

28 May 2021

The National Insurance Brokers Association (**NIBA**) welcomes the opportunity to provide these comments to the State Insurance Regulatory Authority consultation on personal injury insurance arrangements for food delivery riders.

## 1. About NIBA

As the peak representative body for the intermediated insurance industry, NIBA represents more than 15,000 brokers across 450 member firms all around Australia.

Insurance brokers perform a number of valuable services for their clients including;

- Helping clients to understand, manage and minimise their risk exposure;
- Identifying and arranging appropriate insurance or other risk financing mechanisms;
- Acting on behalf of their client, and as the client's advocate when an insured event occurs.

In performing these duties, insurance brokers act as agents of their client and have statutory, common law and professional obligations to act in the best interests of their client at all times.

Insurance brokers represent the interests of the purchasers of insurance, the policy- holders, and not those of insurance companies. Consequently, comments made by NIBA and its members are made on behalf of its members and the public that purchases insurance not on behalf of insurance companies.

## 2. Introduction

The meteoric rise of the gig-economy in Australia has had a significant impact on the Australian economy and workforce. It has also highlighted how unprepared Australia's regulatory environment is to handle these new ways of working.

The deaths of six food-delivery riders in 2020 and the subsequent lack of protections for injured riders and their families is just one example where employment law cannot keep pace with the gig-economy.

Gig-economy platforms have maintained that their driver and delivery partners are not employees but independent contractors. So far that assertion has had only limited attention in Australian courts, with platforms often choosing to settle prior to judgement. However, NIBA notes that the status of a person for tax purposes bears no direct relationship to that person's status as a worker for workers insurance purposes. As such it is possible that these

workers may already be entitled to protection under the workers compensation scheme, irrespective of any ruling on their status as workers.

NIBA notes that delivery riders who work for either Uber or Deliveroo are currently covered under the company's respective injury insurance policies. However, the benefits available to workers and their families under these policies are significantly less than those available under the NSW worker's compensation scheme. For example, the maximum lump sum benefit payable for Accidental Death under the UBER Personal Accident Policy is \$500,000 compared to \$834,200 under the NSW Worker's compensation scheme. It is not clear whether riders for other platforms are covered by similar policies.

### 3. Options

**Option 1:** Maintain the status quo with increased education and awareness about existing personal injury and income protections.

**NIBA Response:** NIBA does not support this option. Currently, only certain platforms provide delivery partners with insurance whilst completing deliveries as many gig-workers complete deliveries on multiple platforms this means that workers may be insured for one delivery but not for the following. The ability for workers to receive compensation if they sustain an injury whilst performing employment duties should not be dependent on the commercial decisions of large corporations.

This option also fails to consider that many gig-workers simply cannot afford to take out these types of protections privately. Gig-workers are not entitled to minimum wage provisions and their ability to complete deliveries varies greatly based on the time of day. A report commissioned by Uber found the average earnings for food deliverers was \$21.55 an hour after costs – but only during meal times.

The report did not provide any information on lowest and highest ranges of hourly pay, however data provided to Guardian Australia showed the riders earned as little as \$9.78 for a 23 minute journey. A submission provided to the NSW Parliament by the Transport Workers Union claims that the average hour rate for a food delivery rider is only \$10.42 .

**Option 2:** Require gig platforms to provide personal injury insurance for their food delivery riders.

**NIBA Response:**

NIBA does not support this option. Current in-market options are insufficient to provide the same level of coverage and support as existing workers compensation cover. To achieve the same level of coverage numerous policies would have to be held, however gaps would still exist around those who sustain catastrophic injuries which would place greater pressure on government services and funding such as the NDIS.

It is also unclear whether these policies would respond in all circumstances as commercial insurance policies have strict exclusions and liability clauses to reduce the risk exposure of the insurer. This may result in workers being unable to receive compensation under these policies.

**Option 3:** Establish a scheme to provide a personal injury insurance safety net for food delivery riders.

**NIBA Response:**

NIBA does not support this option. In NIBA's view it is both counterproductive and unnecessary to establish a new scheme when one already exists that is fit-for-purpose.

**Option 4:** Establish a scheme to provide personal injury insurance to food delivery riders modelled on motor accidents (CTP) scheme benefits.

**NIBA Response:** See response to Option 3.

**Option 5:** Establish a scheme to provide personal injury insurance for food delivery riders modelled on workers compensation protections.

**NIBA Response:** See response to Option 3.

**Option 6:** 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.

**NIBA Response:** NIBA supports this option.

NIBA supports the extension of the existing workers compensation scheme to cover food delivery riders. This is easily done by amending workers compensation provisions to recognise food-delivery riders as "deemed workers" for the purposes of workers compensation.

NIBA believes that food delivery riders meet the requirements of a deemed worker as they are engaged by the platform for the purposes of their trade and are directed by the platform regarding the work to be performed and the time in which it is to be performed (many platforms track their delivery partners and riders may be removed from the platform if they fail to complete deliveries in what the platform deems to be a timely manner).

There may be some complexities under this option where riders are contracted by multiple platforms, and suffer injuries as a result of repeated strain/activity in determining the deemed employer however NIBA notes that these complexities already exist with other casual workers and the legislation has mechanism for dealing with these.

As such it is possible that this cohort of workers may currently be entitled to compensation anyway, it just hasn't been tested by the courts, so deeming them provides certainty to workers and platform operators

**Please note:** A person may have been hired as a contractor and be a contractor for other purposes such as tax, but still be a worker for the purpose of workers insurance.

### **Conclusion**

NIBA's preferred option is to extend the existing workers compensation scheme to include food delivery riders. This could be done by amended existing workers compensation regulation to provide that food delivery drivers are deemed workers for the purposes of accessing workers compensation benefits and protection.

Please do not hesitate to contact me if you have any questions in relation to this submission.

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