



**The Hon Christian Porter MP**  
Attorney-General  
Minister for Industrial Relations  
Leader of the House

MC20-013594

Mr Michael Kaine  
National Secretary  
Transport Workers' Union  
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Dear Mr Kaine

A handwritten signature in blue ink, appearing to be 'M. Porter', written over the text 'Dear Mr Kaine'.

Thank you for your letter of 2 April 2020, requesting urgent action to support and protect food delivery workers during the COVID-19 pandemic; seeking, among other measures, a living wage, rights to sick leave, workers' compensation, and personal protective equipment (PPE), and government support for visa holders. I appreciate the time you have taken to bring these requests to my attention. Regrettably, it took longer than anticipated to receive advice from the Attorney-General's Department given the pandemic.

Access to a living wage

I understand that most food delivery drivers are independent contractors, which gives them a certain amount of flexibility in the way they conduct their business. In exchange for this, independent contractors do not have the same minimum wage and sick leave entitlements that employees have.

As for national system employees, the Fair Work Act framework sets minimum pay and conditions. For employees not covered by an award or registered agreement, the National Minimum Wage Order applies. Australia's current minimum wage (\$19.49 per hour / \$740.80 per week / \$38,521.60 per annum), as determined by the independent Fair Work Commission, is now officially the highest in the world according to the OECD.

In any event, the Government is supporting workers, including independent contractors, through the JobKeeper and JobSeeker programmes. Food delivery workers who operate as sole traders may be eligible for JobKeeper if their turnover has fallen or will likely fall by 30 per cent or more. The Government has also temporarily expanded the eligibility criteria for JobSeeker to include sole traders if their income is negatively affected by the economic impact of the pandemic.

Paid sick leave entitlements

As mentioned above, independent contractors do not have the same sick leave entitlements that employees have.

As for employees, there are already paid leave entitlements available for most employees under the National Employment Standards (NES) when they are unwell, need to care for someone who is unwell, or need to attend a medical appointment. Many businesses are also stepping-up to offer paid sick leave entitlements in excess of that.

#### Workers' compensation

A demand for workers' compensation insurance for COVID-19 related injury and medical expenses cannot be answered without recognising that this is primarily a matter for the states and territories. Each jurisdiction is answerable for their own legislation and arrangements. While workers' compensation schemes generally cover employees, and employers either self-insure or pay premiums to cover them, different coverage rules apply in each jurisdiction. As a result, these decisions are a matter for those jurisdictions.

#### PPE

As you are no doubt aware, under the model WHS laws adopted by the Commonwealth and most jurisdictions, persons conducting a business or undertaking (PCBUs) are required to ensure the health and safety of workers and others in their workplaces by eliminating or minimising risks to health and safety, so far as is reasonably practicable.

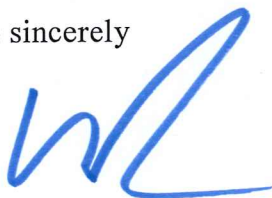
If elimination is not possible, PCBUs must minimise these risks as far as practicable by applying all available control measures, based on the advice of WHS and health authorities. These control measures may include, among other things, physical distancing, good hygiene, cleaning and, where appropriate, PPE. That said, face masks are not currently recommended by health officials in Australia, while the rate of community transmission of COVID-19 is low. Face masks may be worn where it is not possible to maintain physical distancing. But this is no substitute for other precautions such as physical distancing and staying at home when unwell.

#### Support for visa holders

The Government has made a number of changes to temporary visa holder arrangements as part of our response to the pandemic. We have removed the Seasonal Workers Preclusion Period and the Newly Arrived Residents Waiting Period for JobSeeker Payment eligibility. Holders of a permanent visa, a Protected Special Category Visa, a non-protected Special Category Visa who have been residing continually in Australia for 10 years or more, or a Special Category (Subclass 444) Visa Holder may also be eligible for JobSeeker or JobKeeper Payments.

Thank you again for bringing your concerns to my attention.

Yours sincerely



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