** **(a)** An employee is entitled to an unpaid meal break of not less than 30 minutes and cannot be required to work for more than 5 hours without a meal break. **(b)** An unpaid meal break provided in clause 0**Error! Reference source not found.** does not count as time worked for the employee.
16.2 Meal and rest breaks after ordinary hours and before overtime hours (a) An employee required to work overtime for 2 hours or more after working ordinary hours must be allowed a paid break of 20 minutes before commencing overtime work or as soon as practicable after commencing overtime work. (b) A further rest break must be allowed after completing each 4 hour period until the overtime work is finished. Any rest breaks will be paid for at the applicable minimum hourly rate. (c) Wherever reasonable and practical, the rest break must be taken at a time to coincide with any requirement to take a break under fatigue management rules/regulations.		**14.2 Breaks between shifts** **(a)** An employee must have a minimum break of 8 consecutive hours between finishing work on one day (including any overtime worked immediately after it) and starting work on the next shift of ordinary hours on the following day (including any overtime worked immediately before it). **(b)** The employer must pay an employee who is required by the employer to start work without having had at least 8 consecutive hours off duty at the overtime rate mentioned in clause 0 until the employee is released from duty for at least 8 consecutive hours. **(c)** The employee must not suffer any loss of pay for ordinary working time hours not worked during the period of a release from duty mentioned in clause 0.

[12] Witness statement of Morten Belling, [58], [90] – [91], [122].

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(d) An employer and employee may agree to apply any variation of this provision in order to meet the circumstances of the work in hand.

(e) An employee required to work overtime for 2 or more continuous hours will be entitled to a meal allowance in accordance with clause 19.5(f)(i).

16.3 Notwithstanding anything contained in clause 16 an employee will not be required or permitted to work longer than 5 and a half hours without a break for a meal.

Part 4 -Wages and Allowances

17. Minimum rates

17.1 Minimum rates—employees other than oil distribution workers

An employer must pay adult employees the following minimum rates for ordinary hours worked by the employee:

a) Transport employees

Employee classification	Minimum weekly rate (full-time employee)	Minimum hourly rate
	$	$
Transport Worker Grade 1	818.30	21.53
Transport Worker Grade 2	838.90	22.08
Transport Worker Grade 3	849.10	22.34
Transport Worker Grade 4	864.80	22.76
Transport Worker Grade 5	875.70	23.04
Transport Worker Grade 6	885.70	23.31
Transport Worker Grade 7	898.60	23.65
Transport Worker Grade 8	924.70	24.33
Transport Worker Grade 9	940.20	24.74
Transport Worker Grade 10	963.50	25.36

b) Distribution facility employees

The employee classifications under the Road Transport and Distribution Award are completely different to the classifications proposed in the on demand delivery services industry award. It follows that the minimum rates of pay are not relevant to the types of work and, in particular, the types of vehicles utilised in the on demand delivery services industry, noting that the preponderance of classifications under the RTD Award relate to the operation of a truck, which is not irrelevant to employees employed in the on demand delivery services industry.[13]

The minimum rates of pay in the Road and Transport Distribution Award are unsustainable, if applied to the on demand delivery services industry and will have the effect that prospective employers are unable to operate competitively in the industry.

Part 3—Wages and Allowances

15. Minimum rates

1.2 **15.1** An employer must pay an employee the rate applicable to the employee's classification specified in **Column** of **Table 2 – Minimum rates**

for ordinary hours of work.

TABLE 2 – MINIMUM RATES

COLUMN 1 Employee classification	Column 2 Minimum weekly rate (full-time employee)	*COLUMN 3* Minimum hourly rate
	$	$
Level 1 Courier	772.65	20.33
Level 2 Courier	825.23	21.72

NOTE 1: Provisions for calculating rates for part-time employees are at clause 0 (Part-time employees) and are based on the minimum hourly rate specified in **Column 3**.

NOTE 2: Provisions for calculating rates for casual employees are at clause 0 (Casual employees) and are based on the minimum hourly rate specified in **Column 3**.

NOTE 3: Schedule X sets out the hourly rates of pay including overtime rates and penalty rates.

[13] Witness statement of Morten Belling, [106].

Employee classification	Minimum weekly rate (full-time employee)	Minimum hourly rate
	$	$
Distribution facility employee level 1	849.10	22.34
Distribution facility employee level 2	864.80	22.76
Distribution facility employee level 3	898.60	23.65
Distribution facility employee level 4	940.20	24.74

NOTE: Minimum rates for employees engaged in vehicle relocation and/or distribution as defined in clause **Error! Reference source not found.** are affected by transitional provisions contained in clause **Error! Reference source not found.**.

c) Minimum rates—oil distribution workers

An employer must pay adult employees the following minimum rates for ordinary hours worked by the employee:

Employee classification	Minimum weekly rate (full-time employee)	Minimum hourly rate
	$	$
Transport Worker Grade 1	818.30	23.38
Transport Worker Grade 2	838.90	23.97
Transport Worker Grade 3	849.10	24.26
Transport Worker Grade 4	864.80	24.71
Transport Worker Grade 5	875.70	25.02
Transport Worker Grade 6	885.70	25.31
Transport Worker Grade 7	898.60	25.67
Transport Worker Grade 8	924.70	26.42
Transport Worker Grade 9	940.20	26.86

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Transport Worker Grade 10	963.50	27.53

NOTE: See **Error! Reference source not found.Error! Reference source not found.** for a summary of hourly rates of pay including overtime and penalty rates.

17.3 Junior employee rates

a) Junior employees will be entitled to a percentage of the applicable adult rate for their classification as follows:

Age	**% of applicable adult minimum hourly rate**
18 years and under	70
19 years	80
20 years	100

b) Where a junior employee aged 18 years or more is required to drive a motor vehicle and is in sole charge of that vehicle, the employee must be paid the adult rate assigned to the class of driving work that the employee is required to perform.

The Road Transport and Distribution Industry Award requires employees to use heavy motor vehicles such as trucks which require a drivers' license, and accordingly rates for employees under 18 years of age have no relevance operation because employees under the age of 18 are unable to hold a drivers' licence – junior rates accordingly have no work to do under the RTD Award.

In contrast, in the on demand delivery services industry, employees are able to deliver items using e-bikes or push bikes, which do not require licences, and therefore, there is relevant capacity for employees under 18 years of age to be covered by the proposed On Demand Delivery Services Award. It follows that it is appropriate to provide further differing wage rate percentages dependent on age, due to the more common spread of junior-aged employees in the on demand delivery services industry.

15.2 Junior rates

(a) An employer must pay a junior employee aged as specified in column 1 of Table 3—Junior rates the minimum percentage specified in column 2 of the minimum rate that would otherwise be applicable under Table 2—Minimum rates:

TABLE 3—JUNIOR RATES

COLUMN 1 **Age**	**Column 2** **Minimum % of minimum weekly rate**
16 years of age and under	50
17 years of age	60
18 years of age	65
19 years of age	75
20 years of age	85

(b) A minimum weekly rate calculated in accordance with Table 3—Junior rates must be rounded to the nearest $0.10.

17.4 Higher duties

Where an employee is required to perform 2 or more grades of work on any one day, the employee is to be paid the minimum rate for the highest grade for the whole day.

As a standard term, Menulog takes no issue with this clause in the RTD Award, and it has proposed a term which takes different drafting but provides for substantially the same effect.

15.3 Higher duties

(a) **(a)**

An employer must pay an employee who performs for more than 4 hours on any particular day duties of a classification higher than the employee's ordinary classification the minimum hourly rate specified in **Column 3** of **Table 2 – Minimum rates**

for that higher classification for the whole of that day.

(b) An employer must pay an employee who performs for less than 4 hours on any particular day duties of a classification higher than the employee's ordinary classification the minimum hourly rate specified in **Column 3** of **Table 2 – Minimum rates**

for that higher classification for the time during which those duties were performed.

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17.5 Supported wage system For employees who because of the effects of a disability are eligible for a supported wage see **Error! Reference source not found.Error! Reference source not found.**. **17.6 National training wage** **a)** Schedule E to the *Miscellaneous Award 2020* sets out minimum wage rates and conditions for employees undertaking traineeships. **b)** This award incorporates the terms of Schedule E to the *Miscellaneous Award 2020* as at 1 July 2021. Provided that any reference to "this award" in Schedule E to the *Miscellaneous Award 2020* is to be read as referring to the *Road Transport and Distribution Award 2020* and not the *Miscellaneous Award 2020*.	As a standard term, Menulog takes no issue with this clause in the RTD Award and has not included reference to them in the exposure draft taking into account that Schedules will be inserted into the modern award when the Commission has decided on the final substantive terms of the award.	
17.7 Transitional provisions—vehicle distribution and/or relocation The minimum wages for employees engaged in the distribution and/or relocation of vehicles as defined in clause **Error! Reference source not found.** will be as follows: **a) From 1 July 2019 to 30 June 2020** The National Minimum Wage plus two-thirds of the difference between the National Minimum Wage and the applicable minimum rate in clause **Error! Reference source not found.**. **b) From 1 July 2020 onwards** The applicable minimum rate in clause **Error! Reference source not found.**.	This clause is not relevant to the on demand delivery services industry as it does not have workers engaged in the distribution and/or relocation of vehicles.	*No equivalent provision provided*
18. Payment of wages NOTE: Regulations 3.33(3) and 3.46(1)(g) of Fair Work Regulations 2009 set out the requirements for pay records and the content of payslips including the requirement to separately identify any allowance paid. 18.1 All earnings, including overtime, must be paid weekly in the employer's time on a day to be fixed by the employer. Payment will be no later than Thursday. 18.2 Once fixed, the day must not be altered more than once in 3 months. 18.3 All earnings, including overtime, must be paid within 4 business days of the expiration of the week in which they accrue. 18.4 The employer may pay an employee by electronic funds transfer (EFT) to a bank account nominated by the employee. **18.5 Payment on termination of employment** (a) The employer must pay an employee no later than 7 days after the day on which the employee's employment terminates:	As a standard term, Menulog takes no issue with this clause in the RTD Award, and it has proposed a term which takes different drafting but provides for substantially the same effect.	**16. Payment of wages** NOTE: Regulations 3.33(3) and 3.46(1)(g) of *Fair Work Regulations 2009* set out the requirements for pay records and the content of payslips including the requirement to separately identify any allowance paid. **16.1 Frequency and method of payment** **(a)** Wages will be paid at least monthly. **(b)** Wages may be paid by cash or electronic funds transfer into a bank account nominated by the employee. However, the employer and an employee may agree that wages must be paid by cash. **(c)** An employee paid by cash or cheque who has to wait at the workplace to be paid is entitled to be paid at the employee's minimum hourly rate for any time spent waiting. **(d)** If the normal pay day or the day following the normal pay is a public holiday, the employee is entitled to be paid on the last ordinary working day immediately before the normal pay day, or on another day that is agreed between the employer and the employee.

