



**TWU**  
Carrying Australia

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**Submission to the “Safe Work NSW and Transport NSW Taskforce into Food Delivery Worker Deaths”**

26 February 2021

**The Transport Workers' Union of Australia**

## About the TWU

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1. The Transport Workers' Union of Australia (**TWU**) represents tens of thousands of men and women in Australia's aviation, oil, waste management, gas, road transport, passenger vehicles and freight logistics industries. The Transport Workers' Union of NSW (**TWU NSW**) is the largest branch of the TWU and represents workers within the State of NSW.
2. The TWU represents 70,000 transport workers in Australia today, including 20,000 owner drivers. With over one hundred years' experience in conducting Australia's passenger and freight task, the TWU has been proactive in establishing industry standards that improve the lives and safety of transport workers, their families and the community. This work has included a long history of establishing innovative regulatory systems which have, among many things, helped to ensure that owner drivers, classified as contractors, and other transport workers have access to fair rights, entitlements and safe work.
3. The TWU is the union which also represents workers in the transport sector of the emerging 'gig-economy' which includes rideshare, food delivery and more recently, parcel delivery workers. Since 2018, the TWU has been leading a campaign to ensure that transport workers in the gig-economy are provided access to safe, fair and ethical work standards.

## Introduction

4. The TWU welcomes the opportunity to provide feedback to the 'Guide to Managing Work, Health and Safety in the Food Delivery Industry' (**Guidelines**) and the broader work of the NSW Taskforce.
5. The following submission will outline the way in which the proposed guidelines in their current form undermine the existing rights and protections which are owed to workers under the existing *Work Health and Safety Act 2011* (NSW) (**WHS Act**). The TWU categorically rejects the current form of the guidelines and the general nature of the interventions made by the Task Force and NSW Government to date.

## Failing of the Taskforce and NSW Government

6. To date, the response of the NSW Taskforce and the NSW Government is failing to address the key risk factors which are placing food delivery workers in danger and leading to some of the highest rates of workplace injury and death at work in NSW. The main source of poor safety outcomes in the food delivery sector is inextricably linked to the unsustainable pressures placed on workers due to a failure to provide minimum standards for rates of pay and other fundamental work rights. So long as dangerous pressures exist, food delivery workers will continue to be injured and killed. The interventions by the NSW Government and the Task Force so far have been piecemeal and will work to only undermine health and safety further by providing the illusion that the underlying health and safety issues have been addressed.
7. More concerning, some of the NSW Governments interventions are exacerbating poor safety outcomes in the food delivery sector. In recent weeks, the TWU has received reports that 'compliance' activities are being carried out by regulatory authorities in NSW which are targeting food delivery workers. In recent days, this has been included a 'blitz' of food delivery workers cycling on pathways with workers being issued fines for infringements. Such interventions only target the workers who are most often the victims of poor health and safety outcomes and increase the already dangerous economic pressures placed on workers.
8. The TWU would like to once again refer the Taskforce and the NSW Government to the TWU's previous submission to the Taskforce dated 22<sup>nd</sup> December 2020 (**Annexure A**), which elaborated on the need to ensure that the broader structural issues are addressed and provided a regulatory framework for achieving this in NSW.

## **Guidelines: Winding Back Protections for Food Delivery Workers**

9. The attempt to ensure even a piecemeal approach to addressing health and safety through the production of guidelines ‘misses the mark’ by failing to address the key risk factors and issues in the sector. More concerningly, in its current form, the guidelines will actually undermine health and safety altogether by misrepresenting the relationship between food delivery workers and companies and in doing so, effectively wind back the existing protections for food delivery workers under the current WHS Act.
10. The guidelines have adopted language which misrepresents the relationship between food delivery workers and food delivery companies. Food delivery workers are engaged to perform delivery work by food delivery companies who control the main terms of engagement which includes the ability to unilaterally set and determine rates of pay, remuneration structures and performance metrics. Food delivery workers are entirely dependent on these companies for all the work they receive and have no ability to develop their own clientele or business independent of these food delivery companies.
11. Despite this, the guidelines elect to describe food delivery companies as ‘third-party’ ‘platforms’ which ‘partner’ with food delivery workers suggesting some level of equality exists in this relationship. The framing of the relationship in this way is then in subsequent sections, used to shift obligations which would otherwise sit with the Person Conducting Business or Undertaking (PCBU) which effectively *controls* and directs the work of the food delivery worker.
12. It is important to note in this regard that even Uber Eats has recently abandoned the fallacy that it is an ‘intermediary’ technology platform that merely ‘facilitates’ a relationship with food delivery workers and food delivery outlets. Following a high profile court case which recently scrutinised Uber’s framing of its relationship with so-called ‘delivery partners’, on January 26 Uber Eats announced it will be introducing an allegedly ‘new model’ to Australia. In this, Uber Eats concedes that it is providing delivery services by engaging food delivery workers rather than merely connecting food delivery outlets and restaurant:

*This new model will not alter the marketplace fee but will mean*

*selling their goods to customers and Uber Eats will provide delivery services to that customer.<sup>1</sup>*

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<sup>1</sup> Uber Eats Australia, “Continuing to deliver the best delivery experience with a new model for Uber Eats”, Jan 26<sup>th</sup>, 2021, <https://www.uber.com/en-AU/newsroom/newdeliverymodel/>

13. The importance of framing this relationship accurately cannot be understated for the purposes of these guidelines as it has implications for how a PCBU's primary duty of care is discharged and where other obligations should apply. One such example in subsequent parts of the guidelines relates to shifting the obligation to provide personal protective equipment (PPE) to food delivery workers. Section 44 (1) of the *Workplace Health and Safety Regulation 2017* (NSW) (**WHS Reg**) states that a PCBU who directs work must provide personal protective equipment. Safe Work NSW's own website advises "If *contractors* do not have PPE, it needs to be issued by the employer/PCBU".<sup>2</sup> Yet for food delivery workers, who remain in at least some of the most dependent contracting arrangements today and in one of the most dangerous industries, the guidelines assign the obligation to provide PPE to the food delivery worker. The spin-off is that the by providing their own PPE, food delivery workers who are already paid below minimum wage, are placed under great economic pressure, exacerbating poor safety outcomes in the sector.
14. Another example of the influence of this misrepresentation is found in the way in which the guidelines elect to describe a food delivery worker as both a 'worker' and a 'PCBU' *for the purposes of performing a risk assessment*. Throughout the subsequent table, the dual categories are used to shift obligations (like PPE) which should otherwise be the responsibility of a food delivery company, as the PCBU, which determines the nature and structure of such delivery work.
15. Finally, and as has been stated from the outset of this submission and the previous submission of the TWU to the Taskforce, WHS Law does not inhibit any risk factor from being addressed and does not create a divide between nominally 'industrial' and 'safety' issues. Economic and contracting pressures are a safety issue in the road transport sector and particularly in the food delivery sector where there is a strong relationship between for example, low rates of pay, remuneration structure, and a lack of protections from unfair dismissal and risk taking behaviours like working fatigued, speeding or poor vehicle maintenance. The guidelines do nothing to recognise the responsibility food delivery companies must have in effectively addressing these issues.
16. In preparation for this submission the TWU has requested that [REDACTED] [REDACTED]<sup>3</sup> in the field of Work Health and Safety,

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<sup>2</sup> Safe Work NSW, "Personal Protective Equipment (PPE)", <https://www.safework.nsw.gov.au/safety-starts-here/physical-safety-at-work-the-basics/personal-protective-equipment-ppe>

[REDACTED]

provide some feedback to the guidelines. [REDACTED] has kindly offered to provide this assistance and [REDACTED] submission has been now included in **Annexure B**.

17. In [REDACTED] submission, [REDACTED] outlines three major concerns being (1) the way in which the guidelines misdescribe provisions of the WHS Act (2) the failure to include reference to the important duty under section 47 of the Act and (3) the 'biased tone' of the guidelines which "overemphasises the measures that food delivery riders must take for their own health and safety". The TWU supports the submission of [REDACTED] in full.

