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29<sup>th</sup> October, 2021

To Whom it May Concern,

**Re: Work Health and Safety Amendment (Food Delivery Service Work) Regulation 2021**

Thank you for the opportunity to comment on the proposed Work Health and Safety Amendment (Food Delivery Service Work) Regulation 2021. Bicycle NSW has been the peak bicycle advocacy group in NSW for over forty-five years, and has over 25 affiliated local Bicycle User Groups.

Unlike the Minister for Better Regulation or the Minister for Transport, Bicycle NSW was grieved but unsurprised by the deaths of Bijoy Paul, Ik Wong, or Burak Dogan in 2020. These riders faced the same types of road safety issues as our members – namely infrastructure not designed to keep bike riders safe, and a road environment where the knowledge and enforcement of close passing laws is low. Too often Bicycle NSW has to deal with preventable cases of serious member injury or death.

Food delivery riders cycle on the same roads, paths and infrastructure as our members. However, the requirements of their work mean they are more likely to ride:

- at night or in low light levels,
- when it is raining,
- on routes they have not ridden before, and
- under time pressures to complete their journeys quickly-

to reach customers before food goes cold or the management algorithms deem their journeys to be too slow, reducing their likelihood of future shift allocation. One in four delivery riders reported being involved in accidents and one in eight reported sustaining knee injuries, concussions or broken bones.<sup>i</sup>

Bicycle NSW has historically engaged with the State Government in a range of ways seeking the improvement of cycling infrastructure, laws and regulations to protect bike riders, driver education and police enforcement. We were heartened by the introduction of the Work Health and Safety Amendment (Food Delivery Workers) Bill 2020<sup>ii</sup> by the Hon Daniel Mookhey MLC, and following this, by the establishment of the Food Delivery Riders Safety Taskforce led by SafeWork NSW and Transport for NSW.

Bicycle NSW appreciates the efforts to investigate and regulate to improve safety. The Joint Taskforce Final Report<sup>iii</sup> released in April 2021, followed investigations by SafeWork and the Working Together to Improve Food delivery Rider Safety – Industry Action Plan<sup>iv</sup> and the Guide to Managing WHS in the Food Delivery Industry<sup>v</sup> offer insights into issues faced by food delivery riders and some of the measures being undertaken to improve safety. In the current format, the proposed Work Health and Safety Amendment (Food Delivery Riders) Regulation 2021 does not go far enough to manage the shared responsibility of making this work safer.

The Hierarchy of Controls is ordinarily used to evaluate the best ways to improve workplace safety and can readily be applied to bike riders.

## The Hierachy of Controls for Bike Riding



Whilst Bicycle NSW recognises that using personal protective equipment like helmets can improve safety, this remains the least effective measure. We know that each of the deceased and injured riders in 2019 and 2020 was wearing a helmet.<sup>vi</sup> Of the contributing factors to crashes, the proposed measures do not address:

- road and environmental conditions
- vehicle features
- skills and knowledge of the motor vehicle operators who have hit food delivery workers
- pay rates and work conditions that lead to the fatigue, time and emotional pressures

## Road and environmental conditions

Just like Food Delivery Riders, bike riders across NSW struggle with a lack of suitable infrastructure, poorly maintained, damaged and unsafe roads. These hazards must be addressed as a priority as part of the NSW Government's safe systems approach. All riders urgently need infrastructure that enables them to get where they need to go where the key hazard presented by motor vehicles is eliminated or controlled.

Food delivery operators are able to map the most popular routes their workers use, and these should be prioritised for cycleways, shared paths and traffic calming. These routes between homes and the high streets where restaurants operate duplicate the journeys taken by riders to work, school and shops, and investment in them would contribute to enabling mode shift to active transport. Bicycle NSW has undertaken work with the Sydney Connect maintenance contract for State Roads in the Harbour City. We hope that by providing bike rider insights this will help improve road maintenance, but we also aspire that lessons could be learned and shared across NSW to improve road safety for all riders.