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(i) the employee's wages under this award for any complete or incomplete pay period up to the end of the day of termination; and (ii) all other amounts that are due to the employee under this award and the NES. (b) The requirement to pay wages and other amounts under clause 18.5(a) is subject to further order of the Commission and the employer making deductions authorised by this award or the Act. NOTE 1: Section 117(2) of the Act provides that an employer must not terminate an employee's employment unless the employer has given the employee the required minimum period of notice or "has paid" to the employee payment instead of giving notice. NOTE 2: Clause 18.5(b) allows the Commission to make an order delaying the requirement to make a payment under clause 18.5. For example, the Commission could make an order delaying the requirement to pay redundancy pay if an employer makes an application under section 120 of the Act for the Commission to reduce the amount of redundancy pay an employee is entitled to under the NES. NOTE 3: State and Territory long service leave laws or long service leave entitlements under section 113 of the Act, may require an employer to pay an employee for accrued long service leave on the day on which the employee's employment terminates or shortly after.		**16.2 Payment on termination of employment** **(a)** The employer must pay an employee no later than 7 days after the day on which the employee's employment terminates: **(i)** the employee's wages under this award for any complete or incomplete pay period up to the end of the day of termination; and **(ii)** all other amounts that are due to the employee under this award and the NES. **(b)** The requirement to pay wages and other amounts under clause 0 is subject to further order of the Commission and the employer making deductions authorised by this award or the Act. NOTE 1: Section 117(2) of the Act provides that an employer must not terminate an employee's employment unless the employer has given the employee the required minimum period of notice or "has paid" to the employee payment instead of giving notice. NOTE 2: Clause 0 allows the Commission to make an order delaying the requirement to make a payment under clause 0. For example, the Commission could make an order delaying the requirement to pay redundancy pay if an employer makes an application under section 120 of the Act for the Commission to reduce the amount of redundancy pay an employee is entitled to under the NES. NOTE 3: State and Territory long service leave laws or long service leave entitlements under section 113 of the Act, may require an employer to pay an employee for accrued long service leave on the day on which the employee's employment terminates or shortly after.
19. Allowances NOTE: Regulations 3.33(3) and 3.46(1)(g) of Fair Work Regulations 2009 set out the requirements for pay records and the content of payslips including the requirement to separately identify any allowance paid. 19.1 Employers must pay to an employee the allowances the employee is entitled to under clause 19. NOTE: See Schedule D—Summary of Monetary Allowances for a summary of monetary allowances and method of adjustment. 19.2 The allowances at clauses 19.3(c) to 19.3(f)(ii), 19.3(g) and 19.5(a) are payable to full-time, part-time and casual employees. In the case of part-time and casual employees, they will be calculated as follows: (a) For weekly allowances, 1/38th of the specified amount per hour worked up to a maximum of 38 hours in any one week. (b) For daily allowances, the relevant amount prescribed in clauses 19.3(d) to 19.3(f). (c) For hourly allowances, payment for each hour worked up to a maximum of 38 hours in any one week.	The majority of the allowances in the Road Transport and Distribution Award are irrelevant in the on demand delivery services industry, due to the nature of the industry. The proposed On Demand Delivery Services Award proposes a bespoke set of allowances that are relevant to this on demand delivery services industry.	**17. Allowances** NOTE: Regulations 3.33(3) and 3.46(1)(g) of *Fair Work Regulations 2009* set out the requirements for pay records and the content of payslips including the requirement to separately identify any allowance paid. **17.1** Clause 0 gives employees an entitlement to monetary allowances of specified kinds in specified circumstances. NOTE: Schedule X contains a summary of monetary allowances and methods of adjustment. **17.2 Vehicle allowance** **(a)** Subject to clause 0, an employer must pay an employee who, by agreement with the employer, uses their own motor vehicle in performing their duties an allowance of: **(i)** for a car, $0.16 per driven kilometre during a shift; **(ii)** for a motorcycle or scooter, $0.14 per kilometre; and **(iii)** for a bicycle or ebike, $0.07 per kilometre. **(b)** For the purposes of distance travelled, the distance estimated by the GPS system integrated into the employer's on demand delivery platform may be used,

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19.3 Wage-related allowances

(a) All-purpose allowances

Allowances paid for all purposes means the payment will be included in the rate of pay of an employee who is entitled to the allowance, when calculating any penalties or loadings or payment while they are on annual leave. The following allowances are paid for all purposes under this award:

(i) Special vehicle allowances (clause 19.3(b)).

(b) Special vehicle allowances

(i) A Transport Worker Grade 7, when driving a low loader for each additional complete tonne over 43 tonnes GCM, will be paid an extra $1.53 per week as part of the weekly rate for all purposes.

(ii) A Transport Worker Grade 10, when driving a multi-axle platform trailing equipment with a carrying capacity in excess of 100 tonnes will be paid:

- for each additional 10 tonnes or part thereof in excess of 100 tonnes and up to 150 tonnes, an extra $18.51 per week; and
- for each additional 10 tonnes or part thereof in excess of 150 tonnes and up to 200 tonnes, an extra $17.75 per week; and
- for each additional 10 tonnes or part thereof in excess of 200 tonnes and up to 300 tonnes, an extra $17.32 per week.

These amounts are to be paid as part of the weekly rate for all purposes.

(c) Leading hand allowance

An employee appointed as a leading hand in charge of:	$ per week
3–10 employees	40.08
11–20 employees	59.69
More than 20 employees	75.82

These allowances do not apply to leading loader.

(d) Miscellaneous driving allowances

(i) Any employee required to drive a motor vehicle in excess of the limit in length prescribed by or under any State or Commonwealth legislation—$3.91 per day.

(ii) Any employee required to drive a motor vehicle with a truck loading crane mounted on the vehicle—$3.91 per day.

provided at all times that the distance records are stored as an employee record.

(c) Provided at all times that the employee is better off overall taking into account distance recorded pursuant to clause 0 averaged over a 12 month period, an employer may, at its discretion, provide payment for the vehicle allowance by way of an additional hourly allowance.

17.3 Clothing reimbursement

An employee required to provide special clothing or a uniform must be reimbursed by the employer for the cost of such clothing.

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(iii) Any employee required to drive a motor vehicle with a side-lifter crane mounted on the vehicle—$3.91 per day.

(iv) Any employee required to drive a motor vehicle in excess of 3.5 metres in width or transport a load in excess of that width—$3.91 per day.

(v) Any employee who is a recognised furniture carter engaged in removing and/or delivering furniture—$21.99 per week.

(vi) Any employee who is a recognised livestock carter carting livestock—$21.99 per week.

(vii) Any employee driving a sanitary vehicle—$24.79 per week.

(viii) Any employee driving a vehicle collecting garbage—$20.29 per week.

(ix) Any employee who is a driver salesperson—$18.60 per week.

(x) Any employee carting loading and/or unloading carbon black except when packed in sealed metal containers—$2.38 per day.

(xi) Any employee carting, loading and/or unloading offensive material—$3.06 per day.

(xii) Any employee carting, loading and/or unloading dirty material—$0.51 per hour.

(xiii) Any employee who is required to cart:

- tar (other than in sealed containers) for immediate spreading upon streets;
- tar in unsealed containers; or
- tarred material for spreading upon streets;

and/or who spreads any of these upon streets—$3.82 per week.

(xiv) Any employee required to handle coffins containing human remains—$3.23 for each coffin handled.

(e) Employee handling money as defined

An employee handling money will be entitled to a weekly allowance in accordance with the following table based on the highest amount of money that they are required to handle in a given week.

For any amount handled:	$ per week
Up to $20	1.95
Over $20 but not exceeding $200	3.82
Over $200 but not exceeding $600	6.54

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Over $600 but not exceeding $1000	8.49
Over $1000 but not exceeding $1200	11.97
Over $1200 but not exceeding $1600	18.51
Over $1600 but not exceeding $2000	20.46
Over $2000	23.27

(f) Dangerous goods

(i) A driver engaged in the transport of bulk dangerous goods or carting explosives by public road, in conformity with the Australian Code for the Transport of Explosives by Road and Rail, must receive an allowance of $20.12 per day. Bulk dangerous goods are those goods defined as such in the Australian Code for the Transport of Dangerous Goods by Road and Rail as amended from time to time.

(ii) A driver engaged in the transport by public road of packaged dangerous goods, which requires placarding, must receive an allowance of $8.41 per day. Packaged goods which require placarding are those goods defined as such in the Australian Code for the Transport of Dangerous Goods by Road and Rail as amended from time to time.

(iii) Where a weekly employee is required to possess a licence to operate a vehicle carrying dangerous goods (as defined in the Australian Code for the Transport of Dangerous Goods by Road and Rail), training and medical costs must be reimbursed by the employer.

(g) First aid allowance

An employee holding a current first aid qualification from St John Ambulance or similar body, who is appointed by the employer to perform first aid duty must be paid $13.59 in addition to wages for any week so appointed. The employer will reimburse the cost of fees for any courses necessary for any employee covered by clause 19.3(g) to obtain and maintain the appropriate first aid qualification.