18. In preparation for this submission, the TWU has also invited [REDACTED]  
[REDACTED]  
[REDACTED] to provide feedback to the guidelines. [REDACTED] submission is provided under **Annexure C**.

19. [REDACTED] notes "the guidelines fails to comprehend the realities of work arrangements in the food delivery industry, notably the strong pressures on delivery workers and their dependency/relative powerlessness, which combined with their piecework payment systems poses a significant risk to their safety, health and well-being. [REDACTED] continues on to cite evidence which supports this link. The TWU supports the submission of [REDACTED] in full.



## **Conclusion**

20. Workers in the food delivery sector are engaged in highly exploitative arrangements. Food delivery riders are some of the most low-paid workers in the country, work in one of the most dangerous sectors – and these two features are inextricably linked. The Taskforce was set up to respond to this very crisis. An effective response will require nothing less of a recognition of this link and a complete overhaul of the food delivery sector.
21. A piecemeal approach which seeks to ‘guide’ food delivery companies towards complying with existing WHS laws will not be effective in an industry where food delivery companies have demonstrated true innovation and expertise in circumventing their obligations under an outdated industrial relations system. Not only do the current guidelines not ensure compliance with WHS law, but in their current form, wind back existing protections by misrepresenting the nature of food delivery work and shifting obligations to food delivery workers.
22. The TWU reiterates the need to ensure the establishment of a tribunal which can set safe, sustainable and universally binding standards throughout the food delivery industry and urges the NSW Government and the Taskforce to work towards this end.



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**Submission to the “Safe Work NSW and Transport NSW Taskforce into Food Delivery Worker Deaths”**

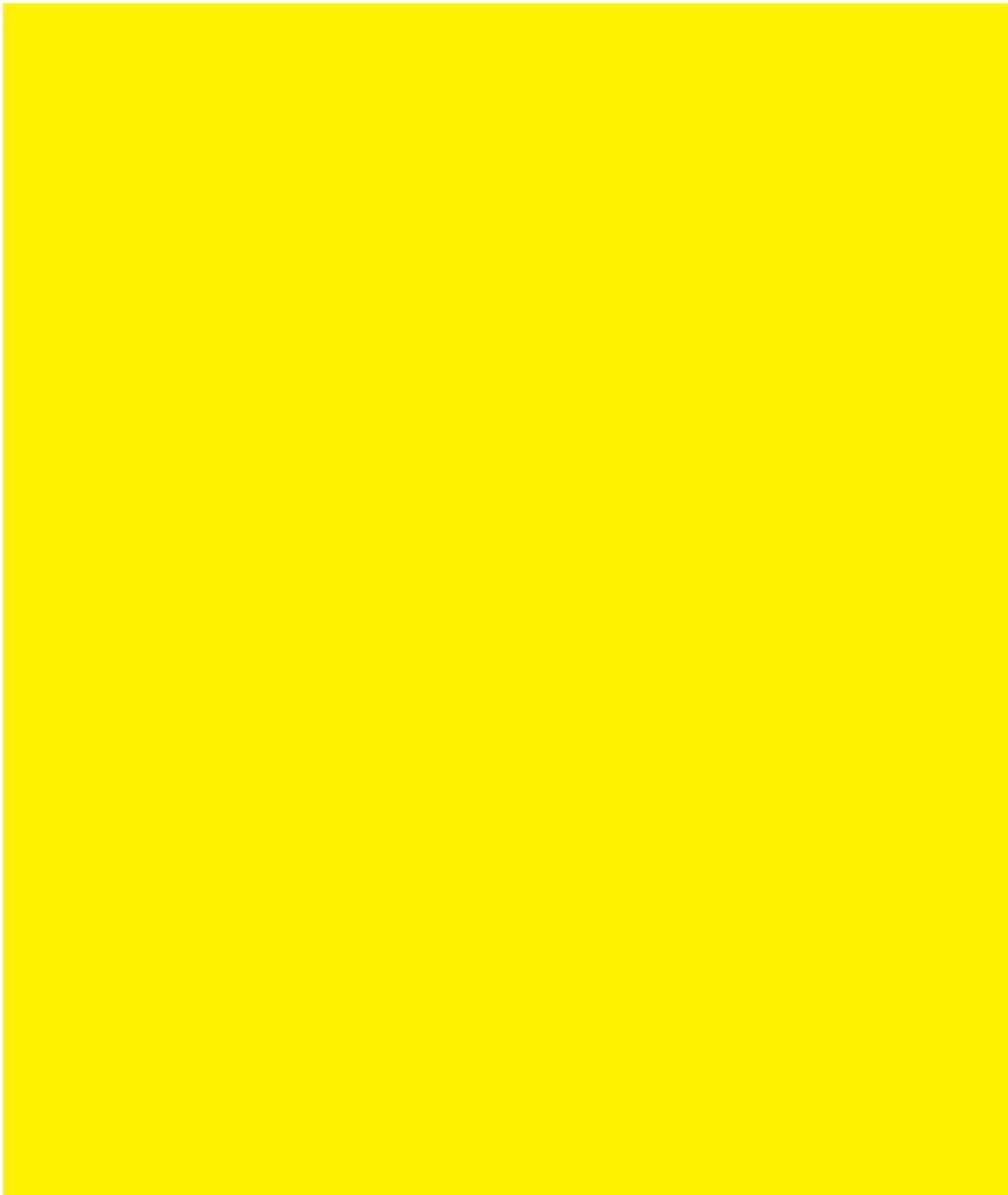
22 December 2020

**The Transport Workers' Union of Australia**

**This submission is dedicated to the food delivery workers killed between**



**May they rest in peace**



## About the TWU

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3. The TWU is the union which also represents workers in the transport sector of the emerging 'gig-economy' which include rideshare, food delivery and more recently, parcel delivery workers. Since 2018, the TWU has been leading a campaign to ensure that transport workers in the gig-economy are provided access to safe, fair and ethical work standards.

## Introduction

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4. The TWU welcomes the opportunity to contribute to the NSW Taskforce which has been set up to investigate the deaths of food delivery workers in the on-demand sector of the transport industry.
5. The TWU welcomes the establishment of the Taskforce and other actions of the NSW Government in recent months which together have recognised the:
  - serious safety issues affecting food delivery workers in the on-demand economy,
  - lack of regulatory compliance with existing workplace health and safety (WHS) law,
  - need to act to ensure that food delivery companies are providing a safe working environment for this emerging workforce,
  - need to extend worker's compensation coverage to food delivery workers.
6. The transport sector has been substantially affected by the growth of the 'gig' or 'on-demand' economy in NSW. It is within the transport sector that development of the on-demand economy has been most advanced and its impact on working conditions and safety most concerning. While this was

tragically brought into focus following the deaths of five food delivery workers during September and November this year, these issues have existed since the emergence of these companies.

7. It is also important to note that these issues extend beyond food delivery, with other on-demand transport workers in the rideshare and parcel delivery sector facing serious and growing safety issues. While focusing on food delivery workers, the following submission will make reference to the issues faced by other on-demand transport workers engaged under similar arrangements.
8. The transport sector has been transformed by two successive waves of on-demand economy restructuring with the entry of rideshare companies in 2011 and food delivery companies in 2015. On-demand companies like Uber, Uber Eats, Deliveroo, Menulog, Doordash, Didi, Easi, Ola, Hungry Panda and others have since grown exponentially and as they have expanded, competitive pressures have led to a diminution of standards which has undermined worker safety.
9. Under existing WHS laws in NSW, employers and business, including those in the on-demand economy, would be considered a 'person conducting a business or undertaking' (PCBU) and as such, have a primary duty of care for workers which they engage. For years now, companies in the sector have failed to meet their primary duty of care to the road transport workers which they engage.
10. This failure has been particularly pronounced in the on-demand sector of the transport industry. This has been due to on-demand companies having (1) limited experience administering road transport work (2) a belief among some companies that, owing to their business models, obligations under WHS laws either do not apply or only partially apply to them (3) a fear that undertaking interventions to improve safety and lift standards will expose companies to employment-classification risks, and (4) competitive pressures which economically constrain the ability of companies discharge their primary duty of care.
11. Some of the major issues undermining the safety of on-demand transport workers such as food delivery workers include but are not limited to:
  - a. A lack of education and training of workers, particularly during onboarding and induction processes,
  - b. A failure to provide access to appropriate personal protective equipment,
  - c. A failure to ensure vehicles are adequately maintained and fit for use,
  - d. A failure to record safety incidents and report 'notifiable incidents' to Safe Work NSW,
  - e. Unsustainable remuneration levels and contracting practices,

- f. Obstructive behaviour which has sought to undermine the establishment of workgroups and the ability of workers to elect Health and Safety Representatives,
- g. A lack of accountability owing in part to a regulatory failure to ensure on-demand companies understand their obligations and comply with them,
- h. Broadly, a failure to proactively and continually undertake risk management procedures in order to address risks present to workers.

