



MENULOG

**Submission to the Inquiry into the
On-Demand Workforce in Victoria**

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February 2019

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Executive Summary

Thank you for the opportunity for Menulog to make a submission to the Inquiry into the On-Demand Workforce in Victoria. Menulog makes this submission in its capacity as a business that facilitates the delivery of food ordered through its online platform, which has evolved to utilising on-demand service providers.

Menulog's objective in making this submission is to provide an overview of the Menulog business and its operations, along with a position on current regulation and future opportunity, in order to inform discussions and recommendations as a result of the inquiry. Menulog would welcome the opportunity to provide the Inquiry with any further submissions or information about any relevant matter arising out of this submission.

Having operated in Victoria and other regions for more than 13 years as an online food ordering platform, Menulog has seen first-hand the incredible evolution of the online food delivery industry and has many learnings to share.

Menulog began its operations by supporting 'self-delivery' restaurants - restaurants with their own delivery drivers - to facilitate online orders and deliveries. Having built a highly successful 'self-delivery business', Menulog launched a secondary business stream in 2018 to provide a new solution for Australian restaurants without their own drivers - the Menulog Delivery Service.

With restaurant delivery services provided by on-demand food couriers, the Menulog Delivery Service was launched to a) provide a new delivery solution to offer the 86 percent of Australian restaurants without their own drivers¹, to help them leverage the power and scale of online to grow their business b) provide customers with greater convenience and choice, to better suit evolving lifestyle trends and c) provide new, flexible opportunities for on-demand food couriers operating in the 'gig economy' to generate revenue.

Menulog's utilisation of independent service providers for the facilitation of the delivery of food ordered through its online platform delivers value to these service providers, to restaurants and to customers engaging with the Menulog platform.

Menulog contends that traditional and outdated approaches to assessing the independent contractor – employee distinction have been inconsistently applied to on-demand workers, a reflection of their poor fit for this emerging area of work. These outdated approaches do not provide participants in the on-demand economy with clarity and certainty around how existing regulatory frameworks apply to them.

¹ Menulog survey of 78,000 Australian restaurants, 2017

Menulog contends that a consistent, national approach is warranted, which is forward looking, fair, and embracing of the on-demand economy.

In support of these contentions, Menulog hopes the following submission provides useful insight into the Menulog business to aid in the inquiry. If further information or clarification is required, please email information@menulog.com.

About Menulog

The Menulog business is founded on a simple premise: To enable great restaurants to provide delicious food to more local customers. The network effect of this relationship, enabled by innovative technology, has driven strong growth for Menulog since its launch in 2006.

Currently operating in Australia and New Zealand, Menulog connects more than 12,000 local businesses with more than three million customers via its website and mobile apps.

Headquartered in Sydney, Menulog has more than 130 full-time employees in locally-based technology, operations, marketing and support teams that service its large network of customers and restaurants on a daily basis.

Menulog is committed to adding value to its partners' businesses and has a proven track record of helping its restaurant partners grow - whether through access to consumers online that they may not have been able to reach, or its investment in technology and marketing to help businesses attract more orders and operate more efficiently.

With the majority of restaurant partners being family-run or independently-owned businesses, Menulog is focussed on driving profitable growth for these small businesses, through constant optimisation and development of a wide range of products and services to help restaurants get even more out of Menulog.

Since launching in Sydney 13 years ago, Menulog has grown to partner with restaurants that service 92 percent of Australian delivery addresses, servicing the widest geographical range of any online food delivery business.

This range speaks to the Menulog business model, which historically worked with local 'self-delivery' restaurants in metro, suburban and regional areas across Australia, to facilitate online orders. For these restaurants with their own drivers, Menulog provides the technology required and marketing support to drive incremental orders and grow their business using the size and scale of online.

Menulog's 'self-delivery' business remains a core focus, with more than 10,000 self-delivery restaurant partners. However, self-delivery restaurants make up just 14 percent of the total number of restaurants in Australia. Menulog has sought to develop a solution available for the remaining 67,000 Australian restaurants without their own drivers, providing an opportunity for these businesses to tap into the exciting opportunity of online ordering and delivery.

As part of the global Just Eat network (Menulog Group was acquired by Just Eat PLC in 2015), Menulog had access to world-class delivery technology, as well as greater opportunity for investment in building and industry-leading delivery solution in Australia that would benefit local restaurants, customers and couriers.