## Vehicle features

Bicycle NSW appreciates efforts to regulate the food delivery vehicles used, and we understand the hazards posed to riders and the community if e-bikes or motorbikes are not well-maintained or compliant with Australian standards and road rules. However, the vehicle features most likely to kill a rider are not on the bike they are using. Burak Dogan died in 2020 on Parramatta Road when he was hit by the driver of a truck after he had stopped to check directions. The coronial report indicated that the driver did not see him as he was in one of the truck's blind spots.<sup>vii</sup> Burak was positioned to the left-most side of the road, and we are all too aware from traffic infringement notices issued to our members by NSW Police, that this is where officers expect bike riders to be. This is not a visibility problem riders can alter. It does not matter what clothing they wear, or what lights they use. The problem relates to the design and operating standards applied to heavy vehicles in NSW.

Ik Wong was killed in Redfern by a left turning truck in 2020,<sup>viii</sup> and just like the death of Brigit Neilsen in Newcastle in 2019, had blind-spot detectors been fitted to both vehicles these riders may be alive today. This is why Bicycle NSW views the introduction of the CLOCS-A heavy vehicle standards into Australia as a priority, and why we continue to contribute to this work.<sup>ix</sup> We recommend the NSW Government set contract standards for heavy vehicle operators that include blind spot detection. Some bus operators, trucking companies and our partner for Safety on Spokes – Suez Waste Management<sup>x</sup>, do an excellent job of reducing the impact of blind spots. We recommend setting standards that make vehicles safer and reduce the chances that mistakes become fatal.

## Driver skills and knowledge

Bicycle NSW agrees with the need for food delivery riders to receive training, but in several cases no amount of rider training could have averted the fatality. Bicycle riders and motorcyclists regularly experience interactions with motor vehicle operators who report 'not seeing' the rider. This happens so frequently that both road user groups use the acronym 'SMIDSY' (sorry mate I didn't see you) to describe the phenomenon.

Bike lights are mandated at night to improve visibility, and reflective apparel or delivery boxes may assist, but neither measure is a panacea for saccadic masking<sup>xi</sup>, or drivers focussed on the area of road where they expect to see cars<sup>xii</sup>. All road users would benefit from greater education, signage and an awareness campaign about minimum passing laws, and that reminds everyone to proactively look for bicycle and motorbike riders. Bicycle NSW has campaigned for, and invested in, better road safety education. The Motorcycle Council of NSW has done similar work this year. We all need regular education to stay up to date. Bicycle NSW recommends public education campaigns and using the driving license renewal process to educate and update motor vehicle operators on the laws that have changed or ways to avoid crashes.

## Pay rates and work conditions

Fatigue, time and emotional pressures can contribute substantially to poor decision making on the road. We appreciate efforts to provide regulation, but if they fail to address underlying issues such as poor pay rates, mapping and job schedules that allow insufficient time to travel safely, or algorithms that penalise riders who do not deliver fast enough, the same problems will persist. Riders can be inducted and trained to work safely, given a Unique Identifying Number, but this could then enable unscrupulous delivery companies to set unsafe schedules but blame vulnerable workers for incidents.

There needs to be greater recognition and auditing of food delivery operators to ensure safe organisational practices.

## Opportunities to learn and grow

The food delivery sector is a relatively new, evolving form of work projected to be worth AUD\$ 2,625m in 2021, growing by 11.8% annually<sup>xiii</sup>. Bicycle NSW appreciates the requirement that food delivery operators keep records of training inductions. However, those are only a record of course completion. Far greater opportunities to improve road safety could be realised through a sharing the near miss and incident reports by riders with State and Council road managers. Current technology could take aggregated data from all operators and generate heat-maps of usage and 'black-spot' reporting, based on the experiences of riders. This could inform infrastructure planning, road maintenance and enforcement activities, to improve the safety of all road users.

Thank you for the opportunity to contribute to improving regulation for food delivery riders. One death on the roads, or at work, is too many. We hope that lessons will be learned from these tragedies, and ongoing efforts made to improve to the safety of food delivery riders and everyone who rides a bicycle on the road in NSW.

Yours Sincerely

*Bastien Wallace* - BA LLB

General Manager of Public Affairs, Bicycle NSW

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- ix <https://bicyclensw.org.au/heavy-vehicles/>
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- xi [D E Irwin<sup>1</sup>, J S Brown, J S Sun](https://pubmed.ncbi.nlm.nih.gov/2971763/) , Visual masking and visual integration across saccadic eye movements
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