

Form F87A – Application for a minimum standards order

Fair Work Act 2009 (Fair Work Act), section 536JZ

This is an application to the Fair Work Commission to make a minimum standards order in accordance with Part 3A-2 of the Fair Work Act.

The Applicant



Choose one of the following.



The person making this application (Applicant) is:

- an organisation that is entitled to represent the industrial interests of one or more regulated workers who would be covered by the proposed order
- an organisation that is entitled to represent the industrial interests of one or more regulated businesses that would be covered by the proposed order
- a regulated business included in a class of regulated businesses that would be covered by the proposed order
- the Minister

Provide the following information about the Applicant:

Legal name of Applicant Transport Workers' Union of Australia

Applicant's ACN (if a company)

Applicant's trading name or registered business name (if applicable) Transport Workers' Union of Australia

Applicant's ABN (if applicable) 18 559 030 546

Contact person Lorraine Biviano

Postal address Level 9, 447 Kent Street

Suburb Sydney

State or territory NSW Postcode 2000

Phone number

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Email address

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Does the Applicant need an interpreter?



If the Applicant has trouble accessing this information, please contact us. We can arrange to provide it in another format. You can find information about [help in your language](#) on our website.

Yes – Specify language:

No

Does the Applicant require any special assistance at the hearing or conference (for example a hearing loop)?

Yes – Specify the assistance required:

No

Does the Applicant have a representative?



A **representative** is a person that is representing the Applicant. This might be a lawyer or paid agent, a union or employer organisation, or a not-for-profit association or body that provides support, advice or advocacy in relation to this kind of application or case. The Applicant does not need to have a representative.

Yes – Provide the representative's details below

No

Representative's details



These are the details of the person that is representing the Applicant (if any).

Name of person

Firm, company or organisation

Email address

Phone number

Postal address

Suburb

State or territory

Postcode

Is the representative a lawyer or paid agent?



The Applicant will need permission to be represented by a lawyer or paid agent in a conference or hearing that is conducted by a Commission Member. Our [lawyers and paid agents practice note](#) explains when you need to ask for permission to be represented.

- Yes – please select:
- Lawyer
 - Paid agent
- No

1. Type of order

1.1 Is this an application for an employee-like worker minimum standards order or a road transport minimum standards order?



See section 536JY of the Fair Work Act. An 'employee-like worker minimum standards order' is a minimum standards order for employee-like workers (including road transport employee-like workers). A 'road transport minimum standards order' is a minimum standards order for regulated road transport contractors.

- An employee-like worker minimum standards order
- A road transport minimum standards order

2. Class of regulated workers to be covered

2.1 Describe the class of regulated workers to be covered by the proposed minimum standards order.



See sections 536JZ(3) and 536JZ(4) of the Fair Work Act. The class may be described by reference to a particular industry or sector, or part of an industry or sector, or particular kinds of work. In your answer, consider describing how workers in the class meet the definition of ‘employee-like worker’ or the definition of ‘regulated road transport contractor’. These definitions are in sections 15P and 15Q of the Fair Work Act. Also consider if the workers in the class meet the definition of ‘road transport employee-like worker’ in section 15RB.

If this application is for an employee-like worker minimum standards order also see section 536K(3). The Commission must refuse to consider the application if it is not satisfied that, on the whole, the persons included in this class of workers are employee-like workers.

For the purposes of s 536KH(1)(c) of the FW Act, the proposed minimum standards order:

- covers employee-like workers for the purposes of s 15P of the FW Act;
- covers the class of employee-like workers who use vehicles, motorcycles, scooters, electronic scooters, bicycles or electronic bicycles falling within the classifications set out in the proposed order and who either:
 - a. are engaged through, or by means of, a digital labour platform operated by a digital platform operator to perform work that involves the transport by road of food, beverages or other like items that are ordered by a consumer using an online enabled application, website or system from a business that offers food, beverages or other like items for sale, for collection from the business and delivery to a location nominated by the consumer; or
 - b. perform work of the kind detailed in (a) above under contracts arranged or facilitated through or by means of a digital labour platform; or
 - c. are engaged through, or by means of, a digital labour platform operated by a digital platform operator to perform work that involves the collection (including by shopping for and/or selecting and/or purchasing) of food, beverages or other like items and the transport by road of such food, beverages or other like items, that are ordered by a consumer using an online enabled application, website or system from a business that retails such food, beverages or other like items for sale, for collection from the business and delivery to a location nominated by the consumer; or
 - d. perform work of the kind detailed in (c) above under contracts arranged or facilitated through or by means of a digital labour platform.

