

**Submission
No 10**

**INQUIRY INTO IMPACT OF TECHNOLOGICAL AND
OTHER CHANGE ON THE FUTURE OF WORK AND
WORKERS IN NEW SOUTH WALES**

Organisation: Deliveroo

Date Received: 31 August 2020



Deliveroo response to the Inquiry by the Select Committee of the Impact of Technological Change on the Future of Work and Workers in New South Wales

August 2020

Executive Summary

Deliveroo is pleased to contribute to the Inquiry into the impact of technological change on the future of work and workers in New South Wales.

Deliveroo has long argued for reform of the on-demand economy and has made the case to Governments and regulators across the world that there should be an end to the current trade-off that self-employed workers face between the flexibility to work where, when and how they want, on the one hand, and the greater security that comes with employment on the other. We know that self-employed riders want both flexibility and security, but legislative frameworks do not currently allow for this. We therefore welcome the Select Committee's Inquiry and consideration of the issues surrounding the future of work.

Deliveroo's model of engagement with self-employed riders is inconsistent with employment, whether full-time, part-time or casual. None of these employment relationships provide the flexibility inherent to the way in which self-employed riders work with Deliveroo. We believe that everyone, regardless of the basis of their engagement and the work they choose to do, should be provided with security and benefits, but the law presently fails to accommodate this. Deliveroo would like to give additional benefits to riders but we want to do this in a way that is compatible with flexibility and, therefore, ensures they do not lose the independent, self-employed status which riders value so highly.

The significant value of the principle of flexibility in the workplace has been highlighted during the COVID-19 crisis. The Prime Minister himself has driven a policy of industrial relations flexibility to help employers keep people in jobs and share hours. In making his argument to extend emergency measures made to the Fair Work Act beyond September, Scott Morrison warned that, "industrial relations inflexibility in this environment will cost jobs."

1

The flexible nature of the work we provide for riders has been a lifeline to many during the COVID-19 crisis. In addition, online delivery platforms, like Deliveroo, have boosted and

1

<https://www.theaustralian.com.au/nation/politics/scott-morrison-eyes-longterm-ir-changes-to-give-emp-loyers-employees-flexibility/news-story/f3fd90fb9d21b98a755e056861eb84e6>



sustained the Australian restaurant sector during this period. The last few months have demonstrated how vital the on-demand sector is as a source of work (for both riders and those working in restaurants), driving revenue in the restaurant sector and as a result making a significant contribution to Australia's economic recovery.

It is important to note that there are limitations to the powers state governments have across many of the areas this Inquiry will investigate. We believe any policy proposals must be driven by the Federal Government to ensure consistency across the nation. Given the sector's critical role in generating economic activity it is vital that if changes are made to modernise the statute book in this area, the fundamental value of flexibility, on which so much of the on-demand economy is predicated, is preserved.

Deliveroo would be happy to provide further detail on anything in this submission if the Inquiry would find it helpful. We would also be willing to convene a roundtable for members of the Inquiry to meet with Deliveroo riders to understand their views and motivations in more detail, if that would be useful.

1. Introduction

- 1.1. Deliveroo was founded in 2013 in London and today works with tens of thousands of restaurants and riders to provide the best food delivery experience in the world. Deliveroo employs over 2000 people across the 12 markets in which we operate; we work with more than 60,000 riders and 80,000 restaurants in more than 500 towns and cities globally. As of 2019, 59,000 additional jobs have been created by Deliveroo in the restaurant sectors in the markets in which we operate.
- 1.2. Deliveroo launched in Australia in November 2015 and is proud to offer flexible well-paid work to more than 8,000 self-employed riders across Australia. We receive up to 1500 applications a week from people who want to be riders. Deliveroo partners with 13,000 of Australia's best-loved restaurants across 13 cities - Sydney, Wollongong and Newcastle in NSW, and Melbourne, Brisbane, Gold Coast, Sunshine Coast, Perth, Adelaide, Canberra, Geelong, Hobart, Newcastle and Cairns - to bring great tasting food straight to people's front doors. Our partners range from small, independently owned restaurants and cafes, to catering businesses, franchises and larger chains.
- 1.3. Within the State of New South Wales, Deliveroo works with hundreds of self employed riders and partners with 4,000 restaurants.
- 1.4. We launched Deliveroo Editions in November 2017, Australia's first delivery-only multi-brand kitchens. We now have two sites in Melbourne, hosting 13 kitchens and 10 restaurant partners, providing jobs for 69 people in total, including chefs, kitchen staff and site managers.