The Menulog Delivery Service was born in April 2018, using intellectual property and technology from Canadian Just Eat business, SkipTheDishes. Supplementary to Menulog's self-delivery

business, The Menulog Delivery Service launched in Sydney, followed by a staggered roll out to Melbourne, Brisbane, Perth, Adelaide and Canberra. Having a phased approach ensured systems and processes were suited to the local market and properly optimised before being launched in another location.

Menulog saw an influx in demand from restaurants for the delivery solution. Unlike many other online businesses that may reduce sales to local Australian brick and mortar businesses, Menulog uses the power and scale of online to support the growth of thousands of independent businesses with physical footprints across the country, by creating a new, complementary revenue stream.

This also drove a huge opportunity for another stakeholder group - independent couriers engaged 'on-demand' to provide courier services to transport orders from restaurants to customers.

In addition to providing a new solution for restaurants without their own drivers, the launch of the Menulog Delivery Service also met increasing demand from customers for greater convenience and choice in their local area.

While the Menulog Delivery Service remains a small part of Menulog's business, it has unlocked a huge opportunity to drive greater benefit to the key stakeholder groups of restaurants, customers and couriers. Menulog now connects more than 3,000 additional restaurants with local customers.

Working with more self-delivery restaurants than anyone else, and with the Menulog Delivery Service set to roll out nationally in 2019, Menulog is committed to help build a responsible and sustainable industry that benefits all.

Menulog Delivers Value

At its core, Menulog connects people with food they love - food they share with family and friends, as part of experiences that make people happy.

Menulog was founded to provide a platform and tools to help independent restaurants facilitate online orders and reach a significantly broader customer base, generate increased orders and grow their businesses, while providing Australians with a more convenient way to find and enjoy food from local restaurants.

Today, Menulog's focus remains to deliver value to each of its stakeholder groups:

1. Value for Restaurants

Menulog works with businesses of all shapes and sizes to help them tap into the power of online to grow their business, supporting them by providing world-class technology to facilitate online orders and delivery, insightful data to inform operations and, significant investment in marketing to drive online orders.

Technology

Menulog provides all ordering technology, including (but not limited to) in-store devices, Point of Sale integration, customer communication including email and SMS and, free websites for restaurants without one, as well as round-the-clock support to ensure a seamless experience.

Data

Self-service tools as well as fortnightly updates provide valuable data and insight to restaurants, to better understand customers, local trends and how to optimise their online business. Menulog's local account management team is dedicated to analysing restaurant performance to help boost the performance of restaurant partners.

Marketing

Menulog invests tens of millions of dollars each year in both national and local area marketing on behalf of its restaurant partners, which drives awareness, consideration, trial and loyalty from customers, resulting in incremental orders for restaurants.

Menulog is proud to be able to support all types of restaurants, the majority being small, independently run businesses, along with franchisees of branded restaurant groups.

In the last reported results, Menulog drove more than \$654 million in gross sales for restaurant partners, which equates to an average of \$64,000 per year in sales for each Menulog restaurant partner.

“We would have closed down if it wasn’t for Menulog. Not only did it help us keep our doors open, but it now accounts for 30 percent of orders. Having an online platform is a big help and has made a huge difference for us”
[redacted text], Earl and Pearls Pizzeria, Berkeley

2. Value for Customers

The primary driver for customers when ordering food is convenience.² Online ordering technology enables this convenience by aggregating options and providing greater selection in a central location, helping them navigate the choice available.

With native applications and an easy-to-use website, Menulog delivers convenience to customers by helping them save time and be able to focus on enjoying meal experiences, rather than shopping, cooking and cleaning. Research shows customers spend more than an hour each day preparing meals, with a third spending more on shopping for ingredients than if they were to order in.³

With more than 38 percent of Australians stating they are always rushed or pressed for time⁴, Menulog provides a way for customers spend more time doing the things they value most, such as spending time with friends and family.³

Furthermore, it does it in a way that conveniently fits into people’s lifestyles. Smartphone penetration continues to rise, with the number of smartphone users set to reach almost 18 million in 2019. Menulog has developed technology to suit this trend, providing applications that allow people to order a wide range of meals in just a few taps.

Menulog technology also helps people discover and try new foods and, helps them to find what they want more quickly - at home, in the office or with friends, whenever or wherever they are.