3. Class of regulated businesses to be covered

3.1 Describe the class of regulated businesses to be covered by the proposed minimum standards order.



See sections 536JZ(3A) and 536JZ(4) of the Fair Work Act. The class may be described by reference to a particular industry or sector, or part of an industry or sector, or particular kinds of work. In your answer, consider describing how businesses in the class meet the definition of ‘digital labour platform operator’ or the definition of ‘road transport business’. These definitions are in sections 15M and 15R of the Fair Work Act.

For the purposes of s 536KH(1)(b) of the FW Act, the proposed minimum standards order:

- covers digital labour platform operators;
- covers the class of digital labour platform operators who enter into, or facilitate, services contracts under which work is performed by employee-like workers that involves:
 - the transport by road of food, beverages or other like items that are ordered by a consumer using an online enabled application, website or system from a business that offers food, beverages or other like items for sale, for collection from the business for delivery to a location nominated by the consumer;
 - the collection (including by shopping for and/or selecting and/or purchasing) of food, beverages or other like items and the transport by road of such food, beverages or other like items, that are ordered by a consumer using an online enabled application, website or system from a business that retails such food, beverages or other like items for sale, for collection from the business

4. Work to be covered

4.1 Describe the work to be covered by the proposed minimum standards order.



See sections 536KH(1)(a) and 536KJ(1)(a) of the Fair Work Act. The coverage terms of the order must include the digital platform work or work in the road transport industry covered by the order.

For the purposes of s 536KH(1)(a) of the FW Act, the proposed minimum standards order covers the following digital platform work:

- the transport by road of food, beverages and other like items that are ordered by a consumer using an online enabled application, website or system from a business that offers food, beverages or other like items for sale, for collection from the business and delivery to a location nominated by the consumer;

- the collection (including by shopping for and/or selecting and/or purchasing) of food, beverages or other like items and the transport by road of such food, beverages other like items, that are ordered by a consumer using an online enabled application, website or system from a business that retails such food, beverages or other like items for sale, for collection from the business and delivery to a location nominated by the consumer.
- The work the subject of the proposed order is referred to as ‘gig work’ or ‘food delivery work’ or ‘grocery delivery work’ or ‘shop and deliver work’. The work captured by the proposed order involves:
 - the transport of food, beverages and other like items that are ordered by customers using an online enabled application, website or system, such as those currently provided by digital labour platforms trading as ‘Uber’ or ‘Uber Eats’, ‘Doordash’ or ‘Menulog’. Customers order food, beverages and other like items using an online enabled application, website or system from a business for delivery to them or to a location nominated by them. Employee-like workers attend the business to collect the food, beverages, or other like items and then deliver them to the customer or a location nominated by the customer. ‘Uber Eats’ describes this work as ‘food delivery’. ‘Doordash’ describes orders and deliveries from businesses that cook and/or sell food and beverages for immediate consumption as ‘Restaurant Deliveries’.
 - the collection (including by shopping for and/or selecting and/or purchasing) of food, beverages or other like items and the transport by road of such food, beverages or other like items, that are ordered by a consumer using an online enabled application, website or system from a business that retails such food, beverages or other like items for sale, for collection from the business and delivery to a location nominated by the consumer. Doordash describes this service as ‘Shop & Deliver’. It advertises it as involving a customer ordering food, beverages or other like items from grocery or convenience stores. An employee-like worker will attend the grocery or convenience store, ‘shop’ in the store for the items ordered, purchase them using a ‘Virtual Red Card’ and then deliver them to the customer.