12. WHS is complex with a range of interacting factors influencing the safety of workers at work. Given this complexity, workplace health and safety laws have been designed to ensure that managing risk and discharging obligations under WHS are not limited to a narrow focus on *certain* risk factors but rather one that is situated around a *holistic* approach to safety.

13. The TWU rejects any assertion that managing safety is limited to a selection of factors, with other factors ‘beyond scope’ for the purposes of WHS. Safety is intrinsically linked to workplace rights and conditions and must be recognised as such in any intervention designed to improve safety for food delivery and other on-demand workers in the transport sector.

14. In recent months, the TWU has conducted two surveys of on-demand transport workers in the rideshare and food delivery sectors. These results (summarised below) highlight the stark safety crisis in the sector and the underlying pressures exacerbating these dangerous trends.

15. The results of the survey are as follows:

	<b>Rideshare Drivers</b>	<b>Food delivery Riders/Drivers</b>
<b>Safety</b>	<p>34.29% involved in a car accident while at work</p> <p>66.31% of drivers have been subject to some form of harassment.</p> <p>17.14% have been physically assaulted</p> <p>Almost half (44.4%) of female drivers reported experiencing sexual harassment</p> <p>40.29% of drivers experienced racial abuse while driving</p>	<p>33.65% have been hurt or injured at work</p> <p>30.77% know someone who has been hurt or injured</p> <p>82.99% of those injured received no support from the food delivery company they worked for</p> <p>70.1% of workers said they “worry about being seriously hurt or killed while at work”</p>
	Gross Earnings = \$23.00 per hour	Gross Earnings = \$17.11 per hour

<p><b>Earnings &amp; Financial Insecurity</b></p>	<p>Effective Hourly Rate (after costs) = \$10.42 per hour</p> <p>74% of food delivery workers are struggling to ‘keep up with bills and buy groceries’</p>	<p>Effective Hourly Rate (after costs) = \$12.85 per hour</p> <p>54% of food delivery workers are struggling to ‘keep up with bills and buy groceries’</p>
<p><b>Lack of COVID Protections</b></p>	<p>53.81% of rideshare drivers were not provided any safety training</p> <p>48.57% of rideshare drivers were not provided sufficient &amp; free protective equipment (masks, sanitisers, gloves)</p> <p>74.76% of rideshare drivers were not provided any paid leave or financial assistance when needing to isolate after being affected by the COVID.</p> <p>1/5 of rideshare drivers said the rideshare company they worked for took no measures to respond to COVID</p>	<p>5.38% of delivery workers were not provided any safety training</p> <p>49.04% of delivery workers were not provided sufficient &amp; free protective equipment (masks, sanitisers, gloves)</p> <p>78.37% of delivery workers were not provided any paid leave or financial assistance when needing to isolate after being affected by the COVID.</p> <p>59.62% of delivery workers said that the company they worked for promoted full contact-free delivery</p> <p>1/5 of delivery workers said the food delivery company they worked for took no measures to respond to COVID</p>
<p><b>Harsh/Unfair Treatment of Workers</b></p>	<p>87.38% have been left negative feedback for something beyond their control (i.e. road conditions, pick-up restrictions)</p> <p>18.45 % have been suspended without pay and</p> <p>9.22% have been terminated as a result of a false allegation</p> <p>56.25% said they’ve “been unfairly treated by a company without being able to defend” themselves</p>	<p>61.27% of workers said they have “been unfairly treated by a company without being able to defend myself”</p>
<p><b>Dependency on Work</b></p>	<p>77.62% of drivers are dependent on rideshare as a main source of income</p>	<p>86.12% of respondents are dependent on food delivery work as a main source of income</p>

	N=210	N=209

16. As the results of the surveys suggest, food delivery workers are increasingly being squeezed to work faster, longer and harder for less which has compounded issues of fatigue and increased risk-taking behaviour such as speeding, riding on footpaths, using phones while driving and not observing 'defensive-driving' behaviour.
17. Low levels of pay also impair a worker's ability to ensure that vehicles are appropriately maintained and fit-for-purpose, and that workers are able to procure their own personal protective equipment when this is not provided by a PCBU.
18. These economic pressures are compounded by the lack of other work rights and protections, which allows companies to enforce unsafe work practices. For example, food delivery workers do not have access to any independent dispute resolution process and are routinely dismissed for failing deliver food within often unrealistic timeframes. When workers are dismissed and have no recourse to an independent tribunal to appeal unfair dismissals such as those which seek to push workers beyond the safe limits of performance, safety is directly compromised.
19. As a result of all these work pressures, food delivery workers are forced to either risk their lives or their livelihoods.
20. Academic studies, coronial inquests, judicial determinations and Government reports have consistently demonstrated that low rates of pay, inappropriate payment methods, unrealistic scheduling, contractual pressures, unfair tendering practices, inequality of bargaining power and lack of whistle-blower protections are linked to poor safety outcomes for drivers and the general public with whom they interface every day on our roads. A list of this research has been provided in Annexure A of this submission.
21. The food delivery sector, along with other sectors in the on-demand transport sector, have experienced a rapid deterioration of standards in recent years which culminated in this worsening safety crisis (Table 1 below). On the 6<sup>th</sup> of January 2021, just two days before this submission was due and within months of the recent spate of food delivery worker deaths, Uber Eats food delivery workers reported their rates of pay being slashed to dangerous new lows, with delivery riders being paid as little as \$3.50 per delivery (previously \$5 per delivery).

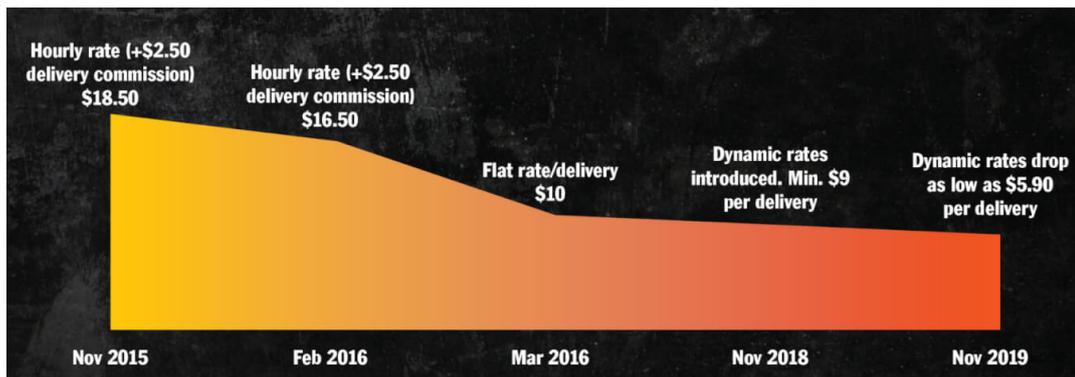


Table 1 – VTHC & TWU Survey of Food Delivery Worker pay standards<sup>1</sup>

22. The transport sector is now faced by a third-wave of on-demand restructuring signalled by the entry of Amazon Flex into Australia. Amazon’s ‘uber-style’ app-based work model now threatens to take the safety issues present in the rideshare and food delivery sectors to all new frontiers in NSW.
23. Since the introduction of Amazon Flex in Australia, the TWU has found Amazon is already engaging in the underpayment of workers below national minimum standards and dangerously undermining safety. In recent visits to the Amazon Flex distribution centres, TWU organisers spoke to numerous drivers who reported:
- I. Earning between \$10-15 per hour on average after costs,
  - II. Regularly overloading vehicles (commonly personal cars) to a point where the driver’s vision is dangerously obstructed,
  - III. Delivering packages which require two or more people to carry and transport,
  - IV. Feeling pressured to engage in dangerous road practices in order to complete an unrealistic number of deliveries in short timeframes,
  - V. Failing to provide sufficient training to workers with all training limited to a short 2-minute training video covering safety, manual handling and use of the app prior to commencement of work.
24. The NSW Taskforce presents an opportunity for the NSW Government and relevant regulatory authorities to recognise the issues facing workers in the emerging on-demand economy and work to address these. This must move beyond seeing safety as removed from the issues highlighted above and take a holistic approach to addressing this crisis in the on-demand sector.

