

**IN THE FAIR WORK COMMISSION**

**BRIEF POSITION PAPER**

**PROPOSED ON DEMAND DELIVERY SERVICES AWARD  
(AM2021/72)**

**FILED ON BEHALF OF:  
AUSTRALIAN BUSINESS INDUSTRIAL**

**11 MARCH 2022**

## 1. INTRODUCTION

1.1 This brief position paper is made on behalf of Australian Business Industrial (**ABI**).

1.2 On 28 January 2022, the Full Bench held:

*“the Road Transport Award currently covers employers and their courier employees in the “on demand delivery services industry” as defined in Menulog’s proposed award, and that the Fast Food Award does not cover such courier employees. It also necessarily follows from this conclusion that the Miscellaneous Award does not cover them by reason of clause 4.1 of that award.”<sup>1</sup>*

1.3 Following that conclusion, the Full Bench observed that the next step in the matter, which would follow any conciliation sought by Menulog and any other parties, is for consideration to be given as to whether the coverage of employers and employees in the “on demand delivery services industry” as defined by the Road Transport and Distribution Award 2020 (**Road Transport Award**) meets the modern awards objective in s 134(1) of the *Fair Work Act 2009* (Cth).<sup>2</sup>

1.4 The matter is listed for conciliation on 16 March 2022 before Commissioner McKinnon.

1.5 Commissioner McKinnon directed interested parties to file and serve a brief position paper setting out their position in relation to the conciliation of the application, including proposed outcomes, by 4pm on 14 March 2022.

## 2. SUMMARY OF POSITION

2.1 As a Respondent to these proceedings, we note that ABIs position will be impacted by any subsequent or further application made by Menulog.

2.2 Arising out of the decision of the Full Bench,<sup>3</sup> ABIs current consideration is that the drivers in question are clearly couriers covered by the Road Transport Award. ABI has a material interest in couriers and the courier industry. Therefore, attention should be directed to whether the terms and conditions in the Road Transport Award for couriers meet the modern awards objective or whether it is necessary to vary those terms to meet the modern awards objective.

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<sup>1</sup> [2022] FWCFB 5 at [55].

<sup>2</sup> [2022] FWCFB 5 at [56].

<sup>3</sup> See [2022] FWCFB 5.