5. Content of order

5.1 Describe the content of the proposed minimum standards order.



See sections 536KH–536KK of the Fair Work Act for terms that must be included in a minimum standards order. Section 536KL gives a non-exhaustive list of terms that may be included in a minimum standards order. Section 536KM lists terms that must not be included in a minimum standards order. See also section 536KMA for further terms that must not be included in an employee-like worker minimum standards order and section

536KN for further terms that must not be included in a road transport minimum standards order.

The proposed minimum standards order will contain terms dealing with the following matters:

- a. A term or terms outlining the coverage of the order in accordance with s 536KH. The proposed order will cover the work and the digital platform operators and employee-like workers outline above.
- b. A term or terms requiring employee-like workers to:
 - (i) supply a motor vehicle, motorcycle, scooter, electronic scooter, bicycle or electronic bicycle to perform work that meets the specifications required by the digital labour provider;
 - (ii) ensure that the motor vehicle, motorcycle, scooter, electronic scooter, bicycle or electronic bicycle provided by them to perform work is registered as required by road transport legislation or road rules;
 - (iii) ensure that they maintain and repair their motor vehicle, motorcycle, scooter, electronic scooter, bicycle or electronic bicycle and that it is in a roadworthy condition;
 - (iv) pay all the running costs associated with their motor vehicle, motorcycle, scooter, electronic scooter, bicycle or electronic bicycle;
 - (v) permit the digital labour provider to inspect their motor vehicle, motorcycle, scooter, electronic scooter, bicycle or electronic bicycle from time to time as reasonably required;
 - (vi) obtain and maintain comprehensive and third party motor vehicle insurance in relation to the motor vehicle, motorcycle, scooter, electronic scooter, bicycle or electronic bicycle used to perform work;
 - (vii) obtain and maintain public liability insurance;
 - (viii) if the employee-like worker performs work using a motor vehicle or motorcycle, to maintain a valid driver's licence; and
 - (ix) have use of a working and operable mobile phone capable of using any online enabled application, website or system used by the digital labour provider in relation to the performance of work.
- c. A term or terms requiring payment for collection and delivery work performed by employee-like workers to be paid in accordance with any services contract relating to the performance of work covered by the proposed order by an employee-like worker.
- d. A term or terms providing for minimum safety net cost recovery rates. The proposed order will provide that the digital labour provider is to assess the time spent by employee-like workers performing work and the amounts paid to them for the performance of work as against the minimum safety net amount. Time spent performing work will be the time from

when the employee-like worker accepts a particular job to the time the employee-like worker completes the job. The safety net will also include a provision that accounts for time spent on the digital labour platform before work is offered to the employee-like worker. Where there is a shortfall in payment, this shortfall is to be paid to the employee-like worker. Variable safety net rates are to be specified depending on the nature and size of the motor vehicle, motorcycle, scooter, electronic scooter, bicycle or electronic bicycle used by the employee-like worker in performing work. Safety net minimum cost recovery rates will be specified for:

- (i) bicycles;
- (ii) electronic bicycles;
- (iii) scooters;
- (iv) electronic scooters;
- (v) motorcycles;
- (vi) motor vehicles up to 750kg; and
- (vii) motor vehicles between 750kg and 1 tonne

Cost recovery rates will ensure that the safety net that takes into account fixed and running costs for motor vehicles, motorcycles, scooter, electronic scooter, bicycle or electronic bicycle including for the following components (where applicable):

- (i) labour costs;
 - (ii) annual leave, personal/carers leave and public holidays;
 - (iii) capital costs, including return on capital, depreciation and lease costs;
 - (iv) mobile phone purchase and usage costs;
 - (v) fuel costs;
 - (vi) registration;
 - (vii) tyres;
 - (viii) oil;
 - (ix) administration;
 - (x) repair and maintenance costs; and
 - (xi) insurances.
- e. A term or terms providing for variations to minimum safety net rates to permit the ready adjustment of those rates to accommodate significant fluctuations in fuel costs which impact the capacity of employee-like workers to achieve cost recovery.
- f. A term or terms requiring that the digital labour platform operator conduct, at least weekly and on a day fixed by the digital platform operator, a reconciliation of the time spent by an employee-like worker performing collection and delivery work and amounts paid under the services contract for the performance of that work. Where the employee-like worker's total

