

Australian Manufacturing Workers Union

Submission to the NSW State Insurance Regulatory Authority:

Personal Injury Insurance Arrangements for Food Delivery Riders in the Gig Economy

28 May 2021



AMWU NSW Branch
133 Parramatta Road
Granville
NSW 2142

About the Australian Manufacturing Workers' Union

The Australian Manufacturing Workers' Union (AMWU) is registered as the "Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union". The AMWU represents members working across major sectors of the Australian economy, including in the manufacturing sectors of vehicle building and parts supply, engineering, printing and paper products and food manufacture.

Our members are engaged in maintenance services work across all industry sectors. We cover many employees throughout the resources sector, mining, aviation, aerospace and building and construction industries. We also cover members in the technical and supervisory occupations across diverse industries including food technology and construction.

The AMWU's purpose is to improve member's entitlements and conditions at work, including supporting wage increases, reasonable and social hours of work and protecting minimum award standards. In its history the union has campaigned for many employee entitlements that are now a feature of Australian workplaces, including occupational health and safety protections, annual leave, long service leave, paid public holidays, parental leave, penalty and overtime rates and loadings, and superannuation.

Introduction

1. The Australian Manufacturing Workers' Union NSW Branch (AMWU) welcomes the opportunity to make a submission to the Standing Committee on Law and Justice 2020 Review of the NSW Workers Compensation Scheme.
2. Our union represents thousands of workers across NSW. Many of our members perform physically demanding work, and the manufacturing industry remains overrepresented for interactions with the workers compensation scheme. The AMWU has played a proud role in advocating for injured workers and will continue to do so.
3. It is beyond the scope of this submission to outline the AMWU's views in general on the NSW Workers Compensation scheme. We refer SIRA to the [AMWU's submission](#) to the NSW Standing Committee on Law and Justice for the 2020 Review of the Workers Compensation Scheme for a summary of these views.
4. The AMWU believes the root cause of the rampant exploitation in the gig economy is the misclassification of employees as 'independent contractors'. This false characterisation of workers allows corporations to evade their responsibilities when it comes to job security, minimum wages, collective bargaining, workers' compensation, unfair dismissal and more.
5. The increasing rate of casualisation of the workforce in Australia, and the evasion of labour standards that accompanies this trend, negatively impacts the workers who are employed in insecure work. It is also widely acknowledged that poor conditions in one section of the workforce exerts downward pressure on wages and conditions for workers across the economy.
6. The recent spate of deaths and injuries of exploited food delivery workers – often migrant workers or international students – has drawn attention to the failure by employers in the gig economy to provide adequate workers compensation for their employees. However, addressing workers compensation in isolation is not enough to address the dangerous conditions food delivery worker face, which is based on extreme insecurity, low pay and poor working conditions, a total lack of representation. Reducing this exploitation requires government legislation, at the State and

Federal level, to regulate to end the fiction that these workers are ‘independent contractors’ and ensure that employers can no longer evade their social and labour responsibilities.

7. Of the six options the SIRA has identified in this consultation regarding the provision of a workers compensation scheme for food delivery drivers, the AMWU supports Option 6, namely to:

Extend the existing workers compensation scheme to cover food delivery riders by deeming food delivery riders as ‘workers’ for the purposes of workers compensation legislation. This option would include the imposition of statutory employer obligations on gig economy platforms such as requirements to provide suitable duties for injured workers who are able to return to work and protection from termination for six months after the injury.

Poor conditions in gig economy affect all workers

8. The gig economy is growing and expanding into areas of the economy that were previously dominated by secure jobs. For example, at the Victorian government’s 2018-2019 Inquiry into the On-Demand Workforce, the Australian Tax Office showed there has been a 249 per cent per cent increase in the use of ABNs in the transport, postal and warehousing industries.

9. The growth of the gig economy has taken place in an almost entirely unregulated way. The Federal Government has failed to enact legislation or amend the *Fair Work Act 2009* to clarify the status of gig workers, or to enact any specific protections for gig workers. This has created an underclass of super-exploited workers in Australia – in spite of the fact that many of these workers are recognised as essential workers who provided vital services to the community during the COVID-19 pandemic.

10. It is widely recognised by economists and academics that the changing composition of work, and especially the proliferation of insecure forms of work such as gig work, and casual and part-time contracts, has significantly contributed to wage stagnation and historic low wage growth levels in Australia.

11. The proliferation of gig work has an indirect, but significant, negative impact on all workers, including AMWU members. Competition among workers and businesses in traditional areas of the economy with digital platforms that evade their social and labour responsibilities places strong downward pressure on wages and conditions across the board.

