

# Managing risks in the food delivery industry



## Food outlets

This fact sheet is directed at food outlets in the food delivery industry.

A food outlet in the food delivery industry provides food and/or drinks to a delivery rider for delivery to customers.

Where the customer has directly placed an order with the food outlet, that outlet is likely to engage a worker to deliver the order to its customer. Alternatively, a food outlet may use the services of a food delivery platform to receive orders from customers. The food outlet may use their directly engaged worker to deliver the food or more commonly, the platform will allocate a worker to deliver the order.

This fact sheet focuses specifically on food delivery work undertaken by delivery riders on bicycles and scooters, including electric bicycles and scooters (where permitted). It may also be of assistance if the rider delivers the order on a motorbike or in a car. This fact sheet is focused solely on work health and safety requirements. When operating any vehicle on a public road, there are additional requirements to be considered including compliance with state or territory road rules, road safety measures and licensing requirements.

As Victoria is not harmonised with the model WHS laws, this guidance does not apply in Victoria. Please contact [WorkSafe Victoria](#) for further information.

## Duties under WHS laws

As a food outlet you are a person conducting a business or undertaking (PCBU). This means you have a primary duty of care to your workers to ensure their health and safety so far as is reasonably practicable (section 19).

The concept of 'worker' is broad and includes employees and contractors. Your workers will include delivery riders you employ directly and any delivery riders who are dispatched by a platform to pick up and deliver an order, if you influence or direct the way they carry out their work. From here on in, the fact sheet will refer to delivery riders as delivery workers.

You must do specific things to ensure the health and safety of workers, such as:

- Providing the information, training, instruction, or supervision needed for workers to work safely.

- Providing and maintaining safe systems of work, such as the process a delivery worker should follow to pick up the order (e.g. where to park safely, where to wait on premises, where to collect the food from and specific food transport requirements).
- Providing and maintaining a work environment without risks to health and safety, including eliminating or minimising risks of slips, trips and falls.

You must also ensure the health and safety of others who may be at risk from the work being performed (the delivery of the order). This includes customers or pedestrians who may be in the vicinity of the delivery worker as they enter and exit your workplace.

If you have management and control of all or parts of your workplace (e.g. kitchen or dining areas), you also have a duty to ensure, so far as is reasonably practicable, that the workplace, the means of entering and exiting the workplace and anything arising from the workplace are without risks to the health and safety of any person (including the delivery worker).

You cannot contract out of your WHS duties or transfer them to others in the food delivery supply chain (sections 14 and 272). Each PCBU is responsible for meeting their duties and must discharge them to the extent that they have capacity to influence and control the matter.

### **Meaning of reasonably practicable**

As a PCBU, the standard you must meet to fulfil your WHS duties is to do what is 'reasonably practicable' to ensure health and safety. You must first try and eliminate the risk so far as is reasonably practicable. If that is not possible, you must seek to minimise the risk so far as is reasonably practicable. You can find more information about understanding reasonably practicable at [How to determine what is reasonably practicable to meet a health and safety duty.](#)

### **Officer duties**

Each officer of a PCBU must exercise due diligence to ensure that the PCBU complies with all its duties and obligations (s 27). This means that each officer (for example, directors and senior managers) 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
- ensure that the PCBU is properly resourced and properly implements a systematic approach to managing health and safety.

### **Workers' duties**

Your workers also have duties when they are at work (s 28). This includes:

- Taking reasonable care of their own health and safety.
- Ensuring that their actions do not affect the health and safety of others in the workplace, including pedestrians and other road users.
- Complying with any reasonable instruction given by you about work health and safety matters, so far as they are reasonably able.
- Cooperating with your reasonable policies or procedures relating to work health and safety that you have notified to workers.

## Consulting, cooperating and coordinating activities with other duty holders

Under WHS laws, you must consult with delivery workers on health and safety matters so far as is reasonably practicable. You may also have duties to consult, cooperate and coordinate with other duty holders to make sure risks to delivery workers are eliminated or minimised so far as is reasonably practicable.

In practice, this means you must work with delivery workers and platforms to ensure the delivery work is carried out without risks to health and safety.

You must not assume that other people are taking care of the health and safety matter – that can lead to no action being taken and an incident occurring.