- earnings are less than the amount due under the safety net, the digital platform operator is to pay the employee-like worker the shortfall.
- g. A term or terms requiring the digital labour operator to make superannuation contributions for the benefit of the employee-like workers into a superannuation fund nominated by the employee-like workers or, in default of such nomination, TWUSUPER or such other fund as may be specified from time to time under the *Road Transport and Distribution Award 2020*.
 - h. A term or terms requiring the digital labour platform to provide personal protective equipment.
 - i. A term or terms providing for the digital labour platform provider to obtain personal injury insurance for employee-like workers which will cover the worker whilst they are performing work for the digital labour platform provider.
 - j. A term or terms providing that:
 - (i) employee-like workers who are not in possession of a valid BlueCard are to undertake BlueCard training and obtain a BlueCard from an appropriately licensed training organisation to demonstrate that they have received and passed work health and safety training specific to the road transport industry;
 - (ii) the digital labour provider will be responsible for paying for expenses associated with such BlueCard training; and
 - (iii) the digital labour provider will pay the employee-like worker the minimum hourly rates for an equivalent classification as set out in the *Road Transport and Distribution Award 2020* for all spent by the employee-like worker undertaking BlueCard training.
 - k. A term or terms conferring an entitlement to 4 weeks of unpaid annual leave (prorated) for employee-like workers who work on a regular basis over a period of 12-months, with terms requiring employee-like workers and digital labour operators to agree as to mutually convenient times to take annual leave and otherwise providing for the employee-like worker to notify the digital labour operator that they intend to take leave.
 - l. A term or terms conferring an entitlement to 10 days of unpaid personal/carers leave (prorated) for employee-like workers who work on a regular basis over a period of 12-months, with terms requiring employee-like workers and digital labour operators to notify the digital labour operator that about the taking of personal/carers leave and the provision of evidence that will satisfy a reasonable person that leave has been taken for a permissible reason.
 - m. A term or terms ensuring the provision and taking of breaks as required by law to deal with fatigue.
 - n. A term or terms requiring that earnings from the performance of work be paid weekly to employee-like workers on a day fixed by the digital platform operator, with payment to occur

- no later than Thursday each week and with all earnings to be paid within 4 business days of the week in which they accrue.
- o. A term or terms requiring that the digital platform operator pay employee-like workers all earnings and other amounts due to them under any services contract and this order within 7 days of termination of the engagement of the employee-like worker.
 - p. A term or terms obliging the digital platform operator to consult with employee-like workers and any representatives of employee-like workers, which may include an industrial association or workplace delegate, about proposed decisions to make major workplace changes which are likely to have a significant effect on employee-like workers. The term or terms will require, amongst other things:
 - (i) the provision of notice about proposed decisions;
 - (ii) an obligation to discuss the proposed changes with employee-like workers or their representative(s) including about their likely effect and measures to avoid or reduce adverse effects;
 - (iii) a requirement to provide relevant information about the proposed changes to employee-like workers and their representative(s) including about their nature, expected effects and other matters which may impact employee-like workers;
 - (iv) a requirement that the digital labour provider not make any decision about the proposed change until after consultation has occurred and the digital labour provider has given genuine consideration to matters raised by employee-like workers and/or their representative(s).
 - q. A term or terms providing for the digital labour platform operator to provide notice in writing prior to terminating the services contract with an employee-like worker or, where such notice is not provided, payment in lieu of notice. Notice will not need to be given for terminations where the employee-like worker has engaged in serious conduct. Additional notice will be provided to employee-like workers aged over 45.
 - r. A term or terms providing for workplace delegates rights which is tailored to the unique circumstances of the workplaces and work performed by employee-like workers the subject of the proposed order.
 - s. A term of terms requiring that the digital labour platform operator is to provide via the digital labour platform operator's digital platform to each of the employee-like workers engaged to perform work on its platform, or when engaged or onboarded to perform work:
 - (i) information about the opportunity to be represented as a worker by a registered organisation; and
 - (ii) details about the Transport Workers' Union of Australia and an option of becoming a TWU member; and