- 1.5. Driven by technology, Deliveroo Editions uses data to identify customer demand in underserved areas and predict what type of food is likely to be popular, thereby reducing risk for restaurants. Deliveroo is filling the cuisine gaps in local areas while investing in the future of the Australian restaurant sector. Editions is good for work, as it creates jobs for chefs and kitchen staff at its sites, as well as creating more opportunities for Deliveroo riders. Editions is good for customers, as it allows top restaurants to reach even more customers and give people greater access to incredible food. Editions is also good for restaurants, providing infrastructure to set up kitchens so they can bring their brands to new areas within 8 to 12 weeks, enabling leading brands to reach a new customer base. Deliveroo provides restaurants with unique insights that allow them to tailor menu items and pricing to their local area which, in turn, gives partners a greater chance of being successful.
- 1.6. Deliveroo for Business is Deliveroo's corporate arm and launched in Australia in 2016. Pre-COVID, it was used by companies to provide meal allowances to employees and would typically be used for employees working overtime, group orders for team lunches or large catering orders. Prior to the pandemic, sales of individual corporate gift voucher options - where companies add an allowance to an individual's Deliveroo account to order directly - were rarely used. However, in the new context in which businesses are operating, gift vouchers have quickly become a way of providing food in the virtual environment. Corporate gift voucher sales through Deliveroo for Business increased 37% from March to April.

2. **COVID-19**

- 2.1. While Deliveroo has been an important channel to market for the restaurant sector in normal times, it has become an essential service for restaurants and customers alike in recent months. During the COVID-19 crisis, platforms like Deliveroo have been a lifeline for restaurants across Australia, with delivery and take away becoming the only sources of income for the Australian catering industry during the national lockdowns. This has helped restaurants to stay open and continue trading, avoid some job cuts and keep many in work. In turn, online platforms like Deliveroo have become a key driver of economic activity during the pandemic across New South Wales and Australia as a whole.
- 2.2. Deliveroo recently released the HospoVitality Index report which explores the experiences of restaurant owners from around Australia during the COVID-19 pandemic, the challenges they've faced, how they've responded, the government policy initiatives they believe are necessary to help aid recovery and their plans for the future. During the national lockdowns, thousands of restaurants across the country pivoted from dine-in trade to offering takeaway and delivery for the very first time. Of the NSW restaurants that introduced new revenue streams, 90% said they would continue with some or all into the



future, with home delivery through a third party (54%) and takeaway (53%) the most popular.

2.3. Across Australia, Deliveroo saw a significant increase in new restaurant partners (close to 2100) joining the platform between late March, when the crisis first erupted and early May.

2.4. We introduced a number of measures to support our partners during this difficult time:

(i) Mandatory 'contact-free pick up and delivery', which allows customers to be confident that deliveries from restaurants are conducted safely. It also ensures, crucially, the health and safety of our riders.

(ii) A new rapid payment service to allow restaurants to access revenue made from deliveries within a day, instead of the usual fortnightly arrangement.

(iii) Restaurant tipping, enabling customers to tip restaurants via the app, with the first 10,000 tips matched by Deliveroo.

(iv) A temporary commissions relief for Pickup and Marketplace² for a month until 4 June, during the COVID crisis.

(v) We invested in a #HereToDeliver campaign to encourage customers to support their local restaurants during the crisis.

(vi) Created online marketing tools for restaurants to notify customers that they are available for delivery services.

(vii) Established teams of people across the business to support restaurants who want to be able to deliver.

(viii) We shared expert advice and guidance on how to operate safely during the outbreak. This included launching a micro-site for restaurants providing the latest information and resources. We also published best practice guidelines for converting existing restaurants into delivery-only operations.

