

**MENULOG'S POSITION PAPER**

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**1. Background and Summary**

- 1.1 This position paper is made by Menulog Pty Ltd (**Menulog**) in accordance with the directions issued by Commissioner McKinnon on 8 March 2022 by email from Chambers.
- 1.2 On 28 January 2022, a Full Bench of the Fair Work Commission decided that the *Road Transport and Distribution Award 2020 (RTD Award)* currently covers employers and their courier employees in the on demand delivery services industry (as that industry is defined in the application made by Menulog in these proceedings dated 24 June 2021) and that the *Miscellaneous Award 2020* and the *Fast Food Industry Award 2010* does not cover such employees.
- 1.3 Menulog is hopeful that, through conciliation, the barriers to achieving a consensus position around the creation of a new modern award that more appropriately covers the on demand courier industry in place of the RTD Award may be explored and negotiated.

**2. Menulog's Position**

- 2.1 Menulog acknowledges and accepts the position that the RTD Award currently covers Menulog's employed couriers. Menulog maintains its position that the RTD Award does not meet the modern awards objective in respect of employers and employees in the on demand delivery services industry, and that it is appropriate for a new modern award to be made.
- 2.2 The 2020 Inquiry into the Victorian On Demand Workforce found that the existing modern award framework was a barrier to gig platforms embracing the engagement of workers through employment, and recommended that the Commission work with relevant stakeholders, including platforms and representatives of workers and industry, about the application of modern awards to platform workers, with a view to ensuring fit-for-purpose, fair arrangements that are compatible with work enabled by technology.
- 2.3 Menulog contends that the dearth of on demand delivery platforms utilising employed couriers in Australia is a testament to the Inquiry's findings.
- 2.4 Menulog acknowledges and respects that the RTD Award has evolved over many decades to provide a fair framework of terms and conditions for the traditional road transport and distribution industry, which the interested parties are reluctant to disturb. To be clear, Menulog does not seek to displace the terms of the RTD Award.

<b>Lodged by:</b>	Menulog Pty Ltd	<b>Telephone:</b>	03 9958 9605
<b>Address for Service:</b>	Level 17, 459 Collins St Melbourne VIC 3000	<b>Fax:</b>	n/a
		<b>Email:</b>	katie.sweatman@kingstonreid.com

- 2.5 Rather, Menulog seeks the making of a new modern award that meets the modern awards objectives in its industry, and takes into account (among other things):
- (a) the need to promote flexible modern work practices and the efficient and productive performance of work – taking into account that limits on split shifts and constraints around minimum engagement, among other things, unreasonably constrains the flexibility valued in the on demand delivery services industry by workers as well as by the platforms that would be employers;
  - (b) the likely impact of any exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden – taking into account that the employment costs arising under the RTD Award as applied to the work practices in the on demand delivery services industry currently makes employment in the on demand delivery services industry prohibitive.
- 2.6 On 23 August 2021, Menulog filed an exposure draft *On Demand Delivery Services Award (Proposed Award)* that it considers to be capable of meeting the modern awards objective, and which constitutes Menulog’s current position entering into the conciliation conferences.

### **3. Proposed Outcomes**

- 3.1 Preliminary views expressed by some interested parties have been that the Commission has determined that the RTD Award covers employers and their employees in the on demand delivery services industry, and that that is the end of the matter. However, Menulog views the Commission’s 28 January 2022 decision to be the determination of the threshold question as to what modern award is deemed to currently apply, not what *should* apply to employees in this industry, noting that the industry did not exist at the time the modern awards were made.
- 3.2 Menulog hopes that a key outcome of the conciliation conferences is to facilitate discussion around what a sustainable and viable modern award for the on demand should look like, which:
- (a) facilitates the employment of on demand delivery couriers with terms that are flexible and sustainable; and
  - (b) which does not displace the terms of the RTD Award as it currently applies in the traditional road transport and distribution industry.
- 3.3 In discussing these objectives, Menulog considers that it would be helpful to understand the views of the interested parties as to the Proposed Award. In particular, Menulog would be grateful to understand the barriers that the interested parties consider need to be addressed in order for the interested parties to support the making of the Proposed Award, and what variations to the Proposed Award (if any) the interested parties deem to be necessary for them to support, or else not object to, Menulog’s application for a new modern award for the on demand delivery services industry.

**Kingston Reid  
14 March 2022**