<sup>1</sup> <https://www.twu.com.au/wp-content/uploads/2020/01/Delivery-Riders-snapshot-2-scaled.jpg>

## Recommendations

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25. The TWU calls on the NSW Government and the relevant regulatory authorities to act to ensure:

### **Recommendation 1. Establish industry wide standards which provide safe and sustainable work practices**

26. Food delivery workers must have access to basic rights and conditions which provide the foundation for safety at work. NSW has led the way in providing transport contractors in similar dependent arrangements such protections for decades through Chapter 6 of the *Industrial Relations Act 1996 (NSW)*, which provides:

- a. a system of mandatory model contract provisions across categories and classes of workers,
- b. Ability to conciliate and arbitrate disputes including those related to the unfair termination of contracts,
- c. Appropriate minimum industry rates which ensure cost recovery on top of minimum labour rates,
- d. The ability to set enforceable rates and conditions on an enterprise basis to deal with issues specific to each company.

The NSW Government and regulatory authorities must act to ensure food delivery workers have safe terms of engagement with regards to pay level and incentive structures, channels to collective representation and access to dispute resolution mechanisms.

### **Recommendation 2. Industry-wide 'BlueCard' training initiative**

27. Other high-risk industries such as construction (White-card) and rail (Rail Safety Worker Induction) have long recognised the importance of ensuring a minimum industry-wide training certification. Regulators have yet to mandate a similar compulsory training competency in the transport industry, despite transportation being one of the most dangerous industries to work in.

28. As a result, major transport companies and the TWU have for years jointly created and implemented the 'Bluecard' training competency for road transport workers through the Training Education Audit Compliance Health Organisation (TEACHO).

29. TEACHO should be engaged to design and administer an industry-wide training competency for food delivery workers in the on-demand economy similar to Bluecard. The certification should be provided to any worker seeking to perform food delivery worker in the industry in order to ensure basic safety training is being effectively administered.

30. Training costs should be funded by an industry levy to ensure that training is readily accessible in the sector.

### **Recommendation 3. Ensuring enforcement of existing WHS law**

31. The safety crisis in the transport sector must in the first instance be addressed by recognising the role which competitive pressures and a lack of working standards play in encouraging dangerous work practices.
32. In addition to this, there is a need to address the lack of enforcement of existing safety obligations in the on-demand economy. There is a need for all industry stakeholders to act to urgently address these issues.
33. The TWU recognises the ongoing work of Safe Work NSW in ensuring that companies in the food delivery sector are discharging their obligations under WHS laws. Notwithstanding such, Safe Work NSW is under resourced and incapable of ensuring compliance in the burgeoning sector alone. In order to address this:
  - a. Safe Work NSW should be provided additional funding and resources to ensure a dedicated permanent team of inspectors to audit on-demand companies and ensure compliance.
  - b. Relevant trade unions should be provided an ancillary role helping to support ongoing enforcement and auditing work being conducted by Safe Work NSW. This can be achieved by for example allowing trained union officials to issue improvement notices to companies breaching their obligations under the WHS Act.

### ***Recommendation 4. Ensuring all workers in the transport sector are provided workers compensation***

34. The rise of gig and other non-standard forms of employment in the transport sector is leaving a growing section of the workforce without access to workers compensation.
35. The current NSW system rests on the incorrect assumption that workers not classified as employees will take out their own workers compensation policy. In reality, workers will not do so, particularly when issues of low pay among such sections of the workforce are taken into consideration.
36. The TWU recommends the NSW Government act to ensure:
  - a. the Workers Compensation Scheme is reformed to require food delivery companies to provide workers compensation to all workers regardless of their method of engagement
  - b. the TWU submits the Workers Compensation Scheme is formally reviewed with the intent of drafting new legislation to expand its coverage to all workers in NSW.
  - c. Failing this, the TWU submits amendments are made to section 4 of the Workplace Injury Management and Workers Compensation Act 1998 (NSW) to meet these objectives.

## Annexure A – Summary of Research on Causal Link Between Pay, Contracting Practices and Safety in the Road Transport Industry

Author	Document Name
Claire Mayhew and Michael Quinlan	<i>Economic Pressure, Multi-Tiered Subcontracting and Occupational Health and Safety in Australian Long- Haul Trucking'</i> , Employee Relations, 2006, Vol. 28 No. 3, p.225.
Lori Mooren, Raphael Grzebieta, Ann Williamson, Jake Olivier, Rena Friswell	<i>Safety management for heavy vehicle transport: A review of the literatare</i> , (2013) 62 Safety Science p.79.
National Transport Commission	<i>Safe Payments: Addressing the Underlying Causes of Unsafe Practices in the Road Transport Industry'</i> , 2008, National Transport Commission, Melbourne.
Michael Belzer	<i>Sweatshops on Wheels: Winners and Losers in Trucking Deregulation</i> , New York: Oxford University Press, 2000.
Safe Work Australia	<i>Attitudes towards risk taking and rule breaking in Australian workplaces</i> , December 2014
Jason Thompson and Mark Stevenson, Monash University	<i>Associations Between Heavy-Vehicle Driver Compensation Methods, Fatigue-Related Driving Behaviour, and Sleepiness</i> , Traffic Injury Prevention, 2014
Michael Quinlan for Safe Work Australia	<i>Supply Chains and Networks'</i> , Safe Work Australia, Canberra.
Claire Mayhew and Michael Quinlan	<i>Occupational Violence in Long Distance Road Transport: a Study of 300 Australian Truck Drivers</i> , Current Issues in Criminal Justice, 13(1): 36-46
Claire Mayhew, Michael Quinlan, and Rande Ferris	<i>The Effects of Subcontracting/Outsourcing on Occupational Health and Safety: Survey Evidence from Four Australian Industries</i> , Safety Science, 1997, 25(1-3): 163-78.
Michael Quinlan	<i>Report of Inquiry into Safety in the Long Haul Trucking Industry</i> , 2001, Motor Accidents Authority of New South Wales, Sydney.
David Hensher and, Helen C Battellino	<i>Long-Distance Trucking: Why Do Truckies Speed?</i> , Papers of the Australasian Transport Research Forum, 15(2): 537-554 at 553
Michael Belzer	<i>The Economics of Safety: How Compensation Affects Commercial Motor Vehicle Driver Safety</i> , Safe Rates Summit 2011.
Ann Williamson	<i>Predictors of Psychostimulant Use by Long Distance Truck Drivers</i> , American Journal of Epidemiology, 166(11), pp.1320-1326.
David Rodriguez, Felipe Targa, Michael Belzer	<i>Pay Incentives and Truck Driver Safety: A Case Study</i> , Industrial and Labor Relations Review, Vol. 59, Issue 2, pp. 205-225, 2006.