2.5. As restaurants return to dine in trading, we recently launched Table Service, a new feature on the Deliveroo app to help restaurants reopen safely to patrons and help the recovery of the Australian hospitality industry. Deliveroo is the first Australian delivery company to launch a tool of this kind, which allows customers to order and pay via the

²Marketplace+ is where customers order over the Deliveroo app but restaurants provide their own delivery riders or use a white label service. Pickup service is where customers order over the Deliveroo app but collect the food from the restaurant themselves.



Deliveroo app in restaurants, pubs and cafes, enabling social distancing for both customers and staff.

2.6. Deliveroo saw a surge in applications from people who wanted to become riders during the COVID-19 crisis. Hundreds of riders were onboarded nationally between April and mid August. At the outset of the pandemic we worked quickly to implement measures to protect riders which included:

(i) Mandatory 'contact-free pick up and delivery' which means that riders should not have direct contact either those preparing food or with customers during the course of a delivery.

(ii) Deliveroo's Rider Support Fund was established for riders who regularly work with Deliveroo so that if they experience symptoms of COVID-19 or are told to self-isolate by a medical authority, they can receive financial help.

(iii) The provision of free safety products, including hand sanitiser and face masks, which is now included in all Rider Starter Kits. Riders in NSW and Victoria were also recently provided with a one off \$20 rebate to purchase their choice of face covering .

(iv) Extending our education support through our Rider Academy platform. In partnership with OpenClassrooms, Deliveroo provides hundreds of courses on a range of subjects to riders, as well as riders' families, so that they too can access this material at a time when schools and colleges are closed.

(v) Deliveroo produced extensive hygiene guidance for riders, regularly updated with the latest information on the Deliveroo rider website.

(vi) We created new, regular prompts within our rider app to remind riders of the importance of contact-free delivery, social distancing and hand washing.

3. Key Features of the Deliveroo self-employed model

3.1. Deliveroo engages the services of independent contractors to perform delivery services. Riders in Australia choose the self-employed model because this offers the flexible work riders seek.

3.2. The key features of working as a self-employed Deliveroo rider are:

(i) There is no obligation to work at a certain time or for a set number of hours, or even at all. Where riders chose to work, there is no obligation to do so personally. Riders have an unfettered right to appoint delegates at their discretion.



(ii) Riders work with multiple companies, often working across multiple platforms and with other clients at the same time as being logged in to the Deliveroo platform (multi-apping).

(iii) Riders have no fixed work arrangements, they pick their own times to go online and be available for delivery, for as little or as long as they like.

(iv) Once online, riders are free to accept or reject any orders offered to them. Having accepted an order, a rider can “unassign” from it at any time.

(v) Riders choose where they work, what vehicle they use, the routes they take to complete deliveries and what clothes and safety equipment they wear.

- 3.3. Riders frequently reject orders - for example, because they are currently completing an order for another platform or restaurant and the offer isn't convenient for them - and they can do so without sanction. In a recent 6 month period in New South Wales, riders rejected 33.7% of the orders they were offered.
- 3.4. Flexibility is increasingly important to people as they consider what type of work they want, and we regularly hear that people ride with Deliveroo because they want to fit work around life, and not the other way around. Having the freedom to choose when you work, cancel or finish at any point, is ideally suited to people who have other commitments; for example, a student who wants to change their plans on a weekly basis depending on their coursework, or someone who wants to make some top-up income for a few weeks to save up for Christmas or a special occasion.
- 3.5. It is clear that flexible working is a key priority for Deliveroo riders. In a recent survey we asked riders in New South Wales how important it is to be able to choose when they work. On a scale of 1 to 10 (where 10 represents extremely important and 1 not at all important), 95% answered 7 or above.
- 3.6. The relationship between an employee and an employer, whether full-time, part-time or casual, is fundamentally different to the relationship between a self-employed platform worker and a platform. In the on-demand economy, people can choose whether or not to work, where to work, when to work, can reject work at any point, who will perform the services, and can work for multiple companies simultaneously. Having complete flexibility allows riders to fit making deliveries around study, hobbies, caring responsibilities or other jobs. Even where riders choose to work, there is no obligation to do so personally, with riders able to appoint delegates at their discretion. This is a fundamentally different relationship to that found in more traditional forms of work, and there is no comparable sector that offers this degree of freedom and control for individuals. Equally, there are no applicable industry awards that permit flexibility of this nature.