Customers are also driven by choice, looking to online providers for a range of meal occasions, be it time of day (breakfast, lunch or dinner), meal requirement (e.g. click and collect, catering or home delivery) or type of food (e.g. healthy options, family meal or treat).

Having the greatest selection of restaurants available via Menulog drives real value for customers looking for a convenient and enjoyable option to order food.

² NPDCrest Research, 2018, prepared for QSR Media, June 2018

³ You Gov Galaxy Research prepared for Menulog, May 2018

⁴ Australian Bureau of Statistics, Gender Indicators, Australia

"I love ordering from Menulog because it's so easy. It takes so much time to think of meals to cook for dinner, let alone going to the supermarket (and spending a lot on ingredients!) and then taking the time to cook it all. I really enjoy browsing through all the options on Menulog and picking either an old favourite or something new I haven't tried before. It's great!"

Lucy, Menulog Customer, [redacted text], VIC

3. Value for Couriers

The launch of the Menulog Delivery Service saw Menulog partner with a new stakeholder group - independent food couriers. Leveraging proprietary technology from Canadian business, SkipTheDishes, the Menulog Delivery Service uses a system that was implemented to reflect the Australian market and is optimised for network efficiency, striving to provide optimal outcomes for restaurants, couriers and customers.

The advanced technology powering the Menulog Delivery Service works to keep couriers as busy as possible while they have logged in to access delivery opportunities during Delivery Runs (time they have self-nominated to access to the Menulog network).

The Menulog system allows couriers to set their own availability for Delivery Runs. Couriers can sign-up to multiple Delivery Runs on the same day if their availability allows, providing greater opportunity to generate revenue, whilst maintaining the freedom for couriers to set their own schedule. Couriers can elect not to log in for any nominated Delivery Run, or to check out of any nominated Delivery Run, at any time without consequence. Importantly, couriers are provided details, including the proposed job payment, of delivery opportunities prior to accepting them, and are able to make their own commercial assessment about whether they accept a delivery opportunity or not. Again, no consequences flow from a decision of a courier to decline a delivery opportunity proposed to them in any given Delivery Run.

Menulog does not charge any commission on courier fees. Menulog couriers are paid 100 percent of the delivery fee from each order they complete.

With an established yet ever-growing network of customers and restaurants, the Menulog Delivery Service provides a new opportunity for thousands of Australians to take advantage of an opportunity to generate supplemental income from flexible contract work.

The demand for access to the Menulog delivery network is testament to this, with the volume of interested courier service providers quickly outgrowing the number of Delivery Runs available in all areas. Menulog currently has more than ten times the number of interested service providers than what is currently required, demonstrating the popularity of this kind of service provision in Australia.

“I have been a food courier for the past five months and I have found completing deliveries for Menulog restaurants very profitable for me. Being a courier is very flexible and I can log in and out of the network when I choose. I am very busy when I am completing deliveries offered on Menulog network and so it is great for me”

[redacted text], Food Courier, Sydney

The Details of Delivery

The timing and technology behind the launch of the Menulog Delivery Service has allowed Menulog to establish a unique model, highly suited to the Australian market. This model is optimised for the success of couriers and restaurants, whilst continuing to deliver value for customers.

Menulog has worked closely with global and local stakeholders to ensure its processes for delivery, most importantly how it utilises services offered by couriers, are aligned with current regulation and designed to benefit couriers. These processes are detailed below.

Courier Sign Up Process

Prospective couriers can seek access to the Menulog network at www.couriers.menulog.com.au, including agreement of Terms and Conditions of Service Provision.

Prospective couriers must meet the following requirements in order to gain access to progress to the next phase of sign up:

- Couriers must be least 18 years of age
- Couriers must have the right to work in Australia
- Couriers must have a roadworthy (insured and registered) vehicle and valid driving license
- Couriers must have an Australia Business Number (ABN)
- Possess a smartphone and a commercial grade thermal food bag

Potential couriers must also complete a police background check in order to gain access to the Menulog network.

Potential couriers are contacted via phone to confirm all elements above. Once complete, the courier is provided with access to the Menulog network and is advised how to set availability for Delivery Runs.

There is no qualitative job application or interview process where a prospective driver is assessed and there is no probationary period or other trial period imposed upon the commencement of work.

Provision of Delivery Opportunities

Couriers providing services to Menulog operate their own enterprise and are given access to the Menulog network when they are available to work.