Author	Document Name
David Rodriguez, Marta Rocha, Asad Khattak, Michael Belzer	<i>The Effects of Truck Driver Wages and Working Conditions on Highway Safety: A Case Study</i> , <i>Transportation Research Record</i> , Vol. 1883. pp. 95-102, 2003.
Federal Motor Carrier Safety Administration	<i>Report of Analysis: Truck Crashes and Work- Related Factors Associated with Drivers and Motor Carriers</i> , Large Truck Crash Causation Study Analysis.
Department of Transport and Communications	'Long Distance Truck Drivers: On Road Performance and Economic Reward', CR99, Department of Transport and Communications Federal Office of Road Safety Document Retrieval Information, pp.1-190.
Australian Parliament	<i>Beyond the Midnight Oil: Managing Fatigue in Transport</i> , House of Representatives Standing Committee on Communications, Transport and the Arts, 2000.
Department of Innovation, Industry and Regional Development, Industrial Relations	<i>Report of Inquiry: Owner Drivers and Forestry Contractors'</i> , Volume 1: Report and Recommendations, Department of Innovation, Industry and Regional Development, Industrial Relations Victoria.
Christopher Jones, Jillian Dorrian, Drew Dawson	<i>Legal Implications of Fatigue in the Australian Transportation Industries</i> , <i>The Journal of Industrial Relations</i> , 2003, Vol 45 No: 3, pp. 344-359.
Richard Johnstone	<i>The Legal Framework for Regulating Road Transport Safety: Chains of Responsibility, Compliance and Enforcement</i> , Working Paper 1, 2002, National Research Centre for OHS Regulation, the Australian National University.
Igor Nossar	<i>The Scope for Appropriate Cross-Jurisdictional Regulation of International Contract Networks: Recent Developments in Australia and their Supranational Implications'</i> , an edited version of the keynote presentation titled 'Better Health and Safety for Suppliers', Toronto (Canada), 17 April 2007.
Michael Quinlan	<i>Road Haulage in Australia: Keeping Vulnerable Workers Safe and Sound</i> , HesaMag, International News.
Michael Rawling	<i>A Generic Model of Regulating Supply Chain Outsourcing</i> , in <i>Labour Law and Labour Market Regulation: Essays on the Construction, Constitution and Regulation of Labour Markets and Work Relationships</i> , Christopher Arup, pp. 520-241.
Michael Rawling	<i>The Regulation of Outwork and the Federal Takeover of Labour Law</i> , 20 <i>Australian Journal of Labour Law</i> 189, 2007.
Dev Nathan	<i>Industrial Relations in a Global Production Network: What Can Be Done</i> , XLVIII <i>Economic and Political Weekly</i> 29, 2013

Author	Document Name
Department of Employment and Workplace Relations	<i>Safe Rates Safe Roads</i> , Directions Paper, Commonwealth of Australia.
Department of Employment and Workplace Relations and Price Waterhouse Coopers	<i>Road Safety Remuneration Bill 2011- Regulatory Impact Statement</i>
TCFUA	<i>Submission for the National Review into Model Occupational Health &amp; Safety Laws in Relation to OHS within the Context of Contract Networks.</i>
National Transport Commission	Towards a Safe and Sustainable Transport Industry', Submission to the Safe Payments Inquiry, National Transport Commission.
Transport Workers' Union of Australia	Safe Rates Submission to Department of Education, Employment and Workplace Relations'.
NSW Government	Chapter 6 of the <i>Industrial Relations Act 1996 No 17</i> (NSW).
NSW Government	Occupational Health and Safety Amendment (Long Distance Truck Driver Fatigue) Regulation 2005 No 221 (NSW) under the Occupational Health and Safety Act 2000 (NSW).
NSW Industrial Relations Commission	Transport Industry – Mutual Responsibility for Road Safety (State) Award and Contract Determination (No 2), Re [2006] NSWIRComm 328.
	Report to the Honourable EA Willis on Section 88E of the Industrial Arbitration Act 1940-1968 in so far as it concerns Drivers of Taxi-cabs, Private Hire Cars, Motor Omnibuses, Public Motor Vehicles and Lorry Owner Drivers.
Phil James, Richard Johnstone, Michael Quinlan, David Walters	<i>Regulating Supply Chains to Improve Health and Safety</i> (2007) 36(2) Industrial Law Journal 163 at 175-176
Igor Nossar	<i>The Scope For Appropriate Cross – Jurisdictional Regulation Of International Contract Networks (Such As Supply Chains): Recent Developments In Australia And Their Supranational Implications</i> , Keynote presentation to the ILO Workshop “Better Health and Safety for Suppliers” held in Toronto (Canada) on Tuesday 17th April 2007.
Michael Rawling	<i>Cross-Jurisdictional and Other Implications of Mandatory Clothing Retailer Obligations</i> , Australian Journal of Labour Law, 2014, vol. 27, no. 3, pp. 191-215.
David Walters and Phil James	<i>What motivates employers to establish preventive management arrangements within supply chains?</i> , (2011) 49 Safety Science 988

<b>Author</b>	<b>Document Name</b>
Chris Wright and John Lund	<i>Supply Chain Rationalization: Retailer Dominance and Labour Flexibility in the Australian Food and Grocery Industry</i> , (2003) 17 <i>Work, Employment and Society</i> 137 at 142–51
Australian Council of Superannuation Investors	<i>Labour and Human Rights Risks in Supply Chain Sourcing: Investment Risks in S&amp;P/ASX200 Consumer Discretionary and Consumer Staple Companies Research Paper</i> , June 2013
OECD, WTO and UNCTAD	<i>Implications of Global Value Chains for Trade, Investment, Development and Jobs</i> , 6 August 2013 prepared for the G-20 Leaders Summit Saint Petersburg, Russia September 2013.

## **Comments on *Draft Guide to Managing Work Health and Safety in the Food Delivery Industry***

**February 2021**

These comments largely focus on the first few pages of the Draft Guide, but include some general observations on the common hazards and the action to control hazards on page 3 onwards.

My first major concern with the Draft Guide is that in many places it misdescribes the provisions of the Work Health and Safety Act 2011 (NSW), and I have suggested more accurate explanations of the provisions.

My second major concern is that the Guide has understated an important duty—the section 47 duty of the PCBU to consult all workers carrying out work for the PCBU and who are likely to be affected by a health and safety matter.

My third major concern is the biased tone of the guide—it uncritically assumes the world view of the Food Delivery Platforms, and overemphasises the measures that Food Delivery Riders must take for their own health and safety. These riders have limited control of their working conditions and their working environment and are exposed to very serious risks (as the guide explains from pages 3 onwards). In my view, which I think is consistent with the approach usually taken to codes of practice and guides, the primary focus of the guide should be on the PCBUs with the most control over working conditions. I respectfully submit that the principal focus of the guide should be on explaining the duty of the Food Delivery Platforms. Of course, food delivery riders must comply with their duties under section 28 and, where they could also be said to be running their own businesses, under section 19(5), but the strong emphasis should be on making clear, and on explaining, what Food Delivery Platforms and Food Outlets need to do to comply with their legal duties.

In my suggested revisions I have tried to adopt a neutral tone, consistent with the approach taken in the Act and regulations, and in the existing codes of practice and guides. I also suggest that the columns Food Delivery Rider as Worker and Food Delivery Rider as PCBU be conflated under a heading 'Food Delivery Rider', and that the advice provided in that column fully recognise the weak bargaining position of Food Delivery Riders, and the fact that most riders are not really running their own business in any meaningful sense.

I also note that as Food Delivery Riders have so little control over their working environment, and because they cannot be said to have any specialist expertise, there can be no suggestion that Food Delivery Platforms or Food Operators can in any way 'rely on' Food Delivery Riders to discharge their primary duty of care under section 19. For further discussion of these issues, please see R Johnstone, 'Engaging Expert Contractors: The Work Health and Safety Obligations of the Business or Undertaking' (2014) 27 *Australian Journal of Labour Law* 57-85.

A further suggestion is that for each summary of the rights, duties or obligations of the various parties, there be a brief reference (in parentheses) to the relevant section of the Work Health and Safety Act,

so that (i) it is clear what the summary is referring to, and (ii) so that the reader can follow up, if need be, by reading the provision in full.