- 3.7. Deliveroo chooses to operate this model because it provides riders with the flexible work opportunities they tell us they want, and this is reflected in riders' overall satisfaction with Deliveroo. Eighty one percent (81%) of riders in New South Wales tell us they are happy working with Deliveroo. Across Australia, 90% of riders "totally agree" the model we operate provides the flexibility to choose when and where to work and which orders to accept. We are proud of these results and stay in regular contact with riders to understand and respond to their concerns and priorities.
- 3.8. Orders are offered to riders by a dispatch algorithm. This algorithm calculates the best rider to offer a delivery to according to the vehicle type they are using and their location relative to the restaurant. The algorithm only uses these objective functions to determine which rider is likely to be able to deliver the order in the quickest possible time. This ensures the food arrives hot to the customer. No performance metrics or personal characteristics (for example, how quickly a rider delivers food, how frequently they reject orders or how many hours they log in, or any other factor relevant to the individual rider) are taken into consideration by the algorithm in the allocation of orders.
- 3.9. We are confident that there is no form of traditional employment available in Australia that allows riders to work whenever or wherever they want; allows them to plan where to work; allows them to work for a competitor at the same time; and allows them to freely delegate work in this way.

4. Protections for Riders

- 4.1. While we believe self-employment is important for Deliveroo and our riders, we recognise that security is also essential.
- 4.2. Deliveroo provides self-employed platform workers with free accident and income protection insurance. This protects riders in the event of an injury incurred while they are logged into the app, and up to an hour after they log out to ensure they are also protected while they return home. This insurance provides financial support should riders incur an injury. It also gives support to cover lost income in case riders can't work following an accident while riding with Deliveroo.
- 4.3. We provide free safety equipment ("kit") and replace worn out items. Kit varies depending on the vehicle being used but for cyclists and those using scooters, for example, it includes highly reflective jackets so riders remain visible to other road users and thermal backpacks and bags.
- 4.4. Riders have access to support for vehicle maintenance through discounts with reputable suppliers.



- 4.5. Deliveroo encourages and enables the professional development of riders through the provision of more than 700 free online courses through OpenClassrooms. Our Rider Academy is available to riders and a family member or friend with courses ranging from improving Microsoft Office skills and public speaking, to data analysis and coding basis. In addition, riders are supported with their finances and bookkeeping via discounts with accounting apps and pension advice via a free webinar.

Rider Safety Advisory Panel

- 4.6. Deliveroo introduced Australian's first ever rider-run panel established by a food delivery platform. The panel focuses on improving safety for all riders, regardless of vehicle type or location. The riders on the panel use their experience to 1) propose safety initiatives to Deliveroo; 2) develop safety projects alongside trusted partners and 3) work with Deliveroo to establish what action could be taken by local and national authorities to improve road safety and generate awareness of safety issues amongst all road users.

World Economic Forum

- 4.7. Deliveroo's commitment to improve opportunities for workers in the platform economy was reinforced when it became one of the founding partners of the World Economic Forum's Charter of Principles for Good Platform Work.³ The Charter, published in January 2020, was developed to improve the environment for the on-demand workforce in Australia and around the world. It outlines eight primary areas to address including diversity and inclusion; safety and wellbeing; flexibility and fair conditions; reasonable pay and fees; social protection; learning and development; voice and participation; and data management.
- 4.8. The Charter encourages collaboration across industry, government and with platform workers to raise industry standards. Deliveroo's role in developing the text of the Charter and its status as a founding member illustrates Deliveroo's leading position in setting the standards of best practice.
- 4.9. A practical demonstration of our commitment to the principles set out in the Charter includes Deliveroo Australia's Rider Safety Advisory Panel (see 4.7). This panel was cited as an example of good global practice for safety and wellbeing in the World Economic Forum's white paper: The Promise of Platform Work Understanding the Ecosystem.⁴