When operating on the network, couriers are offered delivery opportunities based on a number of factors, including customers' preferred delivery time, estimated delivery time, required food preparation time, when couriers are available and where couriers are located.

Proprietary algorithms determine which courier is 'best fit' to ensure that food is delivered to a customer in the best time.

Menulog's 'best fit' approach also minimises any courier wait time and ensures couriers are maximising deliveries during their Delivery Runs. It is important to note that 'best fit' is not a qualitative assessment of service providers, rather a system-generated solution based on data points, such as those listed above.

Opportunities offered to service providers are equal and there is no ranking of couriers in any way. Furthermore, couriers are free to accept or decline opportunities presented at their absolute discretion, meaning there are no adverse consequences from the non-completion of delivery services.

Facilitation of Courier Payments

Couriers are offered job payments for each delivery completed during a Delivery Run, calculated according to payment algorithms that are designed to be commercially appealing to couriers. Menulog couriers keep 100% of all delivery fees as part of job payments offered to them.

The job payment per delivery is made up of a) the delivery fee, b) transit pay (based on factors including distance and time and c) any supplement based on a number of other factors, such as cover for wait time. Couriers will always receive at least equal or more than the delivery fee charged to the Menulog customer, however the delivery fee is only one component of the potential revenue offered for a job opportunity.

Couriers are notified of the payment attached to a delivery opportunity and are able to make their own commercial decision as to whether to accept or reject the delivery opportunity offered to them at their absolute discretion.

Couriers are engaged and paid on a per-result basis meaning if a courier signs in for a Delivery Run but does not accept any delivery opportunities made to them, they will not receive any payment for that Delivery Run.

As delivery service providers, couriers are in control over expenses that may be incurred in fulfilment of services including, but not limited to, fuel, tolls, traffic infringements, vehicle depreciation and maintenance, smartphone data plan and any costs associated with engaging personnel to assist them in the fulfilment of all or part of the services.

Courier Services Provided

All couriers operate an Australian business, which provides services to facilitate the transport of orders from Menulog restaurants to Menulog customers.

Couriers manage their business as they see fit, with the flexibility to set their own hours and can scale their workload, depending on their availability and open Delivery Runs. As independent contractors providing these services, couriers are required to pay their own tax. Couriers have the express right to delegate all or part of their services, and do so in practice.

The full Courier Agreement is available at couriers.menulog.com.au/help/legal.

Courier Interaction with Restaurants and Customers

Menulog has detailed yet user-friendly Community Behaviour Guidelines and Health & Safety Guidelines (Code of Conduct) to ensure all couriers operating on the Menulog network conduct their delivery services in a manner that ensures the safety of all participants in the Menulog system and ensures that reasonable customer expectations are met.

Menulog exercises no more control over drivers than is necessary to protect its customers, to ensure safety and to ensure the goodwill of its business. Couriers are not held out as representatives of Menulog, are not required to wear a uniform and are, to customers, essentially indistinguishable from delivery drivers engaged directly by restaurants who choose to undertake their own food delivery.

Furthermore, Menulog does not seek to prevent couriers from working for competing food delivery businesses and is aware that many couriers provide their food delivery services to other businesses.

National Opportunity for Industry Alignment to Benefit All

As the Victorian Minister for Industrial Relations, Tim Pallas, said in relation to this inquiry, “The gig economy is booming and giving Victorians more choice, more flexibility and more options than ever before, so it’s vital the appropriate checks and balances are keeping up with that growth”.

The gig economy has emerged organically from the development of smartphones and mobile applications, which enable consumers of services to directly connect to service providers.

The Australian population has embraced technological change and large numbers of people engage with the gig economy as consumers and providers. The flexible opportunities created through the gig economy provide an overall stimulus to the Australian economy.

The inquiry Terms of Reference correctly identify the status of workers in the gig economy as a fundamental issue. Within the present legal framework, businesses must endeavor to apply uncertain and unclear indicia to determine whether individuals completing paid opportunities are properly assessed as employees or independent contractors, whilst being acutely aware that federal regulators, such as the Australian Taxation Office (ATO) and the Fair Work Ombudsman, or state bodies, such as State Revenue Office Victoria, may take a different view. These indicia were developed to deal with traditional methods of work and are a poor fit for the on-demand economy.

