



Insurance Council
of Australia

28 May 2021

Ms Carmel Donnelly
Chief Executive Officer
State Insurance Regulatory Authority
Level 14/15
231 Elizabeth St
Sydney NSW 2000

Sent by email: PolicyDesignWHBCR-SIRA@sira.nsw.gov.au

Dear Carmel

CONSULTATION ON PERSONAL INJURY INSURANCE ARRANGEMENTS FOR FOOD DELIVERY RIDERS IN THE GIG ECONOMY

The Insurance Council of Australia (Insurance Council) is pleased to make a submission to SIRA on personal injury insurance arrangements for food delivery riders in the gig economy.

The Insurance Council is the representative body for the general insurance industry in Australia. Our members provide a range of insurance products, including compulsory third party (CTP) and workers compensation insurance.

Our response draws on our members' knowledge and expertise in providing insurance in workers compensation and CTP in Australia. As noted in the Consultation Paper, the gig labour force is often made up of younger males, students, recent migrants and those who do not speak English as their first language¹. Food delivery riders are often more vulnerable road users with less protection in a crash, many being on a bicycle, motorcycle or scooter to undertake their duties. Currently in NSW, they may not have access to medical expenses or lost earnings if they suffer an injury while delivering food.

As outlined in the Consultation Paper, some platform operators provide personal injury insurance protection for their delivery riders. The option to provide this cover is voluntary and the benefits payable can vary greatly. This practice of Personal Accident insurance operating in addition to Statutory Workers Compensation is reasonably common in industries such as construction, which can be for a variety of reasons. Some that are relevant to food delivery drivers are to counteract periods where there is no work (so that for instance a non-work related injury does not place a person who may already be on a low income, under additional financial pressure) and the ability to design tailored

¹ Consultation Paper, [Personal Injury Insurance Arrangements For Food Delivery Riders In The Gig Economy](#), p4.



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solutions (such as Portable Sick Leave and Power and Utility Bill Cover) to solve for specific industry challenges, like those faced by the gig economy.

Developments interstate and overseas

The Insurance Council has also been monitoring state and national inquiries as well as international responses to the gig economy, which has informed our response. In Australia, one food delivery platform announced it would trial direct employment of gig economy workers for the first time. The company announced it would provide its riders with a minimum wage, superannuation and leave entitlements².

In the UK there was a recent decision of the Supreme Court which found that the food delivery driver was a 'worker.' This is halfway between the rights of an employee and the rights of an independent contractor in the UK³. There appears to be a preference towards identifying employment rights for those in the gig economy. In addition to the decision in the UK, the Australian Fair Work Commission has recently ruled that Deliveroo held such a measure of control over a food delivery rider that he was in fact an employee and was therefore unfairly dismissed⁴.

However, the major issue highlighted by the recent events in NSW involves the safety of food delivery riders. Our members have considered the six options put forward in the Consultation Paper⁵, noting the objective of ensuring food delivery riders are protected and 'do not fall between the cracks of our existing workers compensation and CTP schemes, and other private insurance arrangements'⁶.

Preferred option: Extending workers compensation

The Insurance Council believes that the best way to ensure the safety of these food delivery riders is to deem them as workers under Schedule 1 of the *Workplace Injury Management and Workers Compensation Act 1998*. As such, the Insurance Council supports option 6 raised in the discussion paper. This is the most logical way to clarify the current legal complexity surrounding the definition of food delivery riders in the gig workforce. It will provide fair and equal access to the same level of benefits provided to other workers in the NSW economy. This option also ensures that there is early medical intervention to aid in the delivery rider's recovery.

It will operate through the current workers compensation framework and negates the need to develop a parallel regime and its associated cost. This will also ensure end-to-end or door-to-door protection of the riders not just when they are injured in a collision with a registerable motor vehicle or injured on a road or road-related area. We believe these to be drawbacks to option 4 involving the CTP scheme.

² AFR, [Menulog to trial employment model for gig workers](#) (12 April 2021).

³ [Uber BV and others v Aslam and others \[2021\] UKSC 5](#).

⁴ [Diego Franco v Deliveroo Australia Pty Ltd \[2021\] FWC 2818](#).

⁵ Consultation Paper, [Personal Injury Insurance Arrangements For Food Delivery Riders In The Gig Economy](#).

⁶ NSW Minister for Digital and Minister for Customer Service, Victor Dominello, [Media Release Consultation opens on insurance options for food delivery riders](#) (29 April 2021).



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Response to consultation questions

Other options suggested in the Consultation Paper were to protect food delivery riders through the CTP scheme or create a new scheme. Our members have considered these alternative options in the Consultation Paper and we would expect that creating a new scheme will take longer, be more costly and impose additional administrative burdens on the regulator and insurers compared with extending the existing workers compensation scheme.

In light of our support for Option 6, we have made brief comments in relation to the specific questions raised in the Discussion Paper (Appendix A).

The Consultation Paper indicated that additional public consultations might be undertaken later this year to discuss and consider specific design features of any options. The Insurance Council looks forward to being involved in further discussions and would be happy to provide any additional information that might assist.

If you have any queries, please contact Neha Chopra, Policy Advisor, Consumer Outcomes, via email at nchopra@insurancecouncil.com.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Andrew Hall'.

Andrew Hall
CEO and Executive Director



Appendix A: Response to questions raised in the Consultation paper

1. What benefits and entitlements are the most important to food delivery riders?

While this is a question for the food delivery riders, we believe that end to end safety is fundamental to the gig labour force.

2. What insurance pricing principles should be applied to the options and what is their likely impact? How should safe work practices be best incentivised?

The current pricing principles underpinning the workers compensation system could be easily applied to the gig economy. The workers compensation regime has an inbuilt mechanism to encourage safe work practices through the application of premiums reflecting improved safety.

3. What is the preferred funding arrangement and key considerations? And why?

We support funding arrangements where the primary responsibility for the payment of premiums rests with the digital service delivery platform operators who use food delivery riders.

4. What the current private insurance policy protections, costs and administration arrangements: What are current private insurance challenges for food delivery riders?

While there are currently available products to cover food delivery riders they are not utilised consistently across the industry and do not universally provide the level of coverage that aligns with that under the workers compensation regime.

5. What the risks/benefits of private underwriting and service delivery by licensed insurers compared with public underwriting and service delivery for any newly developed personal injury scheme?

Not applicable in light of our support of option 6.

6. What scheme design features of any new personal injury insurance scheme are critical to minimise administrative costs and disputation levels?

Not applicable in light of our support of option 6.

7. Do you have a preferred model and why?

Option 6. Our reasoning can be found on pages 1-3.