5. The future of on demand working

³ World Economic Forum Charter of Principles for Good Platform work. Link to Charter [here](#)

⁴ The Promise of Platform Work: Understanding the Ecosystem. Link to World Economic Forum White Paper [here](#)



- 5.1. Deliveroo welcomes the debate on the impact of technological change on the future of work in New South Wales. Deliveroo's position is that everyone, regardless of the basis of their engagement and the work they choose to do, should be provided with security and benefits, but that the law presently fails to accommodate this.
- 5.2. The legal concepts of "employee" and "independent contractor" evolved at a time before technology transformed the economy and allowed a platform, such as Deliveroo, to exist and give people the opportunity to choose new ways of working. We argue that this traditional dichotomy cannot be resolved so that Deliveroo can provide both the flexibility that riders want and the security we believe riders deserve.

Differences between on demand and casual work

- 5.3. Traditionally, Australian employment law has sought to provide certain flexibility to employers and employees by allowing workers to be engaged on a "casual" basis. A casual employee generally works irregular hours (with no guarantee of further work or an obligation to accept work), does not receive paid personal/carer's leave or annual leave and can be dismissed without notice (or payment in lieu) or any redundancy benefits. A casual employee receives a higher hourly pay rate than the equivalent full time-time or part-time employees (the casual loading) to compensate them for lack of paid leave entitlements.
- 5.4. While casual employment is more flexible than part-time or full-time employment, it is still subject to regulation that would be incompatible with the degree of flexibility that characterises the on-demand economy. For example, casual employees are paid by the hour. This would necessitate the need to schedule riders for those hours (and for the minimum number of hours required under the applicable modern award as noted below) and also limit the supply of riders during those hours. With the Fee per Delivery model we operate and the ability of riders to log in or out whenever and wherever they want, riders can come and go as they please, doing the deliveries that they want to do and being paid for them, rather than having to do deliveries they are compelled to do. This Fee per Delivery model and ability to log in and out freely, enables the flexibility that riders value so highly. In addition, the ability to multi-app (where riders work with multiple companies, often working across multiple platforms and with other clients at the same time as being logged in to the Deliveroo platform) is something riders value so they can maximise their earnings by selecting the deliveries they want to make.
- 5.5. Many modern awards also require that casual employees be provided with a minimum number of working hours (ranging from 2 to 4 hrs) each time they are engaged. These minimum shift length requirements for casual employees conflict with the key features of working as a self-employed Deliveroo rider. Working with the Deliveroo platform, riders can log in or out whenever and wherever they want, as they have no obligation to work at all, or for any minimum time. Mandating a set number of hours of work, and restricting their ability to work across multiple platforms at the same time, would be very unpopular



with riders, the vast majority of whom tell us they value flexible self-employed work very highly. In addition, a system whereby Deliveroo had to impose shifts on riders would represent a significant shift of power away from the worker to the company. This is not something we want to do. It would clearly be unpopular with riders and directly contradicts the reason many choose to engage with Deliveroo in the first place. Finally, mandating hours is fundamentally incompatible with the service Deliveroo provides to restaurants and customers - with demand for delivery peaking sharply for only a few hours during key times (such as Friday / Saturday evenings, or weekday lunchtimes). It is difficult to see how Deliveroo could continue to provide work opportunities to as many riders if it were required to engage riders on an hourly basis.

- 5.6. As noted previously, 'multi-apping' is a prevalent practice. This is where a rider will be logged in to the apps of several platforms at the same time and will perform deliveries for whichever platform is most convenient for them at any given moment, often making deliveries for multiple separate companies within any given hour. However, if a rider was engaged as a casual employee, they would be restricted from working with competitor platforms at all, and certainly could not do so within the same 'shift' as they were receiving an hourly wage from one employer.

