

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

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I am in agreement with Professor Johnstone's 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 system¹ 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 journals² and have also undertaken heavily-cited reviews of global research in this

¹ 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.

² 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.³ A number of these published studies specifically dealt with or included road transport workers (though not food delivery workers).⁴ 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.⁵ 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 Professor's Johnstone's cogent points

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;

³ 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.

⁴ 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.

⁵ 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).⁶ 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.⁷ I was commissioned by WorkCover NSW to undertake one such study two decades ago.⁸ 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.

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

⁷ 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>.

⁸ 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.