
Senate Select Committee on Job Security

Amazon Commercial Services Pty Ltd (**Amazon**) provides the following responses to the Senate Select Committee on Job Security Questions on Notice (**Questions**) from the Committee Hearing on 4 November 2021 (**Hearing**), and to the supplementary submission of the Transport Workers Union (**TWU Submission**) to which the Committee referred during Amazon's appearance at the Hearing.

Questions 1 and 5:

1. *I would ask that you...review the material that was sent to you this morning and come back to us with some understanding about how you have interpreted those rules, regulations and schedules you have relied on in previous evidence, and also give us your reading for how you believe that \$108 for a four-hour period complies with any of those.*
2. *The document that's been sent to you is a document that's been in circulation by the Transport Industry Council...on page 13 it says that the total per hour is \$40.71. Doesn't that mean you're paying substantially less than the minimum hours for a four-hour block?*

A. Background

Based on Amazon's correspondence with the Committee Secretariat, it is Amazon's understanding that the TWU Submission, although dated 16 June 2021, was provided to the Committee Secretariat on 4 November 2021 and is a revised version of an earlier supplementary submission published on the Committee's website and identified as Submission Ref. 39.1.

Amazon was not made aware of Submission Ref. 39.1 at the time it was received by the Committee Secretariat, nor was Amazon invited to respond to the adverse comments set out in that submission prior to 4 November 2021. The Committee Secretariat provided Amazon with a copy of the TWU Submission shortly prior to the Hearing on 4 November 2021. Set out below is the detailed basis for Amazon's responses to the Committee's questions regarding the matters outlined in the TWU Submission.

B. Amazon's response to the TWU Submission

The TWU Submission, to which the Committee referred during the Hearing, contains a number of incorrect claims regarding the rates paid to Amazon Flex Delivery Partners. We reject these claims. We made our representatives available for the Committee on two occasions, and engaged honestly, constructively, and in good faith with the Committee's questions. We trust that the additional detail set out in this response is of assistance to the Committee.

The rates paid to Amazon Flex Delivery Partners meet or exceed Amazon's obligations under the applicable owner driver laws, including the *Industrial Relations Act 1996* (NSW) (**NSW Act**) and the *Owner Driver and Forestry Contractors Act 2005* (Vic) (**VIC Act**).

The NSW Act, the VIC Act and the Transport Industry Council Rates and Costs Schedule 2020-21 (**Schedule**) set out a process to assess owner driver rates based on the costs of the owner driver's business model. Having regard to the features of the Amazon Flex business model, Amazon's rates are set in accordance with these industry guidelines.

The TWU's claims that Amazon Flex rates "fall well below minimum standards" and are "substantially lower than those specified in the New South Wales and Victorian owner-driver legislation" are inaccurate, for the reasons set out below.

The first source referenced by the TWU Submission is the *Road Transport and Distribution Award 2010* (**Award**). This instrument applies to employees. Amazon Flex Delivery Partners are engaged as independent contractors, they are not employed by Amazon. The relevant regulatory framework for independent contractors is established by the owner driver legislation referenced above. The Award does not apply to Amazon Flex Delivery Partners.

The second source referenced by the TWU Submission is the VIC Act. The TWU Submission appears to identify the rate of \$40.71 per hour as a "minimum standard" set by the VIC Act. This is inaccurate. The Schedule (published under s 14 of the VIC Act) states, "This Schedule does not set minimum rates that must be paid" (page 2). Rather, the Schedule states that it is necessary to have regard to the actual costs of the business model to determine the applicable rate of pay. The purpose of the Schedule is to provide owner drivers with guidance in calculating their own unique cost model. See e.g. the following extracts from the Schedule:

"This Schedule is a general guide only." (page 2)

"The Schedule sets out a worked example of typical overhead costs for an owner driver supplying a 1 Tonne Van, Courier/Messenger. The worked example is based on certain assumptions about the business, for example, that the vehicle is 3 years old, is in operation for 7.6 hours a day and uses a certain number of tyres." (page 2)

"BECAUSE OF THESE POTENTIAL VARIATIONS, GREAT CARE SHOULD BE TAKEN IN USING THE INDICATIVE FIGURES SET OUT IN THE COST MODEL, AS THE COSTS OF THE INDIVIDUAL BUSINESS MAY VARY SIGNIFICANTLY." (page 4)

Many of the assumptions on which the \$40.71 figure is based do not apply to Amazon Flex Delivery Partners. For example, the \$40.71 per hour rate is based on the indicative figures for a full-time van driver, operating a vehicle with a current capital value of \$32,317 for 7.6 hours per day, 220 days per year. These figures do not reflect a supplementary earning opportunity where Amazon Flex Delivery Partners deliver an average of approximately

three blocks per week, operating a sedan to earn extra income around their other commitments.

The third source referenced by the TWU Submission is the NSW Act. Under the NSW Act s 313, the Industrial Relations Commission of NSW may make a contract determination with respect to the remuneration of a carrier. However, as acknowledged in the TWU Submission, *"Currently, there is no rate set for light vehicles"*. The rates that are referenced by the TWU are the rates that apply to larger vehicles (2-5 tonne rigid vehicles) and are not relevant to the vehicles used by Amazon Flex Delivery Partners.

Save for a limited pilot in NSW (which is currently trialing the use of small vans under 1.5 tonnes carrying capacity), all Amazon Flex Delivery Partners otherwise drive sedans. Amazon pays a minimum of \$108 for a four-hour block for sedan drivers, and a minimum of \$240 per eight-hour block for van drivers (even if they complete the block earlier, which is mostly the case). On average in October 2021, Amazon Flex Delivery Partners driving sedans earned more than \$125 for a four hour block, with more than 90% of blocks completed in under the allocated time. Amazon Flex Delivery Partner rates align with the relevant industry standards, having regard to the type of work performed for the Amazon Flex program, and the vehicles used by Delivery Partners.

We have sought to address the Committee's detailed and specific questions regarding the application of relevant owner driver laws to Amazon Flex. More broadly, Amazon has previously submitted to the Committee that we believe that there is value in having a simple and appropriate national framework for owner drivers, and that we welcome an opportunity to work with state and federal governments on a nationally consistent framework of regulations.

Questions 2 and 3:

2. Could you provide on notice the number of top-up applications that have been lodged since Amazon Flex started, and how many of them were successful?

3. Could you also provide how many of the drivers have been compensated, since you started in 2020, through your other process of compensation for the extra time above four hours?

There are two mechanisms in place to compensate drivers for deliveries made outside the allocated block time: Delivery Partners can make a 'top-up' application; and Amazon undertakes a proactive reconciliation every 60 days, which captures any Delivery Partners who took longer than the allocated block time to make deliveries across the relevant period. Since the launch of Amazon Flex in Australia, approximately 7% of Delivery Partners have received additional payments through these mechanisms.

Question 4:

Could you please provide on notice the total number of terminations or offboardings since the launch of Amazon Flex in Australia?

Less than 3% of Delivery Partners have been offboarded since the launch of Amazon Flex in Australia.