Providing benefits to riders

- 5.7. Deliveroo believes that those who opt to work in the on-demand economy should be entitled to both maximum flexibility as well as greater security. In short, platforms such as ours should be able to offer something akin to current minimum employment benefits to riders, such as some form of paid sick and carer's leave. However, this must be facilitated in a way that is compatible with the flexibility that comes with self-employment. This is what Deliveroo riders want, and our view is that any policy change related to how riders work should be rooted in seeking to deliver their objectives and best interests.
- 5.8. As the Inquiry will be aware, consideration of whether or not a worker is provided with benefits ordinarily associated with employment is a factor that will be taken into account when determining the nature of a relationship⁵. As will be evident from the case law, it would be difficult for Deliveroo to reconcile a position that riders are independent contractors if in addition to the benefits associated with that status (such as flexibility), we were also to provide employment benefits such as superannuation or paid leave. If we did, this would likely work against our position in the event that a court or tribunal is asked to assess the "totality of the relationship" when making a determination on claim for

⁵ In *Stevens v Brodribb Sawmilling Company Proprietary Limited* [1986] HCA 1; (1986) 160 CLR 16 Mason J (at 29) stated that: "**it is the totality of the relationship between the parties which must be considered**". In *Odco Pty Ltd v Building Workers Industrial Union of Australia* [1989] FCA 483, when examining the relationship, Woodward J found that the workers were independent contractors, reasoning (at 121-2) that: "**it is clear that the arrangements which Troubleshooters makes with its workers are very different form (sic) those made by other labour hire agencies. It makes it clear that it does not intend its workers to be its employees. They are not paid a weekly wage nor do they receive any of the normal benefits of a wages employee, particularly annual leave and sick leave**". (Emphasis added)

employment status. There is, therefore, a considerable disincentive for platforms who want to protect flexibility and their operating model to provide any such benefits.

5.9. The current framework for the provision of employment benefits such as paid as personal / carer's leave or annual leave is also incompatible with on-demand work. This is because paid leave is calculated on the basis of an employee's "ordinary hours of work". A simple expansion of this entitlement would not work in circumstances where:

(i) What constitutes "ordinary hours of work" is unclear when riders are not under any obligation to do any minimum amount of work, and when they do choose to make themselves available to perform services by logging on to the app, they can reject orders offered to them because, for example, they are working with another platform at the same time as being logged onto the Deliveroo app. Therefore, it is evident that time logged on to the app, which is clearly not at the direction and control of Deliveroo, cannot be equated with "ordinary hours of work".

(ii) It is equally not clear what would constitute a "continuous period" of employment in the on-demand economy where work patterns are highly variable. We do not know whether this would begin from the moment a rider on-boarded, or whether this would be subject to having performed a certain quantity of work across a specific period of time. Nor would it be clear how riders who choose to take long periods of time away from working with Deliveroo should be treated. Freedom and flexibility of this nature would not work even for casual employees paid on an hourly basis. For example, 40% of riders who have been working with Deliveroo for at least six months have taken one month or more of consecutive time away from Deliveroo.

(iii) Riders are often simultaneously working for other companies while logged in (multi-apping), which means it is unclear which company would be liable for payments and the accrual of benefits during this period.

(iv) Additionally, the right of delegation that all riders have means it may not even be the rider with whom Deliveroo has a supplier agreement who is working at any given time.

5.10. Should riders be reclassified as "employees, it is likely that Deliveroo would work with fewer riders on the road who, unlike now, would operate in fixed shifts. This would be bad for the students, carers and others who supplement their income with delivery work, as it would mean employing a different cohort of riders; it would be bad for customers, who would be denied choice and speed as a result of fewer drivers being on the road; and bad for restaurants, who would see lower revenue growth from deliveries through the Deliveroo platform.

