



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: InjuryComp:JWap040621

4 June 2021

Mr Matthew Barrett
Injury insurance arrangements for food delivery riders in the gig economy consultation
SIRA
Level 14-15, 231 Elizabeth Street
Sydney NSW 2000

By email: PolicyDesignWHBCR-SIRA@sira.nsw.gov.au

Dear Mr Barrett,

Injury insurance arrangements for food delivery riders in the gig economy

Thank you for the opportunity to comment on the injury insurance arrangements for food delivery riders in the gig economy consultation (the consultation). Thank you also for meeting with members of the Injury Compensation Committee on 27 May 2021 to provide further context to the consultation. The Law Society's Injury Compensation Committee has contributed to this submission.

As discussed during the meeting, the Law Society considers that, as a general principle, compensation should be available to gig economy workers. We note various consultations are currently being conducted, at both the Commonwealth and State level, into the issues and challenges presented by the growing, and largely unregulated, gig economy work force. We also note there are cases presently before various Australian courts in relation to gig economy workers, some of which deal with whether a gig economy worker is considered a 'worker'.¹ We invite SIRA to consider the outcome of those inquiries and proceedings in determining the most appropriate forum for compensating gig economy workers.

We note the focus of this consultation is specifically on food delivery drivers in the gig economy. This subset of gig economy worker has been recognised as comprising more vulnerable members of society, including low-skilled and young workers, often with a migrant background.² While we note that issues, including the absence of regulation over minimum wages, superannuation, and workers compensation, exist in relation to all gig economy workers, we consider that food delivery drivers may face additional risks of exploitation. The Law Society considers it essential that an appropriate solution be developed to compensate food delivery drivers and their families (in the case of their death), and any members of the public, for example pedestrians, injured by delivery riders on bicycles.

As raised during our discussion with you, however, the Law Society considers that any option developed must carefully consider the impacts to the current injury compensation schemes

¹ *Diego Franco v Deliveroo Australia Pty Ltd* [2021] FWC 2818.

² Ebony Stansfield, "Price of a life: why food delivery services need a regulation overhaul", UNSW Newsroom (14 January 2021) <<https://newsroom.unsw.edu.au/news/business-law/price-life-why-food-delivery-services-need-regulation-overhaul>>.

available in NSW, of expanding coverage to this new and ever-growing workforce. In our view, a careful analysis of the costs to both the workers compensation and compulsory third party insurance (CTP) schemes should be undertaken to better understand the impact to those schemes, should either be considered an appropriate forum for compensating food delivery riders. Noting the issues that presently exist in both schemes (as raised at various times with SIRA), including our position that many genuinely injured workers and road users are currently not being given the compensation they are entitled to or the treatment they need to recover, we would not support expanding the pool of workers or road users, without careful consideration of the impact this would have on the benefits available to current scheme users. We consider that the costs of any expansion would need to be borne by the operators of the food delivery services, for example through some sort of additional levy.

Without committing to a particular position at this stage, the Law Society considers that careful consideration should be given to developing a standalone compensation scheme for food delivery riders in the gig economy, self-funded by operators of the system (many of whom are large multinational corporations). In our view, such a scheme would have less impact on current NSW injury compensation schemes, and would not impose additional costs on road users or employers (who are otherwise bound by stringent fair work requirements not presently required of employers in the gig economy).

We would welcome an opportunity for future consultation once the direction of this consultation becomes clearer. Please do not hesitate to contact Adi Prigan, Policy Lawyer, on (02) 9926 0285 or at adi.prigan@lawsociety.com.au should you wish to discuss.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'J Warner', followed by a horizontal line extending to the right.

Juliana Warner
President