### Consultation, cooperation and coordination with other PCBUs

More than one person can have the same duty and one person can have more than one duty. When this occurs, the following principles apply to these duties (sections 14 and 16):

- A person cannot transfer their duty to others in the food delivery supply chain.
- Each person retains responsibility for their duty.
- Each person must discharge their duty to the extent that they have capacity to influence and control the matter.

In addition, the WHS Act (s 272) provides that a person cannot contract out of their health and safety duties.

This means that your agreement with a delivery worker cannot state that the worker is solely responsible for complying with WHS laws in performing deliveries or that the worker agrees that you do not owe them duties under WHS laws.

You may share the same WHS duty with another business. As there is likely to be more than one PCBU who has a duty in relation to the same matter (in this case, the health and safety of delivery workers), each PCBU must, so far as is reasonably practicable, consult, co-operate and co-ordinate activities with all other persons who have a duty in relation to the same matter (s 46). This requirement to consult, cooperate and coordinate applies to all duties, including the primary duty to ensure workers' health and safety (s 19) and the duty to consult workers (s 47).

Consulting, co-ordinating and co-operating with the other PCBUs will help you all understand the type of hazards delivery workers face and the actions required to control the risk of the hazard occurring. It will also help clearly define each PCBU's roles and responsibilities and assist PCBUs to reach agreement on who is the most appropriate person to undertake actions to control risks, ensuring each PCBU meets their WHS duties. It will also assist PCBUs to clarify where they may need to cooperate and coordinate actions to ensure health and safety.

For example, through consultation with other PCBUs, there may be agreement that you are in the best position to control and manage risks that may arise when delivery workers enter your workplace to collect the order. To address risks that may arise, you implement procedures to ensure workers park and wait in a safe area. In consulting with the other PCBUs about your procedures, they agree to instruct delivery workers to follow your safety procedures when picking up orders.

## Notifiable incidents

An example of a WHS duty you may share with another business is the requirement to notify the WHS regulator of a notifiable incident (the death of a person, a serious injury or illness or a dangerous incident) where the incident arises from the conduct of your business and another business (such as the platform). You must notify the WHS regulator immediately after becoming aware it happened. Notifiable incidents may relate to any person – including the delivery worker, a pedestrian or customer. Failing to report a notifiable incident is an offence and penalties apply.

For more information see the [model Code of Practice: Work health and safety consultation, cooperation and coordination](#).

## Consultation with workers

You must consult with your workers and their health and safety representatives on health and safety matters so far as is reasonably practicable (s 47). Consultation is required when:

- identifying hazards and assessing the risks arising from delivery workers collecting food from your premises. For example, hazards arising from entering and exiting the workplace and traffic movements or conditions when picking up a delivery
- deciding on control measures to eliminate or minimise the risks arising from delivery workers collecting food from your premises
- deciding on the adequacy of facilities for the welfare of workers (e.g. access to toilets)
- proposing changes that might affect the health and safety of workers, and
- you are making decisions about procedures for how you will undertake consultation, issue resolution, monitoring of workers' health and workplace conditions and providing information and training to workers.

The kind of consultation that is reasonably practicable for you to undertake and is best suited to your workplace, and the nature of food delivery work, will ultimately depend on the size of your business, the way work is arranged and what suits your workers. For example, consider:

- the number of platforms you use (and therefore the number of workers to consult)
- if there are ways already available on the platform's app to help you contact delivery workers, and
- whether delivery workers may come from culturally or linguistically diverse backgrounds or have limited experience in the workplace.

If you and your workers agree to certain procedures for consultation, the consultation must be undertaken in accordance with those procedures.

## Health and Safety Representatives

Health and safety representatives (HSRs) are workers who are elected to represent the health and safety interests of their work group. Elected HSRs 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.

HSRs can foster and facilitate communication between you and workers and can be a single point of contact for you when consulting with workers. HSRs can also improve the efficiency of consultations and gather key information on the work group's specific WHS interests or concerns, helping you to meet your WHS duties and improve work health and safety outcomes for delivery workers.

If a request is made by a worker, you must negotiate with workers to establish a workgroup to facilitate the election of HSRs. Union delegates or any other person that a worker nominates to represent them must be involved in negotiating work group formation.

While HSRs need to know which workers are in their work group to represent these workers, an HSR is not entitled to access any personal or medical information concerning a worker without the worker's consent (s 68(3)). Similarly, you must not share any personal or medical information regarding a worker with an HSR without the worker's consent (s 71(2)).