This uncertainty significantly impacts business investment decisions and the deployment of capital. If a clear framework was developed for the on-demand workforce in Australia, businesses, such as Menulog, would be able to invest further in providing benefits to and developing the entrepreneurship of on-demand couriers, as well as investing in other business projects that would deliver further benefits to restaurants and customers.

The current limitation on this kind of investment can be attributed to the uncertainties arising from how on-demand workers sit in the Australian regulatory framework. There are risks for any businesses working with on-demand workers that, despite careful implementation of business practices in line with currently understood law, to face allegations of ‘sham contracting’, given any decision on the employment status of a worker or group of workers, whether by a court, tribunal or the ATO can turn on considerations, which may be applied differently to different on-demand work.

Based on the volume of courier applications received and the increasing rate at which Australian restaurants are adopting delivery, Menulog believes the number of people in Australia seeking to provide services to online platforms, such as online food delivery providers, will continue to grow. Furthermore, consumer demand for these types of services will increase, as technology continues to help customers save time and focus on other activities in which they find value.

The regulatory framework should accordingly be re-framed to appropriately reflect the realities of on-demand work for the benefit of all participants in it, rather than regulators seeking to "shoe-horn" on-demand workers into existing regulatory frameworks.

Menulog recognises that clear and objective regulation of the gig economy across Australia is important to ensure all stakeholders benefit from technological change.

To this end, Menulog contends that national regulation is required and that state-based regulation of service providers in the gig economy will exacerbate existing uncertainty.

Furthermore, Menulog contends that any potential legislation to regulate the on-demand workforce should be carefully developed to continue to afford on-demand workers the same flexibility, freedom and opportunity to generate revenue they currently have within the existing framework. As such, it proposes that the current definition of independent contractors should be clarified to enable couriers to maintain their current benefits and build their businesses in the future.

The Australian states' referral of industrial relations powers to the commonwealth has provided a degree of certainty when looking broadly at employment in Australia (albeit with current issues relating to the gig economy mentioned above).

Not only would state-based regulation of this one industry be misaligned to how other industries are governed, but having a different framework for each state would add a level of significant complexity for businesses, couriers, restaurants and ultimately consumers.

For example, restaurants that are not partnered with a delivery service may engage contracted service providers and operate multiple locations interstate. With a state-based approach to regulation, business operations would require additional resource and potentially added cost, which could filter down to the customer. Similarly, varying regulation would see added complexity for couriers working interstate.

Menulog is of the view that any Australian State or Territory seeking to review regulation of the gig economy should not act unilaterally insofar as how workers providing services within it are classified.

In the absence of any federal legislative changes, reform of the sector could be considered by the Council of Australian Governments (COAG) to ensure uniformity of regulation throughout Australia, which Menulog strongly advocates as the best course of action in relation to the on-demand workforce.

Conclusion

Over the past 13 years, the Menulog business has continued to evolve to provide products and services to its stakeholders that deliver real value. Menulog is focussed on continuing to develop its marketplace to provide new opportunities for restaurants and couriers and, new experiences for customers, in order to drive shared success and help build a sustainable industry that benefits all.

The continued evolution of the business has seen a natural progression for Menulog to enter the gig economy, with the launch of the Menulog Delivery Service. Coupled with Menulog's thriving self-delivery business, which already services more than 10,000 Australian restaurants, the Menulog Delivery Service provides world-class delivery technology to support the 68,000 Australian restaurants without their own drivers.

While Menulog has been careful to ensure that its engagement with independent service providers complies with applicable laws, Menulog has identified a clear disconnect between this regulation and the 'on-demand' services provided by those operating in the gig-economy.

As such, Menulog welcomes discussion around the regulation of on-demand workers and is pleased to be able to share its experiences and learnings.

Menulog is supportive of a national approach to ensure utmost clarity and consistency for all stakeholders.

In addition to bringing certainty to the legal framework, Menulog submits that it is vitally important to maintain flexibility for on-demand workers, specifically food couriers, within proposed legislative reform. Maintaining flexibility will ensure benefits remain, including the opportunity for service providers to set their own hours, accept or reject opportunities at their discretion, provide services to any and all businesses they choose and manage their business as they see fit. Menulog contends that the maintenance of these benefits can only be achieved by clarification of the current definition of an independent contractor.

Menulog is pleased this important issue is being considered and looks forward to assisting in driving a positive solution.