19.4 Where a higher allowance amount becomes payable under clauses 19.3(d)(vi), 19.3(d)(vii), 19.3(d)(viii), 19.3(d)(x), 19.3(d)(xi), 19.3(d)(xii) or 19.3(d)(xiii) it will supersede any lesser allowance contained in these items which otherwise would have been payable.

19.5 Expense-related allowances

(a) Travelling allowance

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An employee engaged in travelling on duty, or on work on which the employee is unable to return home at night must be paid personal expenses reasonably incurred in travelling, of at least $32.48 per day. Where an employer provides suitable accommodation and meals such allowance shall not be payable.

(b) Work diary

Where an employee is required to possess a work diary, the cost of such diary must be reimbursed by the employer.

(c) Articles of clothing

(i) Where the employer requires an employee to wear any special clothing such as any special uniform, cap, overall or other article, the employer must reimburse the employee for the cost of purchasing such special clothing. The provisions of clause 19.5(c) do not apply where the employer provides the special clothing.

(ii) Where the employer requires an employee to work continuously in conditions in which, because of their nature, the employee's clothing would otherwise become saturated, the employer must reimburse the employee for the cost of purchasing protective clothing. The provisions of clause 19.5(c) do not apply where the employer provides the protective clothing.

(iii) Where an employee is employed as a greaser and cleaner, or is normally required to service vehicles, the employer must reimburse the employee for the cost of purchasing overalls. The provisions of clause 19.5(c) do not apply where the employer provides the overalls.

(iv) Clause 19.5(c) does not apply to employees who are required as an adjunct to their normal duties to check such things as vehicles, oil, water and tyres.

(v) Protective clothing will remain the property of the employer, and the employee will be liable for the cost of replacement of any article of protective clothing which is lost, destroyed or damaged through the negligence of the employee.

(d) Housing allowance

(i) Any employee required by the employer to live at a depot, yard or garage must be paid an allowance equal to the amount of the rent charged by the employer for the accommodation at the depot, yard or garage.

(ii) If an employer provides housing accommodation for an employee and the employee's family, and requires the employee to live there and charges rent, the employer must pay the employee an

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allowance of $3.35 less than the amount of rent charged. **(e) Medical checks** An employer requiring employees to undertake medical checks during a term of employment, or requiring persons seeking employment to undertake a medical check as part of an interview process, must reimburse all medical costs not recoverable from a health fund by the employee or persons seeking employment. **(f) Meal allowance** **(i)** An employee required to work overtime for 2 continuous hours or more must either be supplied with a meal by the employer or paid the amount specified for a meal allowance of $16.85 for each meal required to be taken. **(ii)** An employee required to start work 2 hours or more prior to their normal starting time must be paid the amount specified for a meal allowance in clause 19.5(f)(i).		
20. Superannuation **20.1 Superannuation legislation** **(a)** Superannuation legislation, including the Superannuation Guarantee (Administration) Act 1992 (Cth), the Superannuation Guarantee Charge Act 1992 (Cth), the Superannuation Industry (Supervision) Act 1993 (Cth) and the Superannuation (Resolution of Complaints) Act 1993 (Cth), deals with the superannuation rights and obligations of employers and employees. Under superannuation legislation individual employees generally have the opportunity to choose their own superannuation fund. If an employee does not choose a superannuation fund, any superannuation fund nominated in the award covering the employee applies. **(b)** The rights and obligations in these clauses supplement those in superannuation legislation. **20.2 Employer contributions** An employer must make such superannuation contributions to a superannuation fund for the benefit of an employee as will avoid the employer being required to pay the superannuation guarantee charge under superannuation legislation with respect to that employee. **20.3 Voluntary employee contributions** **(a)** Subject to the governing rules of the relevant superannuation fund, an employee may, in writing, authorise their employer to pay on behalf of the employee a specified amount from the post-taxation wages of the employee into the same superannuation fund as the employer makes the superannuation contributions provided for in clause 20.2.	Clause 20 of the RTD Award is substantially directed at preserving historical arrangements which have no relevant application in the on demand delivery services industry which did not exist in Australia before 2015.	**18. Superannuation** **18.1** Superannuation legislation, including the *Superannuation Guarantee* (*Administration) Act 1992* (Cth), the *Superannuation Guarantee Charge Act 1992* (Cth), the *Superannuation Industry (Supervision) Act 1993* (Cth) and the *Superannuation (Resolution of Complaints) Act 1993* (Cth), deals with the superannuation rights and obligations of employers and employees. Under superannuation legislation individual employees generally have the opportunity to choose their own superannuation fund. **18.2 Superannuation contributions for defined benefit members** An employer is permitted to make superannuation contributions to a superannuation fund or scheme in relation to a default fund employee who is a defined benefit member of the fund or scheme.

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(b) An employee may adjust the amount the employee has authorised their employer to pay from the wages of the employee from the first of the month following the giving of three months' written notice to their employer. **(c)** The employer must pay the amount authorised under clauses 20.3(a) or 20.3(b) no later than 28 days after the end of the month in which the deduction authorised under clauses 20.3(a) or 20.3(b) was made. **20.4 Superannuation fund** Unless, to comply with superannuation legislation, the employer is required to make the superannuation contributions provided for in clause 20.2 to another superannuation fund that is chosen by the employee, the employer must make the superannuation contributions provided for in clause 20.2 and pay the amount authorised under clauses 20.3(a) or 20.3(b) to one of the following superannuation funds or its successor: **(a)** TWUSUPER; **(b)** Tasplan; **(c)** SunSuper; **(d)** AustSafe Super; **(e)** LUCRF Super; **(f)** any superannuation fund to which the employer was making superannuation contributions for the benefit of its employees before 12 September 2008, provided the superannuation fund is an eligible choice fund and is a fund that offers a MySuper product or is an exempt public sector superannuation scheme; or **(g)** a superannuation fund or scheme which the employee is a defined benefit member of. **20.5 Absence from work** Subject to the governing rules of the relevant superannuation fund, the employer must also make the superannuation contributions provided for in clause 20.2 and pay the amount authorised under clauses 20.3(a) and 20.3(b): **(a) Paid leave—while the employee is on any paid leave;** **(b)** Work-related injury or illness—for the period of absence from work (subject to a maximum of 52 weeks) of the employee due to work-related injury or work-related illness provided that: **(i)** the employee is receiving workers compensation payments or is receiving regular payments directly from the employer in accordance with the statutory requirements; and **(ii)** the employee remains employed by the employer.		

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Part 5—Overtime and Penalty Rates **21. Overtime** 21.1 For all work done outside ordinary hours the rate of pay will be 150% of the ordinary hourly rate for the first 2 hours and 200% of the ordinary hourly rate after 2 hours. 21.2 In computing overtime each day's work will stand alone. 21.3 Overtime for shiftworkers is provided for in clause 22.5. **21.4 Rest period after overtime** (a) When overtime work is necessary it must, wherever reasonably practicable, be arranged so that employees have at least 10 consecutive hours off duty between the work of successive days. (b) If an employee (other than a casual employee) works so much overtime between the termination of ordinary work on one day and the commencement of ordinary work on the next day that the employee has not had at least 10 consecutive hours off duty between those times, the employee must, subject to clause 21.4, be released after completion of the overtime until the employee has had 10 consecutive hours off duty without loss of pay for ordinary working time occurring during the absence. (c) If, on the instruction of the employer, an employee resumes or continues work without having had 10 consecutive hours off duty the employee is entitled to: (i) be paid the rate of 200% of the ordinary hourly rate until released from duty; and (ii) upon being released from duty, to be absent until the employee has had 10 consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.	As employees in the on demand delivery services industry typically work short shifts, there is not a relevant need to prescribe a particular rest period after overtime.	**19. Overtime** **19.1 Overtime** All time worked in excess of an average of 38 hours per week, or the daily hours prescribed in clause 0 is overtime and must be paid at the rate of **150%** of the relevant minimum rate for the first 3 hours and **200%** of the relevant minimum rate after 3 hours.
21.5 Time off instead of payment for overtime (a) An employee and employer may agree in writing to the employee taking time off instead of being paid for a particular amount of overtime that has been worked by the employee. (b) The period of time off that an employee is entitled to take is equivalent to the overtime payment that would have been made. EXAMPLE: By making an agreement under clause 21.5 an employee who worked 2 overtime hours at 150% of the ordinary hourly rate is entitled to 3 hours' time off. (c) Time off must be taken: (i) within the period of 6 months after the overtime is worked; and (ii) at a time or times within that period of 6 months agreed by the employee and employer.	As a standard term, Menulog takes no issue with this clause in the RTD Award, and it has proposed a term which takes different drafting but provides for substantially the same effect.	**19.2 Time off instead of payment for overtime** **(a)** An employee and employer may agree in writing to the employee taking time off instead of being paid for a particular amount of overtime that has been worked by the employee. **(b)** Any amount of overtime that has been worked by an employee in a particular pay period and that is to be taken as time off instead of the employee being paid for it must be the subject of a separate agreement under clause 0. **(c)** An agreement must state each of the following: **(i)** the number of overtime hours to which it applies and when those hours were worked; **(ii)** that the employer and employee agree that the employee may take time off instead of being paid for the overtime;