It may be useful to establish a process where each worker is asked to provide informed consent for their contact details to be shared with their HSR upon election so that the HSR can contact them when needed. This will help you and the HSR do their job.

You must include HSRs in any consultation process with workers. You must also provide HSRs with reasonably necessary resources, facilities and assistance, and time to perform their functions.

Discrimination against a worker or HSR for seeking to exercise their rights under the WHS 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 WHS Act. For more information on worker representation and participation see Safe Work Australia's [Worker representation and participation guide](#). WHS regulators are also able to assist you to set up HSR processes.

## Managing risks and control measures

To manage risks, you must identify what could go wrong for workers and others while making deliveries (known as hazards) and ensure there are processes in place to ensure workers and others are safe. Before putting control measures in place, you must talk to your delivery workers and any HSRs about the hazards, risks and control measures and take their views into account.

Think about what areas in your workplace delivery workers may need to access and what risks might exist. This might include:

- Providing equipment that is fit for purpose, such as suitable food containers and carriers.
- Providing information to the platform and workers about how delivery workers can pick up food safely, including where to park, wait and pick up food, as well any other safety requirements relevant to the workplace.
- Ensuring your entry and exit points are clear, well-lit and accessible.
- Keeping ground clear of potential slip and trip hazards, particularly in wet weather.
- Ensuring outdoor equipment or furnishings do not pose hazards to workers and others.
- Providing protection from weather if workers must wait outdoors to pick up orders.
- Having obvious, safe and well-lit parking areas for workers to leave their vehicles.
- Avoiding, or communicating clearly about, significant delays in food preparation that may affect workers' delivery requirements.
- Having processes in place to deal with extremely large orders that cannot be safely carried by a single delivery worker.

If you directly engage the delivery workers, you may need to take further measures to ensure their health and safety. This may include the following, noting that not all may be reasonably practicable to implement:

- Providing specific training to workers, and ensuring they understand road rules. A delivery worker should never ride on the road if they do not know or understand the road rules.
- Ensuring workers are trained and competent at riding bikes and scooters in a delivery context, including on roads, in traffic, at night, in adverse weather and road conditions, and when carrying loads.
- Ensuring any equipment provided, such as bikes or scooters, is in good working order and maintained as per manufacturer's instructions. Provide a system to report safety issues, such as poorly maintained or damaged bike/scooter parts.
- Making sure workers have enough time to complete their deliveries safely.
- Allowing adequate rest time between deliveries. Workers who are tired are more likely to make mistakes. Ensure workers are trained in recognising the signs of fatigue.
- Providing workers with suitable delivery bags. High visibility insulated delivery bags that are able to be secured to the bicycle or scooter are preferable.
- Making sure you have training, processes and policies in place and workers know how and when to report incidents (e.g. if a worker is feeling unsafe or threatened, they should call 000).
- Making sure there is training and policies and procedures in place to prevent exposure to violence, aggression and harassment. For example, encourage workers to report abusive customers and communicate to customers that violence and harassment will not be tolerated.
- Ensuring workers are encouraged not to use mobile devices while riding.
- Making sure workers are trained on relevant safety matters in the workplace, including use of PPE as required and how to inspect their bike/scooter before use.
- Considering the use of devices that detect crashes and send information to emergency services.

## Personal Protective Equipment

If you employ the delivery workers or if you otherwise direct them in carrying out deliveries, you also must provide personal protective equipment (PPE) to control any risks that remains after other control measures have been put into place. PPE is the least effective method for controlling risks on its own and so should always be used with other controls where possible. If you provide PPE to workers, you must:

- ensure, so far as is reasonably practicable, that workers wear PPE
- ensure it is suited to the work delivery workers carry out and suit each worker's size and fit—you must consult with workers when selecting PPE, and
- provide workers with information training and instructions on how to properly use and wear PPE and how to store and maintain PPE.

You must also make sure the PPE is maintained in good working order, is clean and hygienic. PPE must be repaired or replaced where required.

You must ensure you meet the requirements of the relevant state or territory WHS regulator and road authority where your business operates. This includes requirements for safety measures and the provision of PPE.

## Review control measures

To ensure the measures are working as planned, you must consult with workers, HSRs and other duty holders to make sure they are maintained and are effective in controlling the risks. If the measures are not being taken, or are not adequately controlling the risks, you must revise the measures or implement different measures. You must also ensure that the training and skills of workers remain adequate and up to date.