I have not made many comments on pages 3 onwards because risk management in the food delivery sector is not within my expertise. My silence should not necessarily be construed as support for the proposed provisions or the way they are explained.

## **Title**

The comma should be removed from the title (ie it should be 'The Guide to Managing Work Health and Safety in the Food Delivery Industry').

## **Introduction**

The introduction should, in the second paragraph, make it clear that one of the main aims of the Act is to protect workers and other persons against harm to their health, safety and welfare through the elimination of risks from work, and if that is not reasonably practicable, to minimise risks as far as is reasonably practicable. Workers and other persons should be given the highest level of protection against harm to their health, safety and welfare as is reasonably practicable. (Sections 3(1)(a) and 3(2)).

## **Background**

I don't think the abbreviations FDR, FO and FDP are at all reader friendly. I suggest writing them out in full each time.

Paragraph 2 first sentence: I strongly suggest changing the wording here – the current wording is not 'neutral' but buys into the perspective being pushed by Food Delivery Platforms. The first sentence should rather read: 'The Guide is directed at food delivery work where Food Delivery Riders are allocated work by a Food Delivery Platform to deliver meals ordered by a customer using the Food Delivery Platform's app.' (Or something similar).

Paragraph 2, last sentence should be revised as follows:

Where a food delivery rider is directly employed by a food outlet the rider is an employee. Under the Work Health and Safety Act 2011 (NSW) both employees and contractors carrying out work for a PCBU are 'workers' (section 7) and are owed the same duties by the PCBU.

Paragraph 3 – the end of the first sentence should be '... and the incidence of serious injury are far less than they are for workers using bicycles, motor scooters or motorbikes.'

I suggest rewriting the sentence in the fourth paragraph as

It is important to note that the Work Health and Safety Act defines a 'worker' as a person who carries out work in any capacity for a person conducting a business or undertaking (section 7(1)). Persons engaged as a contractor by a Food Delivery Platform and employed by a Food Operator are both 'workers' and are owed the same duty by the Food Delivery Platform and Food Operator.

Finally, 'persons conducting a business or undertaking' should be introduced in the background section not under the work health and safety duties section. The notion of a PCBU should be

introduced before ‘worker’ is introduced, because the definition of ‘worker’ depends on an understanding of what is a PCBU. Perhaps this should be done in a paragraph between existing paragraphs 1 and 2. This new paragraph should be something like this:

The Work Health and Safety Act places a series of important duties on a ‘person who conducts a business or undertaking’—referred to as a ‘PCBU’. Individuals (such as sole proprietors, self-employed persons, or each partner in a partnership) and legal entities (such as corporations) can be PCBUs (section 5). Food Delivery Platforms and Food Outlets will always be PCBUs.

### **Work Health and Safety Duties**

I suggest that this section be renamed ‘Work Health and Safety Duties, Rights and Protections’ and that the section contain a brief reference to workers’ rights to elect a health and safety representative, the right to cease dangerous work, and the provisions protecting food delivery riders from discrimination, coercion and misrepresentation (Part 6 of the Act)

The first paragraph of this section should be revised as follows:

The Work Health and Safety Act imposes wide-ranging duties on all PCBUs, officers of PCBUs, and workers.

The second paragraph should be deleted, because its content is now in the Background section.

The third paragraph should be deleted and replaced by:

The Act imposes a series of duties on a PCBU. The most important duty is the ‘primary duty of care’ in section 19, which is owed to ‘workers’ (section 19(1)) and to ‘others’ (persons who are not workers) (section 19(2)).

The section 19(1) duty is owed by the PCBU to all workers who are engaged, caused to be engaged, influenced, or directed by the PCBU while they are work. This means that all Food Delivery Platforms owe a duty to take all reasonably practicable measures to ensure the health and safety of all Food Delivery Riders who carry out work using the Food Delivery Platform’s app. All kinds of workers—‘employees’, ‘independent contractors’, labour hire workers, outworkers, employees of contractors etc—are all owed exactly the same duty by the PCBU.

I suggest the fourth paragraph should be deleted, and replaced by the following:

The PCBU’s duty in section 19 is to ensure the health and safety ‘so far as is reasonably practicable’. This means that the PCBU must take measures to eliminate the risk; and if this is not ‘reasonably practicable’, the PCBU must minimise the risks as far as is reasonably practicable (section 17). In working out what is reasonably practicable, the PCBU must take into account and weigh up all relevant matters, including

- the likelihood of the hazard or risk occurring;
- the degree of harm that would result from the risk;
- the availability and suitability of ways to eliminate the risk;
- what the person concerned knows or ought reasonably to know about these three matters.

Once these factors have been weighed up, the PCBU may consider the **cost** of the measures to eliminate (or minimise) the risk—but a measure is only not reasonably practicable if the cost of implementing it is **grossly disproportionate** to the risk.

I suggest the first sentence of the fifth paragraph be replaced with: ‘Some examples of the measures that must be taken include:’

The second sentence of the sixth paragraph should be revised as follows: 'Other' persons can include, for example, road users, pedestrians, customers at food outlets and receiving delivered food, and other members of the public affected by the food delivery system.

There should be three paragraphs inserted after paragraph six.

Paragraph seven should state:

All PCBUs have a duty to consult, as far as it can be suitably accomplished in the circumstances, with all workers who carry out work for the business or undertaking and who are likely to be directly affected by a health and safety matter (section 47). In particular, consultation is required when the Food Delivery Platform is conducting risk management activities as required by its section 19 duty, when it proposes any changes that might affect the health and safety of riders, and when it makes decisions about procedures for consultation, issue resolution, monitoring, and providing information and training to riders. PCBUs' other duties include duties to negotiate with workers to establish work groups, to facilitate the election of health and safety representatives for those work groups, to confer and consult with those representatives and to provide them with reasonably necessary resources, facilities and assistance (Part 5).

Paragraph eight should state that: PCBUs have other duties under the Act and the Regulation, including immediately notifying Safe Work New South Wales of all deaths, serious injuries or illnesses, or dangerous incidents arising at work (Part 3).

Paragraph nine should state that:

Each officer of a PCBU must exercise due diligence to ensure that the PCBU complies with all its duties and obligations (section 27). This means that each officer (for example, each director and each senior manager) must acquire up-to-date knowledge of health and safety matters, understand the PCBU's operations and the hazards and risks arising from those operations, and must ensure that the PCBU is properly resourced and properly implements a systematic approach to managing health and safety.

The last paragraph in the draft (the duties of workers), now paragraph ten, should be amended as follows. The second dot point should begin with the words 'take reasonable care to'; in the third dot point the words 'to allow the PCBU to comply with the Act' should be added at the end of the sentence; and in the fourth dot point the words 'work health and safety' should be inserted between 'reasonable' and 'policy'.

I suggest a new paragraph 11 along these lines.

All workers have the right to negotiate work groups with their PCBU and to elect work health and safety representatives for these work groups. Elected health and safety representatives are given broad powers under the Act, including rights to inspect places where work is carried out, to receive work health and safety information, to issue provisional improvement notices where they detect a breach of the Act, and to direct that dangerous work cease. Individual workers are entitled to cease work if they have reasonable concern that they have been exposed to an immediate or imminent serious risk to their health and safety (Part 5 of the Work Health and Safety Act 2011). Any discrimination against a worker or health and safety representative for seeking to exercise their rights under the Act, or any attempt to coerce them not to exercise their rights, or to exercise them in a certain way, is prohibited and is an offence under the Act (see Part 6 of the Act).

## Who has duties in the Food Delivery Industry?

### Duties of a Food Delivery Platform

I suggest the first three paragraphs and paragraph 5 be replaced with the following four paragraphs:

The Food Delivery Platform is a PCBU. It designs, produces and oversees the technology in the app used to order and deliver the food. It markets the service to Food Outlets and to Food Delivery Riders who are workers and who can register with the app to be able to work as a Food Delivery Rider in the system developed by the Food Delivery Platform.