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(d) If the employee requests at any time, to be paid for overtime covered by an agreement under clause 21.5 but not taken as time off, the employer must pay the employee for the overtime, in the next pay period following the request, at the overtime rate applicable to the overtime when worked. (e) If time off for overtime that has been worked is not taken within the period of 6 months mentioned in clause 21.5(c), the employer must pay the employee for the overtime, in the next pay period following those 6 months, at the overtime rate applicable to the overtime when worked. (f) An employer must not exert undue influence or undue pressure on an employee in relation to a decision by the employee to make, or not make, an agreement to take time off instead of payment for overtime. (g) An employee may, under section 65 of the Act, request to take time off, at a time or times specified in the request or to be subsequently agreed by the employer and the employee, instead of being paid for overtime worked by the employee. If the employer agrees to the request then clause 21.5 will apply for overtime that has been worked. NOTE: If an employee makes a request under section 65 of the Act for a change in working arrangements, the employer may only refuse that request on reasonable business grounds (see section 65(5) of the Act). (h) If, on the termination of the employee's employment, time off for overtime worked by the employee to which clause 21.5 applies has not been taken, the employer must pay the employee for the overtime at the overtime rate applicable to the overtime when worked. NOTE: Under section 345(1) of the Act, a person must not knowingly or recklessly make a false or misleading representation about the workplace rights of another person under clause 21.5.		**(iii)** that, if the employee requests at any time, the employer must pay the employee, for overtime covered by the agreement but not taken as time off, at the overtime rate applicable to the overtime when worked; **(iv)** that any payment mentioned in clause 0 must be made in the next pay period following the request. NOTE: An example of the type of agreement required by clause 0 is set out at Error! Reference source not found.—Agreement for Time Off Instead of Payment for Overtime. There is no requirement to use the form of agreement set out at Error! Reference source not found.—Agreement for Time Off Instead of Payment for Overtime. An agreement under clause 0 can also be made by an exchange of emails between the employee and employer, or by other electronic means. **(d)** The period of time off that an employee is entitled to take is the same as the number of overtime hours worked. EXAMPLE: By making an agreement under clause 0 an employee who worked 2 overtime hours is entitled to 2 hours' time off. **(e)** Time off must be taken: **(i)** within the period of 6 months after the overtime is worked; and **(ii)** at a time or times within that period of 6 months agreed by the employee and employer. **(f)** If the employee requests at any time, to be paid for overtime covered by an agreement under clause 0 but not taken as time off, the employer must pay the employee for the overtime, in the next pay period following the request, at the overtime rate applicable to the overtime when worked. **(g)** If time off for overtime that has been worked is not taken within the period of 6 months mentioned in clause 0, the employer must pay the employee for the overtime, in the next pay period following those 6 months, at the overtime rate applicable to the overtime when worked. **(h)** The employer must keep a copy of any agreement under clause 0 as an employee record. **(i)** An employer must not exert undue influence or undue pressure on an employee in relation to a decision by the employee to make, or not make, an agreement to take time off instead of payment for overtime. **(j)** An employee may, under section 65 of the Act, request to take time off, at a time or times specified in the request or to be subsequently agreed by the employer and the employee, instead of being paid for overtime worked by the employee. If the employer agrees to the request then clause 0 will apply, including the requirement for separate

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		written agreements under clause 0 for overtime that has been worked. NOTE: If an employee makes a request under section 65 of the Act for a change in working arrangements, the employer may only refuse that request on reasonable business grounds (see section 65(5) of the Act). **(k)** If, on the termination of the employee's employment, time off for overtime worked by the employee to which clause 0 applies has not been taken, the employer must pay the employee for the overtime at the overtime rate applicable to the overtime when worked. NOTE: Under section 345(1) of the Act, a person must not knowingly or recklessly make a false or misleading representation about the workplace rights of another person under clause 0.
21.6 Call-back (a) An employee recalled to work overtime after leaving the workplace (whether notified before or after leaving the workplace) must be paid for a minimum of 4 hours' work. (b) Clause 21.6 does not apply in cases where it is customary for an employee to return to the workplace to perform a specific job outside ordinary working hours or where the overtime is continuous (subject to a reasonable meal break) with the completion or commencement of ordinary working time. (c) Overtime worked in circumstances specified in clause 21.6 will not be regarded as overtime for the purposes of clause 21.4 where the actual time worked is less than 4 hours on such recall or on each of such recalls. **21.7 Standing-by** Subject to any prevailing custom under which an employee is regularly required to be available for a call-back, an employee required to be available for work after ordinary hours must be paid standing-by time at ordinary rates from the time from which the employee is told to be available until released.	Clauses 21.6 and 21.7 of the RTD Award are designed to operate to protect the continuous performance of hours of work on any one day and prohibiting the performance of broken or split shifts. Inherent in the demand for flexibility by employees in the on demand delivery services industry is the need to provide scope for employees to elect to perform additional hours at their own initiative, with appropriate safety net protections to mitigate against fatigue.	See clause 13.4 above **13.4 Employee flex shifts** **(a)** The employer may advertise to its employees extra shifts for which it seeks employees to perform work to respond to unexpected customer demand (employee flex shift). **(b)** A part-time or casual employee may elect to perform any number of employee flex shifts provided always that the span of hours from the start of the first part of the shift to the end of the last part of the shift on any given day is not more than 12 hours. **(c)** An employer may not direct an employee to perform an employee flex shift. **(d)** An employee who elects to perform an employee flex shift will be taken to have agreed to a variation to their regular pattern of work pursuant to clause 0.
21.8 Transport of employees When an employee, after having worked overtime, finishes work at a time when reasonable means of transport are not available, the employer must reimburse the employee for the cost of obtaining transport home. Alternatively, the employer must provide the employee with transport to the employee's home, or pay the employee the current wage for the time reasonably occupied in getting home.	This clause is irrelevant in the on demand delivery services industry as employees typically use their own vehicles in the performance of their work, and accordingly, will ordinarily have ready access to transport home.	*No equivalent provision*
22. Shiftwork **22.1 Definitions** For the purposes of clause 22: **(a)** **Afternoon shift** means a shift finishing after 6.30 pm but not later than 12.30 am.	As the performance of work in the on demand delivery services industry is tied to the typical trading hours of the third party businesses that are serviced by employers in the on demand delivery services industry, there is not a relevant need for the performance of night shifts.	*No equivalent provision*

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(b) **Day shift** means a shift starting at 5.30 am or later, but finishing at or before 6.30 pm.

(c) **Night shift** means a shift finishing after 12.30 am but not later than 8.30 am.

(d) **Rostered shift** means a shift for which the employee concerned has received at least 48 hours' notice.

(e) **Shiftwork** means work extending for at least 2 weeks and performed either in daily recurrent periods, wholly or partly between the hours of 6.30 pm and 8.30 am or in regular rotating periods but does not include work performed by day workers employed under clause 13—Ordinary hours of work and roster cycles—employees other than oil distribution workers.

22.2 Shiftwork hours and shift rosters

(a) The hours of work of employees performing shiftwork must be an average of 38 per week. The ordinary hours of work must not exceed 8 continuous hours per day (inclusive of meal breaks) on one of the following bases:

(i) 38 hours within a work cycle not exceeding 7 consecutive days;

(ii) 76 hours within a work cycle not exceeding 14 consecutive days;

(iii) 114 hours within a work cycle not exceeding 21 consecutive days; or

(iv) 152 hours within a work cycle not exceeding 28 consecutive days.

(b) There must be a shift roster which provides for rotation unless it is agreed otherwise by the employer and majority of employees or the employer and an individual employee.

(c) Shift rosters must be posted in a prominent place in the workplace. Shift rosters must specify the starting and finishing times of ordinary hours of respective shifts.

(d) Shift rosters must not be altered unless 48 hours' notice is given.

22.3 Shift rates

For ordinary hours shiftworkers must be paid as follows:

Shift	**% of the ordinary hourly rate**
Afternoon shift	117.5%
Night shift	130%

22.4 Shiftwork—casual employees

Casual employees engaged on shiftwork must be paid the casual loading of 25% of the ordinary hourly rate in addition to the shift rate specified at clause 22.3 above.

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22.5 Shiftwork—overtime

For all time worked:

(a) outside or in excess of the ordinary shift hours; or

(b) on a shift other than a rostered shift,

shiftworkers will be paid at 150% of the ordinary hourly rate for the first 2 hours and 200% after 2 hours.

22.6 Transfer to existing shift rosters

An employer must give an employee 48 hours' notice of any change of shift. If notice is not given, overtime rates must be paid for work done outside the ordinary shift hours within 48 hours of being notified of the change.

22.7 Transfer of day worker to or from shiftwork

(a) Unless otherwise agreed between an employer and an employee, day workers must be given at least 10 hours off duty immediately before commencing, or after ceasing shiftwork.

(b) Day workers may be transferred to or from shiftwork with 48 hours' notice. If notice is not given, an employee must be paid overtime rates for all work done outside previous ordinary working hours within 48 hours of being notified of the change.

18.3 Work on Saturdays, Sundays or public holidays

a) For work on a rostered shift, the major portion of which is performed on a Saturday, Sunday or public holiday, shiftworkers will be paid as follows:

Shift	**Penalty rate**	**Casual penalty ra**
	% of ordinary hourly rate	
Saturday	150	175
Sunday	200	225
Public holidays	250	275

b) The penalty rates prescribed by clause **Error! Reference source not found.** for work on a Saturday, Sunday or public holiday will be payable instead of the shift rate prescribed in clause **Error! Reference source not found.**.

22.9 Shiftworkers' meal breaks

While working on day, afternoon or night shift, shiftworkers will be entitled to a paid meal break of 20 minutes. An employee must not be required to work more than 5 hours without a meal break.

22.10 Rate for non-continuous afternoon or night shift

Shiftworkers who work on any afternoon or night shift which does not continue for at least 5 consecutive afternoons or nights must be paid at

<table>
<tr><th>Road Transport and Distribution Award 2020 Term</th><th>Feedback on RTD Award Term</th><th>Proposed On Demand Delivery Services Award Term</th></tr>
<tr><td>
the rate of 150% of the ordinary hourly rate for the first 3 hours and 200% of the ordinary hourly rate thereafter for each shift.

22.11 Rate when shift extends beyond midnight

Despite any other provision of clause 22, each shift must be paid for at the rate applicable to the day on which the major portion of the shift is worked.

22.12 Holiday shifts

Where the major portion of a shift falls on a public holiday, the whole of the shift will be regarded as a public holiday shift.
</td><td></td><td></td></tr>
<tr><td>
23. Penalty rates

23.1 Weekend work

(a) For any ordinary time hours worked between midnight on Friday and midnight on Saturday an employee must be paid at 150% of the ordinary hourly rate.

(b) For any ordinary time hours worked between midnight on Saturday and midnight on Sunday an employee must be paid at 200% of the ordinary hourly rate.