- (iii) if the worker opts to become a TWU member, a link or access to an online portal or facility provided by the TWU, and notified to the digital labour platform operator by the TWU, where the worker may nominate to become a TWU member.
- t. A term or terms providing for TWU membership fees to be deducted from amounts paid to the employee-like worker for the performance of work, where that employee-like worker has opted to do so.
- u. A term providing a procedure for the settlement of disputes about matters arising under the order in accordance with s 536KK of the FW Act.
- v. A term or terms requiring the digital labour provider to provide an employee-like worker within one working day of paying the employee-like worker in relation to the performance of work with an invoice that specifies:
 - (i) the digital labour platform operator's name and Australian Business Number;
 - (ii) the employee-like worker's name and Australian Business Number;
 - (iii) the period to which the invoice relates;
 - (iv) the date on which the payment to which the invoice relates was paid;
 - (v) start and finish times for work performed each day during the period to which the invoice relates by the employee-like worker;
 - (vi) gross and net amounts paid to the employee-like worker under rates prescribed by any applicable services contract;
 - (vii) safety net amounts the employee-like worker be entitled to be paid for the time spent performing work and any shortfall;
 - (viii) deductions from gross and net amounts paid;
 - (ix) annual leave accrued and/or taken; and
 - (x) amounts of superannuation contributions made.
- w. A term of terms requiring that the digital labour provider is to make and keep records in documentary or readily accessible electronic form for a period of 7 years in relation to an employee-like worker, including:
 - (i) all invoices provided to the employee-like worker;
 - (ii) any services contract or contracts entered into;
 - (iii) start and finish times for work performed each day by the employee-like worker;
 - (iv) gross and net amounts paid under rates prescribed by any applicable services contract;
 - (v) deductions from gross and net amounts paid;
 - (vi) amounts of superannuation contributions made, dates contributions were made, the name of the fund into which contributions were made, the period over which contributions were made and any election by an employee-like worker to have contributions made to a particular fund; and

- (vii) whether the services contract was terminated, the reasons for and manner of termination, and the name of the person who acted to terminate the employment.
- x. A term or terms requiring the digital labour platform operator to provide employee-like workers the following information at any time they are accessing the digital labour platform operator’s application as follows:
 - a. information about supply of employee-like workers and available work at the time the application is accessed; and
 - b. information prior to the acceptance of any work including about any potential earnings, distance to be travelled in the performance of work including travelling to collect work, location for delivery to the customer and estimated time required to complete a job from collection to delivery; and
 - c. any operative algorithmic systems that have been applied to any employee-like worker that may impact any work available to that employee-like worker.
- y. A term or terms providing that, on nomination by an employee-like worker, a digital platform operator is to provide to the employee-like worker and/or industrial association nominated by the employee-like worker copies of records required by this order to be kept by the digital platform operator for the purposes of assessing whether the digital platform operator is complying with its obligations under this order.

Attach additional pages if necessary (which may include a draft of the proposed order).

5.2 Does the proposed minimum standards order overlap with existing minimum standards guidelines? If so, identify the guidelines.



Sections 536KZ(5) and 536KZ(6) of the Fair Work Act provide that if the Commission makes a minimum standards order that overlaps with minimum standards guidelines, the Commission must revoke or vary the guidelines with effect from the day the order comes into operation.

No

6. Minimum standards objective and road transport objective

6.1 Explain why each term of the proposed minimum standards order is necessary to achieve the minimum standards objective.



See the minimum standards objective in section 536JX of the Fair Work Act. Under section 536KO a minimum standards order may include terms it is permitted to include, and must include terms it is required to include, only to the extent necessary to achieve the minimum standards objective.