A Food Delivery Platform owes the section 19(1) duty to all Food Delivery Riders that it engages, causes to be engaged, influences or directs. It owes the section 19(2) duty to all other persons—including customers receiving the food delivery, their families and visitors, customers and visitors to the Food Outlet, road users, pedestrians, and members of the public—whose health and safety might be affected by the food delivery system that the Food Delivery Platform has established.

The Food Delivery Platform's section 47 duty to consult all workers who carry out work for the Platform requires the Platform to do all it can in the circumstances to consult Food Delivery Drivers on health and safety matters that affect them (see the Code of Practice Work Health and Safety Consultation, Cooperation and Coordination). Consultation will be facilitated by encouraging, and supporting, drivers to elect health and safety representatives as provided for in the Act.

#### Duties of the Food Outlet

The Food Outlet is also a PCBU, and owes the section 19(1) duty to Food Delivery Riders and its own workers, and the section 19(2) duty to its customers and all other persons affected by its business.

Paragraph 4 does not adequately explain 'reasonably practicable' and should be deleted. I have proposed a more accurate explanation of 'reasonably practicable' in the previous section.

### Duties of a Food Delivery Rider

I suggest that the three paragraphs in the draft guide be replaced with the following.

A Food Delivery Rider 'carries out work for' both the Food Delivery Platform and the Food Delivery Outlet, and is therefore a 'worker'. The rider must take reasonable care for their own health and safety and the health and safety of others (road users, pedestrians, customers at the Food Outlet, the customers receiving the delivery and their family, visitors and neighbours). They must also follow the reasonable health and safety instructions, policies and procedures of the Food Delivery Platform and the Food Outlet (section 28).

In many circumstances, the Food Delivery Driver will be self-employed. In these cases, the rider will also be a PCBU and will owe a duty to ensure, as far as is reasonably practicable, their own health and safety while at work (section 19(5)), and that the health and safety of other people is not put at risk from their activities at work (section 19(2)).

### Shared Duties

I suggest this heading is misleading because it might create the impression that the responsibility is to be shared equally. The Act does not suggest that the duties are 'shared'—rather duty holders must fully discharge the duties they owe and must consult, cooperate and coordinate with other duty holders in doing so. A more accurate heading would be '**Consultation, cooperation and coordination in implementing the duties**' or something like that.

I suggest that paragraph 1 be amended by not using acronyms, and by replacing 'possible' with 'reasonably practicable'.

I suggest that the first sentence of paragraph 2 be replaced with

As this guide illustrates, more than one person can owe the same duty and one person can owe more than one duty.

I suggest that dot point two of paragraph 3 be replaced with

- a duty cannot be transferred or delegated to another person.

Paragraph 4 needs to be replaced with the following;

Where more than one person owes a duty under the Act (note that it does not have to be the same duty) in relation to a work health and safety matter, each person with the duty must consult, cooperate and coordinate their health and safety activities with those of each other person (section 46). This requirement to consult, cooperate and coordinate applies to all duties, including the section 19 duty and the section 47 duty to consult workers.

## Managing Risks in the Food Delivery Industry

I suggest amending the second paragraph to read:

When deciding on measures to address hazards, the Food Delivery Platform is required to eliminate the risks arising from the hazard if it is reasonably practicable to do so. If it is not reasonably practicable to do so, all reasonably practicable measures must be taken to minimise the risk.

I suggest that the first subheading be 'Identifying Hazards', and that the first paragraph read:

Common hazards that cause injuries and ill-health to workers in the food delivery industry include:

I suggest that at the end of the section on identifying hazards, the following paragraph be inserted.

When identifying hazards and assessing risks, Food Delivery Platforms must consult with all Food Delivery Workers or their health and safety representatives (section 47).

I also suggest that the guide refer to the Code of Practice: How to Manage Work Health and Safety Risks in both the hazard identification and the controls sections.

## Action to be taken by Duty Holders to Control Common Hazards

I suggest that at the beginning of the section on controlling hazards, the following paragraph be inserted.

When determining controls, Food Delivery Platforms must consult with all Food Delivery Workers or their health and safety representatives (section 47); and must consult, co-operate and coordinate with all other PCBUs.

Throughout the section of the table addressing 'equipment unsuitable for the task', Food Delivery Platforms are advised that they should 'advise' riders and others. I am not sure that this is all that the section 19(1) duty to 'ensure health and safety' requires. I suggest consideration be given as to whether this advice be expressed as requiring the Food Delivery Platform to ensure that equipment is suitable.

## Summary

I suggest this section be revised to reflect the revisions suggested to the earlier sections. For instance, the responsibility for managing the risks to FDRs is not 'shared'—the primary duty is on the Food Delivery Platforms and the Food Operators; the Food Delivery Platforms' duty is owed to workers that they engage, cause to engage, influence or direct (not just to workers they influence or direct); the Food Delivery Platforms' systematic approach to managing health and safety includes health (which includes psychosocial) issues; etc.

## Comments on *Draft Guide to Managing Work Health and Safety in the Food Delivery Industry*

February 2021

I am in agreement with [redacted] comments but would add a number of further observations including references to evidence supporting some key points as well as the value of the Guide to deal with this.

1. The guidance note fails to comprehend the realities of work arrangements in the food delivery industry, notably the strong pressures on delivery workers and their dependency/relative powerlessness, which combined with their piecework payment system<sup>1</sup> poses a significant risk to their safety, health and well-being. The work arrangements really amount to App-enabled subcontracting. There is a large body of evidence that links subcontracting and dependent self-employment to poorer OHS outcomes in terms of increase injury incidence/frequency rates, poorer physical and mental health, increased hazard exposures and poorer knowledge/access to workplace health safety (WHS)/workers' compensation protections. I have published an extensive amount of research on subcontracting and WHS (and precarious and insecure work more generally) in international academic journals<sup>2</sup> and have also undertaken heavily-cited reviews of global research in this

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<sup>1</sup> There is extensive global evidence linking piecework payment regimes to more adverse WHS outcomes across a range of industries. For examples of some of this research and research reviews see Johansson, B. Rask, K. & Stenberg, M. (2010). Piece rates and their effects on health and safety - a literature review, *Applied Ergonomics*, 41(4): 607–614; Premji, S. Lippel, K. & Messing, K. (2008) "We work by the second!" Piecework remuneration and occupational health and safety from an ethnicity- and gender-sensitive perspective, *Perspectives Interdisciplinaires Sur Le Travail et La Santé*, 10(1), 1-35; Williamson A, (2007) Predictors of Psychostimulant Use by Long Distance Truck Drivers, *American Journal of Epidemiology*, 166(11):1320-1326; Mooren, L., Williamson, A., & Grzebieta, R. (2015). Evidence that truck driver remuneration is linked to safety outcomes: a review of the literature, *Proceedings of the 2015 Australasian Road Safety Conference*; Thompson, J. & Stevenson, M. (2014) Associations between heavy-vehicle driver compensation methods, fatigue-related driving behaviour and sleepiness, *Traffic Injury Prevention*, 15(sup1) S10-S14 doi:10.1080/15389588.2014.928702.