(c) An employee required to work on a Saturday or Sunday will be paid for a minimum of 4 hours' work.

(d) All time worked on Sunday will stand alone.

23.2 Work on public holidays

a) All time worked by a full-time or part-time employee on a public holiday must be paid for at the following rates with a minimum payment of 4 hours:

<table>
<tr><th></th><th>% of the ordinary hourly r</th></tr>
<tr><td>Good Friday and Christmas Day</td><td>200</td></tr>
<tr><td>Public holiday other than Good Friday and Christmas Day</td><td>150</td></tr>
</table>
b) Payment for work on a public holiday is in addition to any amount payable in respect of the weekly rate.

c) Despite clause Error! Reference source not found. an employee required to work on a public holiday during hours which, if the day were not a public holiday, would be outside the range of ordinary working time, will be paid for such hours at the following rates:

<table>
<tr><th></th><th>% of the ordinary hourly r</th></tr>
<tr><td>Good Friday and Christmas Day</td><td>300</td></tr>
</table>
</td><td>
Taking into account the peak periods in the on demand delivery services industry, it is unsustainable to pay penalty rates during the industries peak periods. The peak periods are significantly volatile which rise and fall by the hour and by the minute, affected not only by the time, lunch and dinner rush, public holidays and events, but also by weather and other external factors.

The penalty rates as they currently stand in the Road and Transport Distribution Award are untenable in the on demand delivery services industry, particularly when noting the demographic of workers, and that these 'unsociable times' are when the employees prefer to work, in order to supplement their income through short term flexible work around other commitments. These employees are often students and retirees.[14]
</td><td>
20. Penalty rates

All work performed by an employee outside of ordinary hours, which is not overtime will be paid at the following rates:

<table>
<tr><th></th><th>Full-time and part-time employees</th><th>Casual employees</th></tr>
<tr><td></td><td colspan="2">% of minimum hourly rate</td></tr>
<tr><td>Monday to Saturday—outside 6.00 am – 11.00 pm</td><td>110</td><td>135</td></tr>
<tr><td>Sunday—all day</td><td>110</td><td>135</td></tr>
<tr><td>Public holidays—all day</td><td>150</td><td>150</td></tr>
</table>
NOTE: Schedule X sets out hourly rates of pay including penalty rates.
</td></tr>
</table>

[14] Witness statement of Morten Belling, [112] – [113].

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Public holiday other than Good Friday and Christmas Day	250

d) If Christmas Day falls on a Saturday or Sunday and another day is observed as a public holiday in accordance with sections 114–116 of the Act, a full-time or part-time employee who is regularly rostered to work ordinary hours on a Saturday or Sunday will be paid:

(i) a loading of 50% of a normal day's wage for a full day's work; and

(ii) the Saturday/Sunday rate for all ordinary hours worked on 25 December with a minimum of 4 hours pay; and

(iii) the employee will also be entitled to the benefit of the substituted public holiday.

e) All time worked by a casual employee on a public holiday must be paid at the following rates in addition to the casual loading at clause **Error! Reference source not found.**—**Error! Reference source not found.**. The minimum payment will be for 4 hours:

	% of the ordinary hourly r
Good Friday and Christmas Day	300
Public holiday other than Good Friday and Christmas Day	250

Part 6—Leave and Public Holidays

24. Annual leave

24.1 Annual leave is provided for in the NES. Annual leave does not apply to casual employees.

24.2 Payment for annual leave must be made at the applicable minimum rate in clause 17—Minimum rates for the classification in which the employee would have worked had they not taken the period of leave.

24.3 Additional leave for certain shiftworkers

A shiftworker, for the purposes of the additional week's leave referred to in section 87(1)(b) of the Act, is a 7 day shiftworker who is regularly rostered to work on Sundays and public holidays.

24.4 Annual leave loading

(a) During a period of annual leave an employee will receive a loading calculated on the minimum wage rate in clause 17—Minimum rates. Annual leave loading is payable on annual leave accrued and taken and on annual leave paid out on termination.

(b) The loading is as follows:

As a standard term, Menulog takes no issue with this clause in the RTD Award, and it has proposed a term which takes different drafting but provides for substantially the same effect.

Part 4—Leave and Public Holidays

21. Annual leave

21.1 Annual leave is provided for in the NES.

21.2 Definition of a shiftworker

For the purpose of the additional week of annual leave provided for in section 87(1)(b) of the Act, a **shiftworker** is an employee who works ordinary hours over 7 days of the week and is regularly rostered to work on Sundays and public holidays.

21.3 Annual leave loading

When taking a period of paid annual leave an employee must be paid a loading of **17.5%** in addition to the payment required by the NES or the ordinary pay they would have received for the period of the leave, whichever is the greater.

NOTE: Where an employee is receiving over-award payments such that the employee's base rate of pay is higher than the rate specified under this award, the employee is entitled to receive the higher rate while on a period of paid annual leave (see sections 16 and 90 of the Act).

21.4 Annual close down

(a) Where an employer intends to temporarily close (or reduce to nucleus) the place of employment or a section

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(i) Day work

Employees who would have worked on day work only had they not been on annual leave—17.5% or the relevant weekend penalty rates, whichever is the greater, but not both.

(ii) Shiftwork

Employees who would have worked on shiftwork had they not been on annual leave—a loading of 17.5% or the shift loading (including relevant weekend penalty rates), whichever is the greater, but not both.

NOTE: Where an employee is receiving over-award payments such that the employee's base rate of pay is higher than the rate specified under this award, the employee is entitled to receive the higher rate while on a period of paid annual leave (see sections 16 and 90 of the Act).

24.5 Annual leave in advance

(a) An employer and employee may agree in writing to the employee taking a period of paid annual leave before the employee has accrued an entitlement to the leave.

(b) An agreement must:

(i) state the amount of leave to be taken in advance and the date on which leave is to commence; and

(ii) be signed by the employer and employee and, if the employee is under 18 years of age, by the employee's parent or guardian.

NOTE: An example of the type of agreement required by clause 24.5 is set out at Schedule F—Agreement to Take Annual Leave in Advance. There is no requirement to use the form of agreement set out at Schedule F—Agreement to Take Annual Leave in Advance.

(c) The employer must keep a copy of any agreement under clause 24.5 as an employee record.

(d) If, on the termination of the employee's employment, the employee has not accrued an entitlement to all of a period of paid annual leave already taken in accordance with an agreement under clause 24.5, the employer may deduct from any money due to the employee on termination an amount equal to the amount that was paid to the employee in respect of any part of the period of annual leave taken in advance to which an entitlement has not been accrued.

24.6 Excessive leave accruals: general provision

NOTE: Clauses 24.6 to 24.8 contain provisions, additional to the NES, about the taking of paid annual leave as a way of dealing with the accrual of excessive paid annual leave. See Part 2.2, Division 6 of the Act.

(a) An employee has an excessive leave accrual if the employee has accrued more than 8 weeks' paid annual

of it for the purpose, amongst others, of allowing annual leave to the employees concerned or a majority of them, the employer must give those employees one month's notice in writing of an intention to apply the provisions of clause 0.

(b) In the case of any employee engaged after notice has been given, notice must be given to that employee on the date of their engagement.

(c) Where an employee has been given notice pursuant to clause 0 and the employee has:

(i) accrued sufficient annual leave to cover the full period of closing, the employee must take paid annual leave for the full period of closing;

(ii) insufficient accrued annual leave to cover the full period of closing, the employee must take paid annual leave to the full amount accrued and leave without pay for the remaining period of the closing; or

(iii) no accrued annual leave, the employee must take leave without pay for the full period of closing.

(d) Public holidays that fall within the period of close down will be paid as provided for in this award and will not count as a day of annual leave or leave without pay.

21.5 Annual leave in advance

(a) An employer and employee may agree in writing to the employee taking a period of paid annual leave before the employee has accrued an entitlement to the leave.

(b) An agreement must:

(i) state the amount of leave to be taken in advance and the date on which leave is to commence; and

(ii) be signed by the employer and employee and, if the employee is under 18 years of age, by the employee's parent or guardian.

NOTE: An example of the type of agreement required by clause 0 is set out at Error! Reference source not found.. There is no requirement to use the form of agreement set out at Error! Reference source not found..

(c) The employer must keep a copy of any agreement under clause 0 as an employee record.

(d) If, on the termination of the employee's employment, the employee has not accrued an entitlement to all of a period of paid annual leave already taken in accordance with an agreement under clause 0, the employer may deduct from any money due to the employee on termination an amount equal to the amount that was paid to the employee in respect of any part of the period of annual leave taken in advance to which an entitlement has not been accrued.