The terms proposed are necessary to achieve the minimum standards objective enunciated in s 536JX of the FW Act, viz., the requirement to take into account the need for an appropriate safety net of minimum standards having regard to the matters set out in that section on the following non-exhaustive bases:

- a. The proposed coverage term or terms are mandatory terms required to be included by s 536KH.
- b. The proposed term or terms imposing obligations on employee-like workers to, relevantly, provide a motor vehicle, motorcycle, scooter, electronic scooter, bicycle or electronic bicycle of a kind specified by the digital platform operator, ensure that any such motor vehicle, motorcycle, scooter, electronic scooter, bicycle or electronic bicycle is insured and registered (as required by applicable road transport legislation or road rules), ensure that they maintain a valid licence (if operating a motor vehicle or motorcycle), obtain public liability and accident insurances, be responsible for the maintenance and repair of their motor vehicle, motorcycle or bicycle and have use of an operable mobile phone capable of utilising an application of the digital labour provider are necessary to ensure an appropriate safety net that:
 - (i) is fair and relevant to the particular work covered by the proposed order;
 - (ii) is tailored to the type of work performed by employee-like workers under the proposed order; and
 - (iii) reflects the nature of the engagement of employee-like workers as independent contractors rather than employees.
- c. The proposed term or terms providing for employee-like workers to be paid amounts due and owing to them under services contract. This means that employee-like workers will be able to enforce entitlements arising under a services contract as terms of a minimum standards orders.
- d. The proposed term or terms providing for a safety net of minimum hourly rates means that, generally speaking, rates and the manner of remuneration will be determined by contract as between the digital labour platform operator and employee-like worker. To ensure, however,

that employee-like workers receive minimum hourly cost recovery rates for all time spent working for a digital labour platform operator, a safety net is required. Hourly safety net rates are proposed to be set to ensure employee-like workers recover, as a minimum, the costs of performing work they are engaged to perform. The minimum hourly rates are designed to ensure they receive, as a minimum, the minimum hourly rates that employees performing equivalent work would be paid under the *Road Transport and Distribution Award 2020* for time spent working for a digital labour platform provider. These proposed terms are directed to the type of work performed, the nature of the equipment used by employee-like workers in performing that work and the fact that they are responsible for the purchase, servicing and upkeep of that equipment. The minimum rates prescribed do not change the form of the engagement and are directed to ensuring sustainable competition amongst digital labour providers by setting a safety net of minimum rates to avoid a race to the bottom in remuneration paid to employee-like workers. The proposed safety net rates also attend to the practice of ‘multi-apping’ by ensuring that employee-like workers are afforded hourly rates for time spent working for a particular digital labour platform operator with some provision for time spent available on the digital labour platform when not performing work. The proposed order therefore has regard to the ability of employee-like workers to perform work under services contracts for multiple business and to do so simultaneously. Employee-like workers are, in this regard, to receive the safety net for time spent actually performing work for a particular digital platform operator with some provision for time spent available on the digital labour platform when not performing work.

- e. The proposed term or terms permitting rate variations where fuel fluctuates are necessary to ensure an appropriate safety net for employee-like workers covered by the proposed order who operate motor vehicle and motorcycles to perform work. Fuel is a notoriously volatile running cost and a mechanism to adjust rates to reflect altered fuel costs is essential for employee-like workers to achieve cost recovery.
- f. The proposed term or terms requiring a reconciliation by the digital labour platform operator to occur each 7-days of the amounts paid to the employee-like worker for the performance of work and the time spent working, against the amounts which would be paid to the employee-like worker under the safety net, is essential to ensure that employee-like workers are paid minimum cost recovery rates. Any shortfall is to be paid to employee-like workers to ensure that they receive at least the safety net for time spent performing collection and delivery work.
- g. The proposed to employee-like workers term or terms requiring the provision of personal protective equipment is necessary to ensure that minimum standards apply that are equal to or equivalent to those that apply to employees performing comparable work.

