



TWU
Carrying Australia

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
September-November 2020**

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May they rest in peace**



About the TWU

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 all other transport workers have access to fair rights and entitlements.
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

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:

	Rideshare Drivers	Food delivery Riders/Drivers
Safety	<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>Earnings & Financial Insecurity</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>Lack of COVID Protections</p>	<p>53.81% of rideshare drivers were not provided any safety training</p> <p>48.57% of rideshare drivers were not provided sufficient & 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 & 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>Harsh/Unfair Treatment of Workers</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>Dependency on Work</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 6th 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).

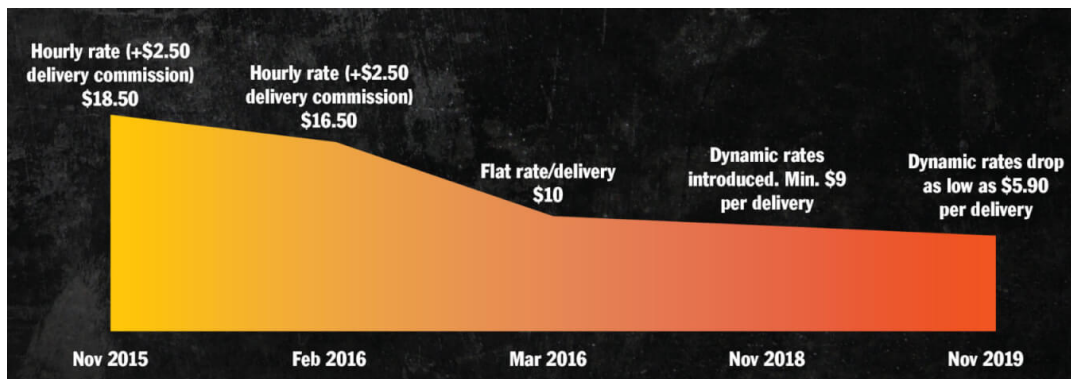


Table 1 – VTHC & TWU Survey of Food Delivery Worker pay standards¹

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.

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

Recommendations

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 ' <i>Better Health and Safety for Suppliers</i> ', 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 & 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

Author	Document Name
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&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.