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leave (or 10 weeks' paid annual leave for a shiftworker, as defined by clause 24.3). (b) If an employee has an excessive leave accrual, the employer or the employee may seek to confer with the other and genuinely try to reach agreement on how to reduce or eliminate the excessive leave accrual. (c) Clause 24.7 sets out how an employer may direct an employee who has an excessive leave accrual to take paid annual leave. (d) Clause 24.8 sets out how an employee who has an excessive leave accrual may require an employer to grant paid annual leave requested by the employee. **24.7 Excessive leave accruals: direction by employer that leave be taken** (a) If an employer has genuinely tried to reach agreement with an employee under clause 24.6(b) but agreement is not reached (including because the employee refuses to confer), the employer may direct the employee in writing to take one or more periods of paid annual leave. (b) However, a direction by the employer under clause 24.7(a): (i) is of no effect if it would result at any time in the employee's remaining accrued entitlement to paid annual leave being less than 6 weeks when any other paid annual leave arrangements (whether made under clause 24.6, 24.7 or 24.8 or otherwise agreed by the employer and employee) are taken into account; and (ii) must not require the employee to take any period of paid annual leave of less than one week; and (iii) must not require the employee to take a period of paid annual leave beginning less than 8 weeks, or more than 12 months, after the direction is given; and (iv) must not be inconsistent with any leave arrangement agreed by the employer and employee. (c) The employee must take paid annual leave in accordance with a direction under clause 24.7(a) that is in effect. (d) An employee to whom a direction has been given under clause 24.7(a) may request to take a period of paid annual leave as if the direction had not been given. NOTE 1: Paid annual leave arising from a request mentioned in clause 24.7(d) may result in the direction ceasing to have effect. See clause 24.7(b)(i). NOTE 2: Under section 88(2) of the Act, the employer must not unreasonably refuse to agree to a request by the employee to take paid annual leave.		**21.6 Cashing out of annual leave** **(a)** Paid annual leave must not be cashed out except in accordance with an agreement under clause 0. **(b)** Each cashing out of a particular amount of paid annual leave must be the subject of a separate agreement under clause 0. **(c)** An employer and an employee may agree in writing to the cashing out of a particular amount of accrued paid annual leave by the employee. **(d)** An agreement under clause 0 must state: **(i)** the amount of leave to be cashed out and the payment to be made to the employee for it; and **(ii)** the date on which the payment is to be made. **(e)** An agreement under clause 0 must be signed by the employer and employee and, if the employee is under 18 years of age, by the employee's parent or guardian. **(f)** The payment must not be less than the amount that would have been payable had the employee taken the leave at the time the payment is made. **(g)** An agreement must not result in the employee's remaining accrued entitlement to paid annual leave being less than 4 weeks. **(h)** The maximum amount of accrued paid annual leave that may be cashed out in any period of 12 months is 2 weeks. **(i)** The employer must keep a copy of any agreement under clause 0 as an employee record. NOTE 1: Under section 344 of the Act, an employer must not exert undue influence or undue pressure on an employee to make, or not make, an agreement under clause 0. NOTE 2: Under section 345(1) of the Act, a person must not knowingly or recklessly make a false or misleading representation about the workplace rights of another person under clause 0. NOTE 3: An example of the type of agreement required by clause 0 is set out at Error! Reference source not found.. There is no requirement to use the form of agreement set out at Error! Reference source not found.. **21.7 Excessive leave accruals: general provision** NOTE: Clauses 0 to 0 contain provisions, additional to the National Employment Standards, about the taking of paid annual leave as a way of dealing with the accrual of excessive paid annual leave. See Part 2.2, Division 6 of the Act. **(a)** An employee has an **excessive leave accrual** if the employee has accrued more than 8 weeks' paid annual leave (or 10 weeks' paid annual leave for a shiftworker, as defined by clause 0).

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24.8 Excessive leave accruals: request by employee for leave (a) If an employee has genuinely tried to reach agreement with an employer under clause 24.6(b) but agreement is not reached (including because the employer refuses to confer), the employee may give a written notice to the employer requesting to take one or more periods of paid annual leave. (b) However, an employee may only give a notice to the employer under clause 24.8(a) if: (i) the employee has had an excessive leave accrual for more than 6 months at the time of giving the notice; and (ii) the employee has not been given a direction under clause 24.7(a) that, when any other paid annual leave arrangements (whether made under clause 24.6, 24.7 or 24.8 or otherwise agreed by the employer and employee) are taken into account, would eliminate the employee's excessive leave accrual. (c) A notice given by an employee under clause 24.8(a) must not: (i) if granted, result in the employee's remaining accrued entitlement to paid annual leave being at any time less than 6 weeks when any other paid annual leave arrangements (whether made under clause 24.6, 24.7 or 24.8 or otherwise agreed by the employer and employee) are taken into account; or (ii) provide for the employee to take any period of paid annual leave of less than one week; or (iii) provide for the employee to take a period of paid annual leave beginning less than 8 weeks, or more than 12 months, after the notice is given; or (iv) be inconsistent with any leave arrangement agreed by the employer and employee. (d) An employee is not entitled to request by a notice under clause 24.8(a) more than 4 weeks' paid annual leave (or 5 weeks' paid annual leave for a shiftworker, as defined by clause 24.3) in any period of 12 months. (e) The employer must grant paid annual leave requested by a notice under clause 24.8(a). **24.9 Annual close-down** An employer may close down an enterprise or part of the enterprise for the purpose of allowing annual leave to all or the majority of the employees in the enterprise or part concerned, provided that: (a) the employer gives not less than one month's notice of its intention to do so;		**(b)** If an employee has an excessive leave accrual, the employer or the employee may seek to confer with the other and genuinely try to reach agreement on how to reduce or eliminate the excessive leave accrual. **(c)** Clause 0 sets out how an employer may direct an employee who has an excessive leave accrual to take paid annual leave. **(d)** Clause 0 sets out how an employee who has an excessive leave accrual may require an employer to grant paid annual leave requested by the employee. **21.8 Excessive leave accruals: direction by employer that leave be taken** **(a)** If an employer has genuinely tried to reach agreement with an employee under clause 0 but agreement is not reached (including because the employee refuses to confer), the employer may direct the employee in writing to take one or more periods of paid annual leave. **(b)** However, a direction by the employer under clause 0: **(i)** is of no effect if it would result at any time in the employee's remaining accrued entitlement to paid annual leave being less than 6 weeks when any other paid annual leave arrangements (whether made under clause 0, 0 or 0 or otherwise agreed by the employer and employee) are taken into account; and **(ii)** must not require the employee to take any period of paid annual leave of less than one week; and **(iii)** must not require the employee to take a period of paid annual leave beginning less than 8 weeks, or more than 12 months, after the direction is given; and **(iv)** must not be inconsistent with any leave arrangement agreed by the employer and employee. **(c)** The employee must take paid annual leave in accordance with a direction under clause 0 that is in effect. **(d)** An employee to whom a direction has been given under clause 0 may request to take a period of paid annual leave as if the direction had not been given. NOTE 1: Paid annual leave arising from a request mentioned in clause 0 may result in the direction ceasing to have effect. See clause 0. NOTE 2: Under section 88(2) of the Act, the employer must not unreasonably refuse to agree to a request by the employee to take paid annual leave. **21.9 Excessive leave accruals: request by employee for leave** **(a)** If an employee has genuinely tried to reach agreement with an employer under clause 0 but agreement is not reached (including because the employer refuses to

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(b) an employee who has accrued sufficient leave to cover the period of the close down is allowed leave, and is paid for that leave at the appropriate rate; (c) an employee who has not accrued sufficient leave to cover part or all of the close down is allowed paid leave for the period for which they have accrued sufficient leave, and given unpaid leave for the remainder of the close-down; and (d) any leave taken by an employee as a result of a close down pursuant to clause 24.9 also counts as service by the employee with their employer. **24.10 Cashing out of annual leave** (a) Paid annual leave must not be cashed out except in accordance with an agreement under clause 24.10. (b) Each cashing out of a particular amount of paid annual leave must be the subject of a separate agreement under clause 24.10. (c) An employer and an employee may agree in writing to the cashing out of a particular amount of accrued paid annual leave by the employee. (d) An agreement under clause 24.10 must state: (i) the amount of leave to be cashed out and the payment to be made to the employee for it; and (ii) the date on which the payment is to be made. (e) An agreement under clause 24.10 must be signed by the employer and employee and, if the employee is under 18 years of age, by the employee's parent or guardian. (f) The payment must not be less than the amount that would have been payable had the employee taken the leave at the time the payment is made. (g) An agreement must not result in the employee's remaining accrued entitlement to paid annual leave being less than 4 weeks. (h) The maximum amount of accrued paid annual leave that may be cashed out in any period of 12 months is 2 weeks. (i) The employer must keep a copy of any agreement under clause 24.10 as an employee record. NOTE 1: Under section 344 of the Act, an employer must not exert undue influence or undue pressure on an employee to make, or not make, an agreement under clause 24.10. NOTE 2: Under section 345(1) of the Act, a person must not knowingly or recklessly make a false or misleading representation about the workplace rights of another person under clause 24.10. NOTE 3: An example of the type of agreement required by clause 24.10 is set out at Schedule G—Agreement to Cash Out Annual Leave. There		confer), the employee may give a written notice to the employer requesting to take one or more periods of paid annual leave. **(b)** However, an employee may only give a notice to the employer under clause 0 if: **(i)** the employee has had an excessive leave accrual for more than 6 months at the time of giving the notice; and **(ii)** the employee has not been given a direction under clause 0 that, when any other paid annual leave arrangements (whether made under clause 0, 0 or 0 or otherwise agreed by the employer and employee) are taken into account, would eliminate the employee's excessive leave accrual. **(c)** A notice given by an employee under clause 0 must not: **(i)** if granted, result in the employee's remaining accrued entitlement to paid annual leave being at any time less than 6 weeks when any other paid annual leave arrangements (whether made under clause 0, 0 or 0 or otherwise agreed by the employer and employee) are taken into account; or **(ii)** provide for the employee to take any period of paid annual leave of less than one week; or **(iii)** provide for the employee to take a period of paid annual leave beginning less than 8 weeks, or more than 12 months, after the notice is given; or **(iv)** be inconsistent with any leave arrangement agreed by the employer and employee. **(d)** An employee is not entitled to request by a notice under clause 0 more than 4 weeks' paid annual leave (or 5 weeks' paid annual leave for a shiftworker, as defined by clause 0) in any period of 12 months. **(e)** The employer must grant paid annual leave requested by a notice under clause 0.