- h. The proposed term or terms requiring superannuation contributions to be made are necessary to ensure that minimum standards apply to employee-like workers that are at least equivalent to those which apply to employees performing comparable work.
- i. The proposed term or terms providing for the digital labour platform provider to obtain personal injury insurance will ensure that employee-like workers receive a form of income protection if injured during the course of performing work for the digital labour platform operator.
- j. The proposed term or terms dealing with BlueCard training are imperative to ensure that employee-like workers receive essential and basic training that is directed to the transport industry and the notorious and peculiar safety issues that arise in that industry. Employee-like workers covered by the proposed order, particularly those who operate motorcycles, scooters and bicycles, are a particularly vulnerable category of workers. They are at a far greater risk of being killed or injured in an accident because they do not have the same protection as motor vehicle drivers and motorcycle, scooter and bicycle riding on public roads is intrinsically hazardous.
- k. The proposed term or terms affording unpaid annual leave are necessary to ensure an appropriate safety net, as it is essential that employee-like workers have the capacity to take time off work to recuperate and refresh. The leave is unpaid, reflecting the nature of the engagement, with an amount for annual leave proposed to be taken into account in setting minimum hourly rates.
- l. The proposed term or terms affording unpaid personal/carers leave are imperative to achieve an appropriate safety net as such leave is necessary for employee-like workers to have a right to not work where they are ill or injured or required to care for a loved one. Such leave is unpaid, reflecting the nature of the engagement, with an amount for personal/carers leave proposed to be taken into account in setting minimum hourly rates.
- m. The proposed term or terms requiring that employee-like workers be provided breaks required by law to be taken to deal with fatigue are necessary to ensure an appropriate safety net of minimum conditions. Given the hazardous and notoriously dangerous nature of work in the road transport industry, ensuring that employee-like workers do not perform work whilst fatigued is critical.
- n. The proposed term or terms obliging payment to be made at least weekly are necessary to ensure that cost recovery rates are paid in a timely manner to employee-like workers. The capacity to achieve cost recovery requires the timely payment of remuneration for the performance of work.
- o. The proposed term or terms requiring payment of outstanding amounts due and owing on termination within 7 days is imperative to ensure cost recovery is achieved and amounts due to employee-like workers are paid expeditiously following termination.

- p. The proposed consultation term(s) are imperative to ensure that employee-like workers are notified of proposed changes, afforded salient information about those proposed changes, and afforded a real opportunity to engage with the digital platform operator about the proposed changes. It is well-settled that consultation is and should be no mere formality and that consultation is purposive rather than procedural. Requiring consultation to occur prior to any decision being made ensures that any consultation will be genuine and not a mere box-ticking exercise. Consultation about major change is imperative given the nature of the work performed by employee-like workers covered by the proposed order.
- q. The proposed term or terms requiring the provision of notice of termination are essential to ensure that employee-like workers are afforded sufficient prior warning of any termination. The object of notice provisions is to give employee-like workers an opportunity to adjust to the change in circumstances and seek other engagement.
- r. The workplace delegates' rights terms are necessary to ensure that the minimum rights conferred by s 350C are both reflected in the proposed order and tailored to the particular circumstances of the work and workplaces covered by the proposed order to ensure that employee-like workers are able to be represented efficaciously by workplace delegates.
- s. The term or terms providing for opting in for membership of the TWU, being the industrial association that is capable under its Rules of representing the industrial interests of employee-like workers covered by the proposed order, is essential to ensure that such workers are able to be represented and receive the benefit of delegates' rights terms in light of the unique nature of their work and workplaces, and the manner and nature of their engagement.
- t. The term or terms providing deductions for TWU membership fees for employee-like workers who are TWU members are essential to ensure that employee-like workers covered by the proposed order are able to maintain financial membership of the TWU and the rights and services flowing from financial membership. Given the unique nature of their work and workplaces, and the manner and nature of their engagement, a term permitting deductions for union membership fees is essential to ensure the effectiveness of terms dealing with representation and workplace delegates rights.
- u. A dispute resolution term is a mandatory requirement and is, in any event, essential to ensure that employee-like workers and digital labour platforms are able to resolve, in a timely and cost-effective way, disputes arising in relation to the proposed order.
- v. A term or terms providing for the provision of invoices when amounts payable for the performance of work are paid to employee-like workers is essential to ensure that such workers receive a contemporaneous record of time worked and remuneration paid to them, and therefore a ready means of ascertaining what amounts they have been paid, including

