



Australian Government
Attorney-General's Department

Committee Secretary
Select Committee on Job Security
Department of the Senate
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Canberra ACT 2600

By email:
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Thank you for your email of 11 August 2021 to former First Assistant Secretary, Alison Durbin, seeking the Attorney-General's Department's (the Department) feedback on the Senate Select Committee on Job Security (the Committee) first interim report: on-demand platform work in Australia (the interim report).

Since the Department's submission to the Committee in April 2021, there have been a number of developments in our portfolio that may be of interest to the Committee.

Commencing in the 2021-22 financial year, the Department is working with the Australian Bureau of Statistics (ABS) to enhance collection of industrial relations related data, including workers engaged in the 'gig' or 'on-demand' economy, casual workers and award-reliant workers. The Department is currently undertaking preliminary scoping work with the ABS on workers engaged in the gig economy. The Government provided \$2.8 million over four years to the ABS in the 2020-21 Mid-Year Economic and Fiscal Outlook to support this work¹. Enhancing data of this kind will support the development of evidence based policy responses.

The Department also continues to monitor jurisdictional developments relating to the work health and safety (WHS) of delivery riders. The model WHS laws that have been adopted by the Commonwealth and the majority of states and territories already capture arrangements in the gig economy. As outlined in the Department's submission to the Committee, in Australia WHS regulation is a shared responsibility, with each jurisdiction responsible for implementing, regulating and enforcing their own WHS laws. Despite having no direct authority in this area, the Government is taking a leadership role in advancing the issue of rider safety in the gig economy to urgently improve safety outcomes for workers in this industry.

On 20 May 2021, the Attorney-General and Minister for Industrial Relations, Senator the Hon Michaelia Cash, led a national discussion on food delivery rider safety at a meeting of WHS Ministers. At this meeting, Ministers agreed to refer work on compliance and enforcement initiatives for food delivery platforms and riders to the Heads of Workplace Safety Authorities for consideration, and to refer work on promoting and strengthening education to Safe Work Australia. The Commonwealth is contributing to the development of further WHS guidance for the gig economy through Safe Work Australia.

The Department further notes that, on 24 June 2021, Menulog made an application to the Fair Work Commission (the Commission) to create a new industry modern award, the 'On Demand Delivery Services' Award. The Commission has commenced the process which first deals with the threshold question around whether any existing awards cover employees and employers in the on demand delivery industry. This process is ongoing, with further submissions and evidence being due over coming months. Hearings are currently scheduled for December 2021.

In relation to casual employment, on 4 August 2021, the High Court handed down its decision in *WorkPac Pty Ltd v Rossato* [2021] HCA 23. The High Court held that, under the common law, a person with a contract of employment is a casual employee if that contract establishes they are employed on the basis of there being no firm advance commitment as to the duration of the employee's employment or the days the employee will work. The decision authoritatively resolves the approach to determining casual employment under the common law and affirms the approach taken by the Government to the definition of casual employment in the *Fair Work Act 2009*. Under the statutory definition that was introduced in the *Fair Work Act 2009*, a casual employee is someone who has been offered and has accepted employment on the basis of there being no firm advance commitment to continuing and indefinite work according to an agreed pattern of work.

In addition, the Commission has been progressing its Casual Terms Award Review to review modern awards and resolve any inconsistencies, uncertainties or difficulties between awards and the *Fair Work Act 2009* as amended (including the statutory definition of 'casual employee' and casual conversion terms). Interested parties, including unions and employer associations, have participated in the process. The Casual Terms Award Review is on track to be completed on time, with variations to take effect from 27 September 2021.

Finally, the Department notes the Committee included its initial recommendations and findings on matters pertaining to the on-demand economy in the interim report, and that the Committee indicated it would add to or refine these recommendations, as well as consider the rest of its terms of reference, in the Committee's final report due later in 2021. The Government will consider the Committee's final report, including any recommendations, once it is released.

Please note the primary contact in the Department is Ms Jennifer Wettinger, Assistant Secretary, Economics and International Labour Branch, who can be contacted on

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¹ Mid-Year Economic and Fiscal Outlook (MYEFO) 2020-21, available at <https://archive.budget.gov.au/2020-21/myefo/download/myefo-2020-21.pdf>.