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is no requirement to use the form of agreement set out at Schedule G—Agreement to Cash Out Annual Leave.		
25. Personal/carer's leave and compassionate leave 25.1 Personal/carer's leave and compassionate leave are provided for in the NES. 25.2 Payment for paid personal/carer's leave must be made at the applicable minimum rate in clause 17—Minimum rates for the classification in which the employee would have worked had they not taken the period of leave.	As a standard term, Menulog takes no issue with this clause in the RTD Award, and it has proposed a term which takes different drafting but provides for substantially the same effect.	**22. Personal/carer's leave and compassionate leave** Personal/carer's leave and compassionate leave are provided for in the NES.
26. Parental leave and related entitlements Parental leave and related entitlements are provided for in the NES.	As a standard term, Menulog takes no issue with this clause in the RTD Award.	**23. Parental leave and related entitlements** Parental leave and related entitlements are provided for in the NES.
27. Community service leave Community service leave is provided for in the NES.	As a standard term, Menulog takes no issue with this clause in the RTD Award.	**24. Community service leave** Community service leave is provided for in the NES.
28. Unpaid family and domestic violence leave Unpaid family and domestic violence leave is provided for in the NES. NOTE 1: Information concerning an employee's experience of family and domestic violence is sensitive and if mishandled can have adverse consequences for the employee. Employers should consult with such employees regarding the handling of this information. NOTE 2: Depending upon the circumstances, evidence that would satisfy a reasonable person of the employee's need to take family and domestic violence leave may include a document issued by the police service, a court or family violence support service, or a statutory declaration.	As a standard term, Menulog takes no issue with this clause in the RTD Award.	**25. Unpaid family and domestic violence leave** Unpaid family and domestic violence leave is provided for in the NES. NOTE 1: Information concerning an employee's experience of family and domestic violence is sensitive and if mishandled can have adverse consequences for the employee. Employers should consult with such employees regarding the handling of this information. NOTE 2: Depending upon the circumstances, evidence that would satisfy a reasonable person of the employee's need to take family and domestic violence leave may include a document issued by the police service, a court or family violence support service, or a statutory declaration.
29. Public holidays 29.1 Public holidays are provided for in the NES. 29.2 Where an employee works on a public holiday, the employee will be paid in accordance with clause 23.2. **29.3 Substitution of certain public holidays by agreement at the enterprise** (a) An employer and employee may agree to substitute another day for a day that would otherwise be a public holiday under the NES. (b) An employer and employee may agree to substitute another part-day for a part-day that would otherwise be a part-day public holiday under the NES. **29.4 Part-day public holidays** For provisions relating to part-day public holidays see Schedule H—Part-day Public Holidays.	As a standard term, Menulog takes no issue with this clause in the RTD Award, and it has proposed a term which takes different drafting but provides for substantially the same effect.	**26. Public holidays** **26.1** Public holiday entitlements are provided for in the NES. **26.2 Substitution of public holidays by agreement** **(a)** An employer and employee may agree to substitute another day for a day that would otherwise be a public holiday under the NES. **(b)** An employer and employee may agree to substitute another part-day for a part-day that would otherwise be a part-day public holiday under the NES. **26.3 Part-day public holiday** For provisions relating to part-day public holidays see Error! Reference source not found.—Part-day Public Holidays.

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Part 7—Consultation and Dispute Resolution **30. Consultation about major workplace change** 30.1 If an employer makes a definite decision to make major changes in production, program, organisation, structure or technology that are likely to have significant effects on employees, the employer must: (a) give notice of the changes to all employees who may be affected by them and their representatives (if any); and (b) discuss with affected employees and their representatives (if any): (i) the introduction of the changes; and (ii) their likely effect on employees; and (iii) measures to avoid or reduce the adverse effects of the changes on employees; and (c) commence discussions as soon as practicable after a definite decision has been made. 30.2 For the purposes of the discussion under clause 30.1(b), the employer must give in writing to the affected employees and their representatives (if any) all relevant information about the changes including: (a) their nature; and (b) their expected effect on employees; and (c) any other matters likely to affect employees. 30.3 Clause 30.2 does not require an employer to disclose any confidential information if its disclosure would be contrary to the employer's interests. 30.4 The employer must promptly consider any matters raised by the employees or their representatives about the changes in the course of the discussion under clause 30.1(b). 30.5 In clause 30 significant effects, on employees, includes any of the following: (a) termination of employment; or (b) major changes in the composition, operation or size of the employer's workforce or in the skills required; or (c) loss of, or reduction in, job or promotion opportunities; or (d) loss of, or reduction in, job tenure; or (e) alteration of hours of work; or (f) the need for employees to be retrained or transferred to other work or locations; or (g) job restructuring. 30.6 Where this award makes provision for alteration of any of the matters defined at clause 30.5, such alteration is taken not to have significant effect.	As a standard term, Menulog takes no issue with this clause in the RTD Award.	**Part 5—Consultation and Dispute Resolution** **27. Consultation about major workplace change** **27.1** If an employer makes a definite decision to make major changes in production, program, organisation, structure or technology that are likely to have significant effects on employees, the employer must: **(a)** give notice of the changes to all employees who may be affected by them and their representatives (if any); and **(b)** discuss with affected employees and their representatives (if any): **(i)** the introduction of the changes; and **(ii)** their likely effect on employees; and **(iii)** measures to avoid or reduce the adverse effects of the changes on employees; and **(c)** commence discussions as soon as practicable after a definite decision has been made. **27.2** For the purposes of the discussion under clause 0, the employer must give in writing to the affected employees and their representatives (if any) all relevant information about the changes including: **(a)** their nature; and **(b)** their expected effect on employees; and **(c)** any other matters likely to affect employees. **27.3** Clause 0 does not require an employer to disclose any confidential information if its disclosure would be contrary to the employer's interests. **27.4** The employer must promptly consider any matters raised by the employees or their representatives about the changes in the course of the discussion under clause 0. **27.5** In clause 0 **significant effects**, on employees, includes any of the following: **(a)** termination of employment; or **(b)** major changes in the composition, operation or size of the employer's workforce or in the skills required; or **(c)** loss of, or reduction in, job or promotion opportunities; or **(d)** loss of, or reduction in, job tenure; or **(e)** alteration of hours of work; or **(f)** the need for employees to be retrained or transferred to other work or locations; or **(g)** job restructuring. **27.6** Where this award makes provision for alteration of any of the matters defined at clause 0, such alteration is taken not to have significant effect.

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31. Consultation about changes to rosters or hours of work 31.1 Clause 31 applies if an employer proposes to change the regular roster or ordinary hours of work of an employee, other than an employee whose working hours are irregular, sporadic or unpredictable. 31.2 The employer must consult with any employees affected by the proposed change and their representatives (if any). 31.3 For the purpose of the consultation, the employer must: (a) provide to the employees and representatives mentioned in clause 31.2 information about the proposed change (for example, information about the nature of the change and when it is to begin); and (b) invite the employees to give their views about the impact of the proposed change on them (including any impact on their family or caring responsibilities) and also invite their representative (if any) to give their views about that impact. 31.4 The employer must consider any views given under clause 31.3(b). 31.5 Clause 31 is to be read in conjunction with any other provisions of this award concerning the scheduling of work or the giving of notice.	As a standard term, Menulog takes no issue with this clause in the RTD Award.	**28. Consultation about changes to rosters or hours of work** **28.1** Clause 0 applies if an employer proposes to change the regular roster or ordinary hours of work of an employee, other than an employee whose working hours are irregular, sporadic or unpredictable. **28.2** The employer must consult with any employees affected by the proposed change and their representatives (if any). **28.3** For the purpose of the consultation, the employer must: **(a)** provide to the employees and representatives mentioned in clause 0 information about the proposed change (for example, information about the nature of the change and when it is to begin); and **(b)** invite the employees to give their views about the impact of the proposed change on them (including any impact on their family or caring responsibilities) and also invite their representative (if any) to give their views about that impact. **28.4** The employer must consider any views given under clause 0. **28.5** Clause 0 is to be read in conjunction with any other provisions of this award concerning the scheduling of work or the giving of notice.
32. Dispute resolution 32.1 Clause 32 sets out the procedures to be followed if a dispute arises about a matter under this award or in relation to the NES. 32.2 The parties to the dispute must first try to resolve the dispute at the workplace through discussion between the employee or employees concerned and the relevant supervisor. 32.3 If the dispute is not resolved through discussion as mentioned in clause 32.2, the parties to the dispute must then try to resolve it in a timely manner at the workplace through discussion between the employee or employees concerned and more senior levels of management, as appropriate. 32.4 If the dispute is unable to be resolved at the workplace and all appropriate steps have been taken under clauses 32.2 and 32.3, a party to the dispute may refer it to the Fair Work Commission. 32.5 The parties may agree on the process to be followed by the Fair Work Commission in dealing with the dispute, including mediation, conciliation and consent arbitration. 32.6 If the dispute remains unresolved, the Fair Work Commission may use any method of dispute resolution that it is permitted by the Act to use and that it considers appropriate for resolving the dispute.	As a standard term, Menulog takes no issue with this clause in the RTD Award.	**29. Dispute resolution** **29.1** Clause 0 sets out the procedures to be followed if a dispute arises about a matter under this award or in relation to the NES. **29.2** The parties to the dispute must first try to resolve the dispute at the workplace through discussion between the employee or employees concerned and the relevant supervisor. **29.3** If the dispute is not resolved through discussion as mentioned in clause 0, the parties to the dispute must then try to resolve it in a timely manner at the workplace through discussion between the employee or employees concerned and more senior levels of management, as appropriate. **29.4** If the dispute is unable to be resolved at the workplace and all appropriate steps have been taken under clauses 0 and 0, a party to the dispute may refer it to the Fair Work Commission. **29.5** The parties may agree on the process to be followed by the Fair Work Commission in dealing with the dispute, including mediation, conciliation and consent arbitration. **29.6** If the dispute remains unresolved, the Fair Work Commission may use any method of dispute resolution that it is permitted by the Act to use and that it considers appropriate for resolving the dispute. **29.7** A party to the dispute may appoint a person, organisation or association to support and/or represent them in any discussion or process under clause 0.