<sup>2</sup> See for example Mayhew, C. & Quinlan, M. (1997) Subcontracting and Occupational Health and Safety in Residential Building, *Industrial Relations Journal* September 28(3):192-205; Mayhew, M. & Quinlan, M. (1999) The effects of outsourcing on OHS: A comparative study of factory-based and outworkers in the garment industry, *International Journal of Health Services* 29(1):83-107; Mayhew, C. & Quinlan, M. (2002), Fordism in the fast food industry: pervasive management control and occupational health and safety risks for young temporary workers, *Sociology of Health and Illness*, 24(3): 261-84; Quinlan, M., Fitzpatrick, S. J., Matthews, L. R., Ngo, M., & Bohle, P. (2015) Administering the cost of death: Organisational perspectives on workers' compensation and common law claims following traumatic death at work in Australia. *International Journal of Law and Psychiatry*, 38:8-17; Schweder, P. Quinlan, M. Bohle, P. Lamm, F. & Ang, AHB (2015), Injury rates and

area.<sup>3</sup> A number of these published studies specifically dealt with or included road transport workers (though not food delivery workers).<sup>4</sup> While there seems to be little research, as yet, on food delivery workers regarding WHS and labour standards, there is no reason to believe the problems identified regarding other precarious workers, including those in road transport, will not apply. The anecdotal evidence available, which mainly media reports dealing with deaths and exploitation, in Australia and elsewhere suggests their situation may be at worse end of the spectrum of effects. One reason for this is that many of the workers appear to be temporary/short-term visa-holders (some with overseas dependents) and this group, along with those working 'outside' their visa requirements, has long been recognised as especially vulnerable, as my own research indicates.<sup>5</sup> These workers have few resources to fall back on and must continue working to support themselves and their dependents. Without coverage under workers' compensation or effectively enforce minimum wages the pressure on these workers work when injured and not assert any legal entitlements they may have is immense.

2. I have serious reservations about whether the Guidance Note will have much, if any, effect for the following reasons. The guidance note will establish some standards of sorts and remind duty-holders of their obligations (though note [redacted] cogent points

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psychological wellbeing in temporary work: A study of seasonal workers in the New Zealand food processing industry, *New Zealand Journal of Employment Relations*, 40(2): 24-51;

<sup>3</sup> Quinlan, M. (1999) The Impact of Labour Market Restructuring on Occupational Health and Safety in Industrialised Societies *Economic and Industrial Democracy*, 20(3):427-60; Quinlan, M. Mayhew, P. & Bohle, P. (2001) The Global Expansion of Precarious Employment, Work Disorganisation and Occupational Health: A Review of Recent Research, *International Journal of Health Services*, 31(2):335-414; Quinlan, M. Mayhew, P. & Bohle, P. (2001) The Global Expansion of Precarious Employment, Work Disorganisation and Occupational Health: Placing the Debate in a Comparative Historical Context, *International Journal of Health Services*, 31(3):507-536; Quinlan, M. & Bohle, P. (2008) Under pressure, out of control or home alone? Reviewing research and policy debates on the OHS effects of outsourcing and home-based work, *International Journal of Health Services*, 38(3): 489-525.

<sup>4</sup> See for example Mayhew, M. Quinlan, M. & Ferris, R. (1997) The Effects of Subcontracting/Outsourcing on Occupational Health and Safety: Survey Evidence from Four Australian Industries, *Safety Science* 25(1-3):163-78; Quinlan, M. & Mayhew, C. (1999), Precarious Employment and Workers' Compensation, *International Journal of Law and Psychiatry*, 22(5&6):491-520; Mayhew, C. & Quinlan, M. (2001), Occupational Violence in the Long Distance Transport Industry: A Case Study of 300 Truck Drivers, *Current Issues in Criminal Justice*, 13(1):36-46; Quinlan, M. (2004), Workers' Compensation and the Challenges Posed by Changing Patterns of Work: Evidence from Australia *Policy and Practice in Health and Safety*, 2(1): 25-52; Mayhew, C. & Quinlan, M. (2006) Economic pressure, multi-tiered subcontracting and occupational health and safety in the Australian long haul trucking industry *Employee Relations*, 28(3): 212-229; Williamson, A. Bohle, P. Quinlan, M. & Kennedy, D. (2009) Short trips – long days: health and safety in short-haul trucking *Industrial and Labour Relations Review* 62(3): 415-429. See also Mayhew, C. & Quinlan, M. (2000) The Relationship between Precarious Employment and Patterns of Occupational Violence: Survey Evidence from Seven Occupations in Isaksson, K., Hogstedt, C., Eriksson, C. and Theorell, T. eds. *Health Effects of the New Labour Market*, Kluwer/Plenum, New York, 183-205; Quinlan, M. Johnstone, R. & Mayhew, C. (2006) Trucking Tragedies: The Hidden Disaster of Mass Death in the Long Haul Road Transport Industry in Eric Tucker ed. *Working Disasters*, Baywood, New York, 19-64.

<sup>5</sup> Guthrie, R. & Quinlan, M. (2005) The Occupational Health and Safety Rights and Workers Compensation Entitlements of Illegal Immigrants: An Emerging Challenge *Policy and Practice in Safety and Health*, 3(2): 69-89; Toh, S. & Quinlan, M. (2009) Safeguarding the global contingent workforce? Guestworkers in Australia, *International Journal of Manpower*, 30(5): 453-471.

in this regard) and could be used as a reference point for acceptable industry practice in legal proceedings where a serious incident has occurred.

- a. However, this is far inferior in my view to a mandatory industry code (with more specific guidance) or regulation especially in such a 'fluid' (including new entrants) and competitive industry as food delivery. When I undertook an inquiry on long haul trucking for the NSW government in 1999-2000 – also a highly competitive industry I examined a number of guidance materials and voluntary codes. The significant defect with these materials is that almost without exception they ignored the underlying economic/commercial pressures that drove non-compliance/dangerous practices (i.e. they dealt with symptoms not causes which severely diminished their effectiveness).<sup>6</sup> Further, voluntary codes like TruckSafe lacked reach, being adopted by some companies but not many others, and only dealt with some issues. Some companies could gain a financial advantage over their competitors (at least in the short term) by not following these guidelines or codes. In the presence of strong commercial pressures and competition the absence of strong and mandatory regulation results in widespread non-compliance and a race to the bottom. This is why I recommended mandatory regulation, and why I believe a number of key recommendations were ultimately implemented. The food delivery industry has many of the same characteristics of other areas of road transport (intense competition, subcontracting and commercial pressures and workers with little bargaining power over the terms and conditions of work). If anything, it is arguably worse. In sum, this type of regulation is liable to fail to meet its stated objectives.
- b. Enforcing WHS standards for precarious workers has proved very challenging to say the least for inspectorates/regulators (and ensuring they can access workers' compensation) especially where these workers are based at home or are mobile workers. There is considerable research on this both in Australia (including government inquiries and commissioned research) and globally.<sup>7</sup> I was commissioned by WorkCover NSW to undertake one such study two decades ago.<sup>8</sup> Overall, responses to these problems have been ad-hoc and under-resourced. Without effective enforcement by a suitably resourced and proactive inspectorate, and stakeholder involvement (for example the requirement to report compliance data to both inspectors and unions and other parties with a keen interest in compliance) WHS standards become largely symbolic if not meaningless. Further, consistent with point a) I do not think the Guide provides the basis for effective enforcement.

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<sup>6</sup> Quinlan, M. (2001) *Report of Inquiry into Safety in the Long Haul Trucking Industry*, Motor Accidents Authority of New South Wales, Sydney.

<sup>7</sup> To cite but two examples Quinlan, M. Johnstone, R. & McNamara, M. (2009) Australian health and safety inspectors' perceptions and actions in relation to changed work arrangements *Journal of Industrial Relations* 51(4): 559-575; Cardiff University et al, (2011), *Contract to assess the potential impact of emerging trends and risks on labour inspection methodologies in the domain of occupational health and safety (the NERCLIS\* Project)*, Report prepared for the European Commission, Luxembourg (I reviewed and drafted significant elements of this report). <http://www.cf.ac.uk/cwerc/reports/NERCLIS%20Vol%201%20FINAL.pdf>.

<sup>8</sup> Quinlan, M. (2002) *Developing strategies to address OHS and workers' compensation responsibilities arising from changing employment relationships*, research report prepared for WorkCover Authority of NSW, Sydney.

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**From:** [REDACTED]@twu.com.au]  
**Sent:** Friday, 26 February 2021 12:08 PM  
**To:** Task Force  
**Cc:** [REDACTED]  
**Subject:** Re: Food Delivery Rider guidance

Good Afternoon,

Please find attached the TWU's submission to the NSW Taskforce Guidelines attached along with the cited Annexures A, B & C.

I've cc'd [REDACTED] who have made accompanying submissions.

Kind Regards,

[REDACTED]  
Transport Workers Union  
[REDACTED]

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