6. Need for legislative reform

6.1. Deliveroo recognises that ending the trade-off between flexibility and security will require legislative change. It is important to note that the power to amend the statute book in this area rests with the Federal Government and not at state level. Indeed, we believe any



policy proposals around work status must be driven by the Federal Government to ensure national consistency and clarity. A patchwork of incompatible Commonwealth, State and Territory laws and regulations risks creating confusion for riders and unfairness in the system. Where law reform is considered, it should enable workers to accrue benefits on the basis of work performed. For example, the number of deliveries completed or the value of fees earned, rather than their ordinary hours of work (which, as noted above, is not easily calculable given the nature of the work). Further, the provision of benefits by a company to a self-employed contractor should not impact on the genuinely agreed terms of their engagement.

- 6.2. This is Deliveroo’s global position and one we have articulated to Governments and Parliaments in other markets in which we operate. In the UK, where Deliveroo is headquartered, the Government commissioned a Review of Modern Working Practices. In its submission to the Review, Deliveroo stated:

“We want to make sure that our riders retain the considerable freedoms that they enjoy at the moment - the freedoms that come with self-employment - but we also want to make sure that they can enjoy a greater level of security. The on-demand economy has changed the way people work and eat. The challenge is working out how to make sure that employment law and benefit entitlements fit with this new economic framework.

It is not up to Deliveroo to define classes within employment law - and nor is it out place to do so. But one potential solution is for new legislation to make it clear that the self-employed can receive benefits without there being a risk to the relationship being reinterpreted by the courts. Ideally, new legislation would make it clear that the self-employed can receive more benefits - coming close to what ‘workers’ currently receive - while retaining the right of the company and the self-employee to negotiate a fair and equitable system for calculating entitlements on an accrual basis.

- 6.3. The Australian industrial relations and employment regulation landscape is complex and Deliveroo believes that all riders in Australia deserve to benefit from any law reform that enables companies like ours to offer new benefits to riders. As stated above, a patchwork of incompatible state regulations risks creating confusion for riders. It is our view that it would be unfair if something as important as the degree of a security that an individual has when they work were to be subject to widely varying rules that may not be known to them when they cross State or Territory borders. We have consistently argued that the Federal Government should be the driving force in solving this policy and legal challenge. Where there is no federal coverage, such as work health and safety regulation, this could potentially be done through the National Cabinet passing “model” legislation that could be implemented uniformly at State and Territory level.
- 6.4. Just as the Fair Work Act has been so important in providing a foundation of standards for the traditional workplace, an equivalent is now needed to build on this for modern ways of working. Deliveroo has argued previously for a Commonwealth ‘Future Work Act’. This could, for example, outline the relationship between platforms and contractors that ends the trade-off that currently exists in legislation between flexibility and security, giving those in the on-demand economy what they want, which is both. A ‘Future Work Act’ could set out the responsibilities companies have to contractors - the freedoms and flexibility that contractors can rely on as well as the security they can expect.

- 6.4.1. **Freedom and Flexibility:** The ‘Future Work Act’ could define the flexibility that on-demand workers must be guaranteed, for example the right to set their own working patterns, and clarity that there is no obligation to perform work or accept set hours, and no restrictions on working with multiple providers or using a delegate to provide the services.
 - 6.4.2. **Security:** The ‘Future Work Act’ could outline that a company is able to directly provide certain benefits to contractors, including, for example, accident and injury or third party liability insurance; income protection when temporarily unable to work because of an accident; paid personal/carer’s leave; is able to provide training, such as specialist training courses related to the work contracted for, or training for wider life skills or educational qualifications that are unrelated to the work the contractor performs.
- 6.5. Other countries, notably France, are already working to enshrine such principles in legislation. The French Charter passed through Parliament and the Senate. Unfortunately, in a last minute intervention it was annulled by the Constitutional Court in December in 2019. However, the French Government has made clear it stands by the principle of protecting platform workers from reclassification when they are given additional benefits. In order to put this principle into practice the Government has asked a former judge, Jean-Yves Frouin, to produce a report with proposals by the end of the year. Prime Minister Philippe has asked Mr Frouin to define a way to enhance the set of rights which platform workers have without compromising their flexible status provided by being self-employed. Deliveroo is working closely with the French Government on this issue.
- 6.6. The answer to the policy challenge of people seeking new ways of working cannot be to deny them the very flexibility that has attracted them to opt for new types of work in the first place, or to entrench a system that disincentivises companies from offering independent contractors greater security in the form of benefits, as the current system does. This would be the consequence of simply reclassifying on-demand workers as ‘employees’, and it would fail to serve the interests or the wishes of the on-demand workforce, and the business and consumers that rely on the services they provide.

