

12 July 2019

Workers' Compensation and Rehabilitation Consultation  
Office of Industrial Relations  
GPO Box 69  
BRISBANE QLD 4001

Our ref: (KS:ACTLC)

By post and by email: [wcpolicy@oir.qld.gov.au](mailto:wcpolicy@oir.qld.gov.au)

Dear Sir/Madam

**Regulatory Impact Statement: possible extension of workers' compensation for certain gig economy workers, and bailee taxi and limousine drivers**

Thank you for the opportunity to provide comments on the possible extension of workers' compensation coverage for certain gig economy workers, and bailee taxi and limousine drivers. Queensland Law Society appreciates being consulted on the consultation Regulatory Impact Statement (RIS)

This response has been compiled with the assistance of the Accident Compensation and Tort Law Committee who have substantial expertise in this area.

The Queensland Law Society (QLS) is the peak professional body for the State's legal practitioners. We represent and promote over 13,000 legal professionals, increase community understanding of the law, help protect the rights of individuals and advise the community about the many benefits solicitors can provide. The QLS also assists the public by advising government on improvements to laws affecting Queenslanders and working to improve their access to the law.

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**Overview of RIS**

The RIS focuses on possible reform options for certain categories of persons in the gig economy and the taxi and limousine industry who are currently outside the scope of the Queensland workers' compensation scheme.

## Regulatory Impact Statement: possible extension of workers' compensation for certain gig economy workers, and bailee taxi and limousine drivers

We note that options for proposed reforms have been identified by the five-year review of the workers' compensation scheme. Our analysis of the options proposed is provided below.

### Part A: Do you believe workers' compensation coverage should be extended to gig economy workers or bailee taxi and limousine drivers?

We acknowledge the potential benefits for these 'workers' in being covered under the Workers Compensation scheme, including for example: the payment of reasonable compensation to often vulnerable workers, the collection of premiums (where intermediaries can be determined), the coverage of medical treatment and rehabilitation and greater return to work assistance to gig workers.

However, having had the opportunity to consider the RIS, QLS has some significant reservations. Our overarching concerns relate to the potential impact of the proposed extension on the viability of the current scheme and on the practical difficulties associated with its implementation.

We note the five year review *'found the scheme is performing well, is financially sound, involves low costs for employers and provides fair treatment for both employers and injured workers'* and significantly, that major scheme reform was not needed.<sup>1</sup> We are concerned that the proposed extension would require significant legislative change which may impact the ongoing viability of the scheme.

In this regard we raise the following issues for further consideration:

- Intermediaries operate very differently to employers and exercise far less control. Therefore, issues of co-ordinating return to work and owing a common law duty of an employer would be difficult.
- There are likely to be numerous statutory disputes on the issue of whether the gig worker was actually working when they were waiting for work through an electronic platform (e.g. an app).
- Wages would also be difficult to calculate. Particularly given the gig workers supply their own equipment (usually a car) and many work for multiple intermediaries and/or employers (for example a driver may undertake work for both Uber and Ola).

We also query if coverage under workers' compensation legislation may be premature prior to greater regulation of gig economy type arrangements for example, under legislation such as the *Fair Work Act 2009* (Cth).

### Part B. Responses to options to address the problem: Gig workers in the Gig economy

Whilst we reiterate our reservations with respect to the proposed extension we make the following observations regarding the options posed in the RIS:

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<sup>1</sup> Queensland Government, Office of Industrial Relations, May 2019, Consultation Regulatory Impact Statement; *Workers' compensation entitlements for workers in the gig economy and the taxi limousine industry in Queensland*, p 22.

## Regulatory Impact Statement: possible extension of workers' compensation for certain gig economy workers, and bailee taxi and limousine drivers

*Option 1: Status-quo—Gig workers rely on voluntary private personal accident insurance and are not covered by Queensland's workers' compensation scheme.*

### *Advantages*

- Section 23 of the *Workers' Compensation and Rehabilitation Act 2003 (WCRA)* states that an "eligible person" can be a contractor or self-employed individual i.e. a gig worker.
- Sections 24 and 25 of the WCRA provides that an eligible person can enter into a contract of insurance with WorkCover and is entitled to receive the same compensation entitlements as a "worker". This addresses the concern with respect to whether gig workers receive adequate medical treatment, rehabilitation and income protection.

### *Disadvantages*

- Gig workers would need to pay premiums when entering into a contract of insurance under section 25 of the WCRA, rather than the intermediary.
- It is reliant on the individual to obtain the insurance with WorkCover, rather than there being statutory scheme coverage.
- Section 25 of the WCRA excludes payment of damages.
- There would be limited medical treatment and rehabilitation costs covered by private insurers compared to WorkCover scheme coverage.

*Option 2: Amend the Workers' Compensation and Rehabilitation Act 2003 to extend workers' compensation coverage to gig workers and require intermediary businesses to pay premiums*

When considered in the context of the sporadic nature of gig economy work hours and income, we are concerned that if workers' compensation coverage was extended to gig economy workers, gig workers would also be entitled to payment of normal weekly earnings (NWE). This would mean that the declaration of "wages" by an intermediary and the premiums paid on those amounts may be disproportionate in the level of entitlements that the gig worker receives.

In our view this is not a financially viable outcome in circumstances where for example, studies have indicated that half of Uber drivers spend less than 10 hours each week on the app<sup>2</sup>.

We are also concerned as to the potential implications with respect to:

- Uncertainty in respect of premium setting due to the current lack of regulation and knowledge of the scope of the current and future development of the gig economy;
- The challenge with the definition of "intermediary" for the purposes of determining who has an obligation to insure;
- Estimating "wages" for premium setting; and

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<sup>2</sup> Queensland Government, Office of Industrial Relations, May 2019, Consultation Regulatory Impact Statement; *Workers' compensation entitlements for workers in the gig economy and the taxi limousine industry in Queensland*, p 30.

**Regulatory Impact Statement: possible extension of workers' compensation for certain gig economy workers, and bailee taxi and limousine drivers**

- Coverage for common law claims where an intermediary has significantly less control over the gig worker compared to traditional master / servant relationship.

**Part C. Responses to options to address the problem: Taxi and limousine drivers**

QLS further submits that the complexity of the relationship between booking entities, operators, licensed owners and drivers acting under a bailment agreement, means that significant consultation and consideration of any unintended consequences would need to be considered before proceeding with any legislative changes.

The types of issues which need to be explored include, but are not limited to:

- The varying nature of taxi and limousine relationships creating uncertainty in determining who has the obligation to insure (i.e. who are workers and who are employers?);
- Uncertainty in respect of premium setting due to the variability and nature of hours worked;
- A potential conflict with the *Motor Accident Insurance Act 1994* regarding coverage resulting in third party contribution claims against the CTP insurer;
- The overall impact, if any, on the viability of the workers' compensation scheme in Queensland;
- The impact on the cost of point to point transportation services to Queensland consumers; and
- Maintaining a level playing field between the taxi and ride share industries.

Accordingly, although we are sympathetic with its intent, the Society is concerned about the unintended consequences of the proposed extension. In our view, it is these consequences which need to be carefully considered before the government considers an extension of the scheme to this sector of the economy.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Policy Solicitor, Kerryn Sampson by phone on (07) 3842 8581 or by email to [K.Sampson@qls.com.au](mailto:K.Sampson@qls.com.au).

Yours faithfully



Bill Potts  
**President**