



Independent  
Review Office

3 June 2021

Darren Parker  
Executive Director  
State Insurance Regulatory Authority  
darren.parker@sira.nsw.gov.au

Dear Mr Parker

**SIRA Consultation; Personal injury insurance arrangements for food delivery riders in the gig economy**

Thank you for your letter received here on 5 May 2021 inviting the Independent Review Office (IRO) to participate in the above consultation.

We have closely reviewed the associated Discussion Paper, which provides a high-level background to and description of the problem (what are the most appropriate personal injury insurance arrangements for food delivery riders?) the State Insurance Regulatory Authority (SIRA) is developing options to solve.

At this stage of the review, and without more detailed analysis of the options outlined, it is challenging to provide an informed view or preference. In addition, the consultation questions appear mostly aimed at gig economy or personal injury insurance industry participants; we have therefore not provided a specific response to them.

We have instead focused our comments on a number of overarching matters we trust are of assistance at this stage of the consultation:

- The objectives of the workplace injury management and workers compensation system<sup>1</sup> provide additional and highly relevant considerations to those you have identified at page 7 of the Discussion Paper. In particular, we encourage SIRA to include considerations: that focus on securing the health, safety and welfare of workers; and that are fair.
- An additional relevant consideration is that the proposed arrangements are durable and can adapt to new circumstances. A key learning from digital disruptions over the past decade is that regulatory arrangements need to be flexible, so that technology and associated commercial innovations can be readily encompassed. Principle-based arrangements that are not tied to particular technology and commercial arrangements will likely provide a more lasting and adaptable solution.
- The apparent strong focus of the Discussion Paper on food delivery riders and injuries that occur while in transit may result in potential solutions that do not adapt to a range of circumstances:
  - other gig economy workers undertake delivery services (for example, courier-like services) that have analogous risks to those confronted by food delivery riders. Given this, there is value in

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<sup>1</sup> Section 3 *Workplace Injury Management and Workers Compensation Act 1998*

considering that any arrangements focus on the nature of the work (home delivery of a good) rather than the item (food) delivered.

- gig economy delivery workers confront other risks in undertaking work, including assaults, verbal abuse and robbery. A solution that focuses on one element of the work of the delivery worker may not deliver an appropriate policy solution.
- there are, of course, other gig economy workers who are injured at work and who are not delivery workers; a solution that promotes universal coverage and standard benefits for these workers is likely to be preferable.
- Legislation that provides for workers compensation is complex and detailed. In his review into icare and the State Insurance and Care Governance Act 2015, which reported on 30 April 2021, the Hon Robert McDougall QC noted the importance of clarifying the workers compensation rights of gig economy workers. He also recommended that any steps taken to clarify this in legislation not be done as a bolt-on accretion to already overly complex laws. We endorse this comment, and caution against a solution that provides differential rights and adds further complexity to current legislative arrangements.

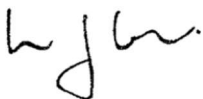
A critical first question for any review is to establish whether food delivery riders (and gig economy workers more generally) are workers for the purpose of current workers compensation legislation. We accept there is uncertainty in this, and that the answer in a particular circumstance may depend upon a range of considerations. This is not, however, of itself novel. In our view, it is open to SIRA to form a view about these matters, and if it determines that food delivery riders are workers, to seek to enforce compliance by platform operators (as employers) with the insurance provisions of the *Workers Compensation Act 1987*. The taking of a definitive position by the regulator (and accompanying action where appropriate) in the absence of any current guiding court or tribunal decisions and until there is a policy intervention by Government and/or the Parliament, may be of substantial assistance.

In making these comments, we emphasise our strong support for a system that: ensures any person injured at work has access to necessary treatment, rehabilitation, income support and compensation; and provides certainty and consistency for workers and platform providers about the personal injury compensation arrangements applicable.

We would be pleased to be again contacted as SIRA further develops options for consideration by government, and to provide any assistance to the review.

Please contact Roshana May, Director Strategy, Policy and Support by telephone (02 8281 6239) or email ([roshana.may@iro.nsw.gov.au](mailto:roshana.may@iro.nsw.gov.au)) if you wish to discuss our initial views.

Yours sincerely



Simon Cohen  
Independent Review Officer

CC: [PolicyDesignWHBCR-SIRA@sira.nsw.nsw.gov.au](mailto:PolicyDesignWHBCR-SIRA@sira.nsw.nsw.gov.au)