12. The AMWU supports the analysis of ACTU Secretary Sally McManus, who said: “At the moment so called-gig economy workers have less rights than workers 100 years ago. They deserve the same rights as all other Australian workers. By allowing these workers to be exploited by their employers and by the so-called gig economy system, our Government is not only turning their back on the workers and their families, but is also creating an unfair system for employers who have to compete against these companies.”

Rampant exploitation in gig economy

13. The Inquiry into the Victorian On-Demand Workforce commissioned by the Victorian Government in 2018 found that the largest age group of workers in the gig economy are young workers, aged 18–34, and that many of these workers are paid “well below the national minimum wage”.

14. [Research](#) conducted in 2020 found that food delivery drivers are paid just over \$10 an hour after costs, and rideshare drivers are paid just over \$12.

15. Research conducted for Slater and Gordon in 2021 found that 70 per cent of rideshare drivers, and 64 per cent of food delivery riders have worked while sick or injured or know a colleague who has. Seventy-one per cent of motorcyclist food delivery riders had worked while sick or injured or knew a colleague that had, while 65 per cent of motorcyclists said their injuries were serious and required, or would have benefited from, medical treatment.

16. Slater and Gordon said common injuries for these workers included broken limbs, with some resulting in permanent injuries, meaning they were unable to take on other work. Some of these workers had to keep working as food delivery riders/drivers while injured in order to pay medical bills and to survive financially without sick leave or access to workers compensation.

17. The clearest indication of extreme exploitation and dangerous conditions in the gig economy was the tragic deaths in workplace accidents of five food delivery riders in NSW in the space of 11 weeks in 2020. None of those workers had basic entitlements, such as to workers compensation, sick leave, unfair dismissal protection, or the right to join a union.

Eliminating second-class status of gig workers

18. Digital platforms have been deliberate in developing arrangements with their employees that enable platforms to avoid the operation detailed labour regulation – while other businesses across the economy are bearing the costs of complying with these requirements. This set-up not only facilitates exploitation but provides an unfair competitive advantage to platforms that evade their social and labour responsibilities.

19. The AMWU welcomes the landmark Fair Work Commission finding on 18 May 2021 that found Deliveroo rider Diego Franco was an employee and not a sole contractor. Our union urges the Federal Government to follow the lead of several other countries around the world, including the UK, France, Spain and the Netherlands, and enact legislation to clarify the employment status of these gig workers by explicitly stating that they are employees and not independent contractors. If the Federal Government does not change the law, workers will be forced to resolve their status on a case-by-case basis before the courts.

20. The AMWU welcomes the Victorian government's move arising from the Inquiry into On-Demand Work, to provide more rights to gig workers. The Inquiry recommended "the basis for the application of entitlements, protections and obligations should be clearer... Genuinely self-employed, autonomous business people should operate under commercial arrangements. Workers who operate as part of another's business or enterprise should be covered by protections and entitlements provided by labour regulation."

AMWU view on workers compensation for food delivery workers

21. In the absence of legislative change from the Federal Government, the AMWU believes there are many steps that can be taken at the State level to eradicate the second-class status of workers in the gig economy. One of these is enacting a workers' compensation for food delivery riders, but this must be accompanied by comprehensive reform of the dangerous and ultra-exploitative conditions in the gig economy.

22. The AMWU supports Option 6 of this SIRA consultation, namely to:

Extend the existing workers compensation scheme to cover food delivery riders by deeming food delivery riders as 'workers' for the purposes of workers compensation legislation. This option would include the imposition of statutory employer obligations on gig economy platforms such as requirements to provide suitable duties for injured workers who are able to return to work and protection from termination for six months after the injury.

23. The AMWU believes that gig workers, including food delivery riders, should be classified as employees and that the platform employers should be liable for workers compensation (and payroll tax, as the ATO has repeatedly found). Gig economy companies should be liable for insuring employees against a work-related injury or illness in the same manner, and to the same extent, as other companies are liable.

24. The AMWU rejects any attempt to entrench the second-class status of gig workers by introducing a partial system of workers compensation that fails to meet the same level of coverage and entitlements that other workers in NSW are entitled to. As a result, we strongly disagree with Options 1-5 in the SIRA consultation. Injured gig workers must have the same rights as every other NSW worker.

25. The protection of the platforms' workforces must be the guiding priority of this reform, rather than the impact on the profitability of these companies.

ENDS