- any safety net shortfall. Invoices will also detail the quantum of accrued annual leave and superannuation contributions made.
- w. A term or terms requiring the making and retention of records is imperative to ensure that the minimum standards provided by the proposed orders are complied with by digital platform operators and enforceable.
 - x. A term or terms requiring the provision of certain information to employee-like workers when accessing the digital labour platform to ensure that employee-like workers have reasonable information available to them about available work on the digital labour platform, systems that will impact their work and information about potential earnings. This information is imperative to allow employee-like workers to remain viable and to ensure efficiency.
 - y. A term or terms requiring the production of records required to be kept is essential to ensure that employee-like workers and their union or other representative(s) can ascertain whether the minimum standards provided by the proposed orders are being complied with and, if they are not, to take appropriate corrective or enforcement action.

6.2 If the proposed minimum standards order relates to the road transport industry, explain why the proposed order is consistent with the road transport objective.



See the road transport objective in section 40D of the Fair Work Act. If the proposed minimum standards order relates to the road transport industry, the Commission must have regard to the road transport objective.

The proposed order provides an appropriate safety net of minimum standards for employee-like workers covered by the order who perform work in the road transport industry. The order sets standards that ensure that the industry is safe, sustainable and viable by ensuring that employee-like workers covered by the order receive a safety net of minimum rates of pay for time spent performing work that achieve cost recovery. The requirement for fatigue breaks and mandatory BlueCard training are essential to ensure the safety and sustainability of the segment of the industry captured by the proposed order. Further, the provisions providing for consultation, workplace delegates' right and facilities for joining the TWU are directed to ensuring effective and appropriate representation of employee-like workers in industrial, health and safety and other workplace matters.

The creation of minimum rates and basic standards will foster the viability of the work performed by employee-like workers covered by the proposed order. Further, the creation of minimum standards will ensure that digital labour providers do not compete on the amounts

paid to those employee-like workers who perform work the subject of the orders, including by ensuring a safety net of minimum rates for time worked is prescribed. Digital labour platform operators will be encouraged to operate more productive and efficient businesses, which will foster innovation and therefore enhance their viability.

The proposed order is congruent with and facilitative of the road transport objective.

If your application is for an employee-like worker minimum standards order, go to question 7.

If your application is for a road transport minimum standards order, go to question 8.

7. Employee-like worker minimum standards order – particular matters to take into account

7.1 Explain how the proposed order takes into account choice and flexibility in working arrangements.



Section 536K(4)(c) of the Fair Work Act provides that the Commission must have regard to choice and flexibility in working arrangements in making an employee-like worker minimum standards order.

The proposed order recognises that employee-like workers are engaged as independent contractors under services contracts. It does not impact the choice such workers make to work as independent contractors rather than employees. It sets minimum standards and conditions that are tailored to the particular circumstances of employee-like workers to whom the orders will apply, which includes their status as independent contractors. In this regard, the order both recognises, respects and facilitates choice and flexibility in working arrangements.

8. Road transport minimum standards order – particular matters to take into account

8.1 Explain how the proposed order takes into account the commercial realities of the road transport industry.



Section 536KA(2)(d) of the Fair Work Act provides that the Commission must have regard to the commercial realities of the road transport industry in making a road transport minimum standards order.

8.2 Explain how the proposed order will not unduly affect the viability and competitiveness of owner drivers and similar persons.



Section 536KA(2)(e) of the Fair Work Act provides that the Commission must be satisfied that making the road transport minimum standards order will not unduly affect the viability and competitiveness of owner drivers or other similar persons.

Authority to sign and signature



For 'Authority to sign':

- If you are the Applicant – insert 'Applicant'
- If you are an employee of a company or organisation that is the Applicant – insert your position title
- If you are an officer or authorised employee of a registered organisation – insert your position title
- If you are the Applicant's representative and have provided your details in this form – insert 'Representative'.

Authority to sign National Secretary



Insert your signature, name and the date. If you are completing this form electronically and do not have an electronic signature, type your name in the signature field.

Signature

Name Michael Kaine

Date 28 August 2024

PLEASE RETAIN A COPY OF THIS FORM FOR YOUR OWN RECORDS