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32.7 A party to the dispute may appoint a person, organisation or association to support and/or represent them in any discussion or process under clause 32. 32.8 While procedures are being followed under clause 32 in relation to a dispute: (a) work must continue in accordance with this award and the Act; and (b) an employee must not unreasonably fail to comply with any direction given by the employer about performing work, whether at the same or another workplace, that is safe and appropriate for the employee to perform. 32.9 Clause 32.8 is subject to any applicable work health and safety legislation.		**29.8** While procedures are being followed under clause 0 in relation to a dispute: **(a)** work must continue in accordance with this award and the Act; and **(b)** an employee must not unreasonably fail to comply with any direction given by the employer about performing work, whether at the same or another workplace, that is safe and appropriate for the employee to perform. **29.9** Clause 0 is subject to any applicable work health and safety legislation.
33. Dispute resolution training leave 33.1 An eligible employee representative is entitled to, and must be granted, up to 5 days' leave with pay each calendar year, non-cumulative, to attend courses which are specifically directed towards effective resolution of disputes regarding industrial matters under this award and/or industrial issues which arise at the workplace. A shop steward, delegate or employee representative will only be entitled to leave in accordance with clause 33 for bona fide courses. 33.2 For the purpose of clause 33, a bona fide course means a Dispute Resolution Training Leave Course conducted under the auspices of a registered training organisation whose scope of registration includes industrial relations training. 33.3 An employee representative must give the employer 6 weeks' notice of intention to attend such courses and the leave to be taken, or such shorter period of notice as the employer may agree to accept. 33.4 The notice to the employer must include details of the type, content and duration of the course to be attended. Upon request, the course curriculum will be provided to the employer. 33.5 Leave must be available according to the following scale for each yard, depot or garage of an employer: **No. of full-time and part-time employees covered by this award** / **Max. no. of employee representatives eligible to attend per year** / **Max. no. of days permitted per year** 5–15 / 1 / 5 16–30 / 2 / 10 31–50 / 3 / 15 51–100 / 4 / 20	Clause 33 is an historical term which is not typical of the types of entitlements address in modern awards. Consistent with the modern awards objective to ensure simple and easy to understand modern awards, an equivalent provision is not proposed.	*No equivalent provision*

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101 and over	5	25

33.6 An employer is not liable for any additional expenses associated with an employee's attendance at a course other than the payment of ordinary time earnings for such absence. For the purpose of clause **Error! Reference source not found.** ordinary time earnings are the relevant minimum rate and shiftwork loadings, where relevant, plus over-award payment where applicable.

33.7 Leave of absence on training leave must be counted as service.

33.8 The employee must provide the employer with proof of attendance.

33.9 The granting of leave pursuant to clause 33 is subject to the employer being able to make adequate staffing arrangements among current employees during the period of such leave.

33.10 An employee will not be eligible to attend such courses until 6 months' continuous service has been served with the employer.

Part 8—Termination of employment and Redundancy

34. Termination of employment

NOTE: The NES sets out requirements for notice of termination by an employer. See sections 117 and 123 of the Act.

34.1 Notice of termination by an employee

(a) Clause 34.1 applies to all employees except those identified in sections 123(1) and 123(3) of the Act.

(b) An employee must give the employer notice of termination in accordance with Table 1—Period of notice of at least the period specified in column 2 according to the period of continuous service of the employee specified in column 1.

Table 1—Period of notice

Column 1 **Employee's period of continuous service with the employer at the end of the day the notice is given**	**Column 2** **Period of notice**
Not more than 1 year	1 week
More than 1 year but not more than 3 years	2 weeks
More than 3 years but not more than 5 years	3 weeks
More than 5 years	4 weeks

As a standard term, Menulog takes no issue with this clause in the RTD Award, and it has proposed a term which takes different drafting but provides for substantially the same effect.

Part 6—Termination of Employment and Redundancy

30. Termination of employment

NOTE: The NES sets out requirements for notice of termination by an employer. See sections 117 and 123 of the Act.

30.1 Notice of termination by an employee

(a) Clause 0 applies to all employees except those identified in sections 123(1) and 123(3) of the Act.

(b) An employee must give the employer notice of termination in accordance with **Table 4 – Period of notice** of at least the period specified in **Column 2** according to the period of continuous service of the employee specified in **Column 1**.

TABLE 4 – PERIOD OF NOTICE

COLUMN 1 **Employee's period of continuous service with the employer at the end of the day the notice is given**	***COLUMN 2*** **Period of notice**
Not more than 1 year	1 week
More than 1 year but not more than 3 years	2 weeks
More than 3 years but not more than 5 years	3 weeks
More than 5 years	4 weeks

NOTE: The notice of termination required to be given by an employee is the same as that required of an employer except that the employee

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NOTE: The notice of termination required to be given by an employee is the same as that required of an employer except that the employee does not have to give additional notice based on the age of the employee. (c) In clause 34.1(b) continuous service has the same meaning as in section 117 of the Act. (d) If an employee who is at least 18 years old does not give the period of notice required under clause 34.1(b), then the employer may deduct from wages due to the employee under this award an amount that is no more than one week's wages for the employee. (e) If the employer has agreed to a shorter period of notice than that required under clause 34.1(b), then no deduction can be made under clause 34.1(d). (f) Any deduction made under clause 34.1(d) must not be unreasonable in the circumstances. **34.2 Job search entitlement** (a) Where an employer has given notice of termination to an employee, the employee must be allowed time off without loss of pay of up to one day for the purpose of seeking other employment. (b) The time off under clause 34.2 is to be taken at times that are convenient to the employee after consultation with the employer.		does not have to give additional notice based on the age of the employee. **(c)** In clause 0 continuous service has the same meaning as in section 117 of the Act. **(d)** If an employee who is at least 18 years old does not give the period of notice required under clause 0, then the employer may deduct from wages due to the employee under this award an amount that is no more than one week's wages for the employee. **(e)** If the employer has agreed to a shorter period of notice than that required under clause 0, then no deduction can be made under clause 0. **(f)** Any deduction made under clause 0 must not be unreasonable in the circumstances. **30.2 Job search entitlement** **(a)** Where an employer has given notice of termination to an employee, the employee must be allowed time off without loss of pay of up to one day for the purpose of seeking other employment. **(b)** The time off under clause 0 is to be taken at times that are convenient to the employee after consultation with the employer.
35. Redundancy **NOTE: Redundancy pay is provided for in the NES. See sections 119 to 123 of the Act.** **35.1 Transfer to lower paid duties on redundancy** (a) Clause 35.1 applies if, because of redundancy, an employee is transferred to new duties to which a lower ordinary rate of pay applies. (b) The employer may: (i) give the employee notice of the transfer of at least the same length as the employee would be entitled to under section 117 of the Act as if it were a notice of termination given by the employer; or (ii) transfer the employee to the new duties without giving notice of transfer or before the expiry of a notice of transfer, provided that the employer pays the employee as set out in clause 35.1(c). (c) If the employer acts as mentioned in clause 35.1(b)(ii), the employee is entitled to a payment of an amount equal to the difference between the ordinary rate of pay of the employee (inclusive of all-purpose allowances, shift rates and penalty rates applicable to ordinary hours) for the hours of work the employee would have worked in the first role, and the ordinary rate of pay (also inclusive of all-purpose allowances, shift rates and penalty rates	As a standard term, Menulog takes no issue with this clause in the RTD Award, and it has proposed a term which takes different drafting but provides for substantially the same effect.	**31. Redundancy** NOTE: Redundancy pay is provided for in the NES. See sections 119 to 123 of the Act. **31.1 Transfer to lower paid duties on redundancy** **(a)** Clause 0 applies if, because of redundancy, an employee is transferred to new duties to which a lower ordinary rate of pay applies. **(b)** The employer may: **(i)** give the employee notice of the transfer of at least the same length as the employee would be entitled to under section 117 of the Act as if it were a notice of termination given by the employer; or **(ii)** transfer the employee to the new duties without giving notice of transfer or before the expiry of a notice of transfer, provided that the employer pays the employee as set out in clause 0. **(c)** If the employer acts as mentioned in clause 0, the employee is entitled to a payment of an amount equal to the difference between the ordinary rate of pay of the employee (inclusive of all-purpose allowances, shift rates and penalty rates applicable to ordinary hours) for the hours of work the employee would have worked in the first role, and the ordinary rate of pay (also inclusive of

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applicable to ordinary hours) of the employee in the second role for the period for which notice was not given. **35.2 Employee leaving during redundancy notice period** (a) An employee given notice of termination in circumstances of redundancy may terminate their employment during the minimum period of notice prescribed by section 117(3) of the Act. (b) The employee is entitled to receive the benefits and payments they would have received under clause 35 or under sections 119 to 123 of the Act had they remained in employment until the expiry of the notice. (c) However, the employee is not entitled to be paid for any part of the period of notice remaining after the employee ceased to be employed. **35.3 Job search entitlement** (a) Where an employer has given notice of termination to an employee in circumstances of redundancy, the employee must be allowed time off without loss of pay of up to one day each week of the minimum period of notice prescribed by section 117(3) of the Act for the purpose of seeking other employment. (b) If an employee is allowed time off without loss of pay of more than one day under clause 35.3(a), the employee must, at the request of the employer, produce proof of attendance at an interview. (c) A statutory declaration is sufficient for the purpose of clause 35.3(b). (d) An employee who fails to produce proof when required under clause 35.3(b) is not entitled to be paid for the time off. (e) This entitlement applies instead of clause 34.2.		all-purpose allowances, shift rates and penalty rates applicable to ordinary hours) of the employee in the second role for the period for which notice was not given. **31.2 Job search entitlement** **(a)** Where an employer has given notice of termination to an employee in circumstances of redundancy, the employee must be allowed time off without loss of pay of up to one day each week of the minimum period of notice prescribed by section 117(3) of the Act for the purpose of seeking other employment. **(b)** If an employee is allowed time off without loss of pay of more than one day under clause 0, the employee must, at the request of the employer, produce proof of attendance at an interview. **(c)** A statutory declaration is sufficient for the purpose of clause 0. **(d)** An employee who fails to produce proof when required under clause 0 is not entitled to be paid for the time off. **(e)** This entitlement applies instead of clause 0. **31.3 Employee leaving during redundancy notice period** **(a)** An employee given notice of termination in circumstances of redundancy may terminate their employment during the minimum period of notice prescribed by section 117(3) of the Act. **(b)** The employee is entitled to receive the benefits and payments they would have received under clause 0 or under sections 119 to 123 of the Act had they remained in employment until the expiry of the notice. **(c)** However, the employee is not entitled to be paid for any part of the period of notice remaining after the employee ceased to be employed.