7. Report of the Inquiry into the Victorian On-Demand Workforce

- 7.1. Deliveroo welcomes the contribution of the Victorian Inquiry Report published in July 2020 but we believe the recommendations it makes risk restricting the flexible self-employed work that the vast majority of riders tell us they value so highly, as discussed above. The measures the report advocates, particularly around work status, would restrict flexible work across Australia, and would make significantly less attractive the type of work offered by platforms such as Deliveroo. This would not only be bad for riders and the on-demand economy as a whole, but it would also have a negative impact on the



Australian restaurant sector which, as highlighted above, has been sustained and boosted during the COVID-19 crisis by online delivery platforms like Deliveroo.

- 7.2. Deliveroo believes the Victorian Inquiry Report does not fully address or acknowledge the crux of the Victorian Inquiry, that self employed riders value flexibility above all else. The report does not provide a clear direction on how a platform may provide benefits such as sick pay and superannuation to riders without the rider losing their self-employed status.
- 7.3. The Victoria Inquiry Report makes clear that any significant policy changes would need to be driven by the Federal Government. The Inquiry states that it "has closely considered the constitutional limitations on Victoria in framing its recommendations. These constitutional limitations are a key reason it would be ideal for the Commonwealth to lead any regulatory changes arising out of the Inquiry."⁶ The report also says that "COVID-19 has shown us the importance of national leadership for the benefit of all Australians, in cooperation with states and territories, as a federation."⁷ Deliveroo believes that action at Federal level is the right approach. As set out above, a patchwork of incompatible Commonwealth, State and Territory laws and regulations risks creating confusion for riders and unfairness in the system. Something as important as the degree of security that an individual has when they work should not be subject to widely varying rules that may not be known to them when they cross State or Territory borders.
- 7.4. Further, the creation of state by state based regulation would create additional burdens and costs to organisations having to implement - and then monitor - new rules. Additional burdens placed on businesses which - in the case of food delivery platforms - operate on low margins could have negative impacts for customers, riders and restaurants.

8. Conclusion

- 8.1. The COVID-19 pandemic is reshaping the world, from plunging economies into recession, to forcing companies to rapidly innovate to survive. It's transforming the way our public and shared spaces, as well as homes, are used and has proved an uncertain and unpredictable time for politicians and populations around the globe. It is likely the economic recovery could take years. The online food delivery sector proved to be a significant lifeline to many in the last few months. Companies like Deliveroo helped to boost and sustain the Australian restaurant sector during the pandemic and in turn have helped to protect jobs, provide work and drive economic activity for many. In the progress towards an improving economic outlook the online food delivery sector will continue to play a vital role. Therefore, it is essential any proposed regulation supports this sector rather than having a detrimental effect on it.
- 8.2. Deliveroo wants to work with all stakeholders to ensure that any regulation of this sector combines the flexibility of on-demand work which people want, with the security they deserve. Companies should not have to be forced, as they effectively are now, to choose between offering workers a relationship with a great deal of flexibility and fewer benefits or a relationship with much less flexibility and more benefits. Companies should be able to offer the best of both worlds. Were the law more accomodating, we would seek to give

⁶ Paragraph 1271, Report of the Inquiry into the Victorian On-Demand Workforce

⁷ Chairperson's foreword, Report of the Inquiry into the Victorian On-Demand Workforce



our riders greater security without sacrificing their flexible arrangements.

- 8.3. We hope this submission is helpful to policy makers when it comes to the motivations people have for choosing to work in this way and for working out a way forward to create a framework that is fit for the future of Australia, supporting the growing on-demand economy and those who work in it. As set out at the start of this submission, we would be delighted to invite any members of the Inquiry team to meet Deliveroo riders at a focus group, where they could discuss why riders choose flexible, on-demand work.

[ENDS]