

Yvette Norris

From: Claude <[REDACTED]>
Sent: Tuesday, 18 June 2019 10:24 AM
To: wcpolicy
Subject: Submission from XLNT Chauffeurs Regarding Workers Compensation Coverage - Queensland

Workers Compensation and Rehabilitation Consultation
Office of Industrial Relations
GPO Box 69
BRISBANE Qld 2001

Dear Sir// Madam

RE : Submission from XLNT Chauffeurs Regarding Workers Compensation Coverage

We have been operating our services in South East Queensland, since 2009.

Our employees are engaged under an Industrial Award – Limousine and Shuttle Bus Drivers Award MA000063 (Federal Award), which established pay levels and conditions of work appropriate to this employment profile. We receive no subsidization under State or Federal Government, for making the decision to employ our staff under an existing Industrial Award. This cost has been born by us as the employer and this has impacted on our profit margin. We have been marginalized by the State Government approval of other ride share companies such as Olah and Uber, that do not have workcover protection, even when it is known for some time that the Taxi Industry had no Workcover Protection System in place for its drivers. We would like it documented, that this Workcover Protection should have been made **compulsory** prior to Government Approval of any further agencies being granted permission to operate within Queensland.

In addition, our employees have been and are covered by a **Workers Compensation Policy** [REDACTED]. We made the decision to cover our employees, as we as responsible employers, have always regarded them as an “employee” within the meaning of the term. Recently, a new employee was issued with a Drivers Authorization after submission of their Medical and Drivers Authorization Paperwork at a TMR Office. Within two weeks the driver was complaining of a sore back. The driver lodged a Workers Compensation Application, claiming that the injury was sustained at work. A Medical Practitioner issued a certificate for time off work. We as the employer asked as to what treatment and rehabilitation program the Medical Practitioner was going to implement. The Medical Practitioner was also provided with a graduated return to work plan. The Workers Compensation Office issued an Acceptance Of Claim notification to us as the employer. Further investigation by us as the employer revealed that the initial Doctor that performed the Employment Medical had noted a pre-existing medical condition that stated the injury was a pre-existing medical condition that had been aggravated at work on the first medical certificate.

The employer (us) contacted workcover in regard to this news, expressing concern that the employee had at no time indicated to the employer that there was a pre-existing medical condition present, prior to employment. Workcover approved the claim and continued to treat the employee as an injured person. It is important to note, that the Workcover Act has a provision which clearly states that an employee who has not notified an employer of any pre-existing medical condition, prior to employment, is not legally entitled to claim Workers Compensation. Despite this, Workcover, for whatever reason made a decision to approve a claim which for all intents and purposes was not permitted by the Workcover Act. Another point is that TMR held the documentation proving that the pre-existing condition was not clearly stated on documentation entered at the time a Drivers Authority was initiated, but, the employer was unable to request a copy due to privacy legislation. The person lodging the workcover claim withdrew the claim and resigned.

No further action was taken by Workcover in respect to their decision to approve the claim made by the worker. The Medical Practitioner had provided Workcover with a Medical Certificate that clearly stated knowledge of a pre-existing medical condition.

We wish to state that we have some serious concerns in regard to this matter stated above:

1. Many drivers work independent of direct supervision by an employer, whilst working. **Employers may be held liable for vexatious claims that result from conditions aggravated or caused outside of work;**
2. Workcover has by their own demonstration to us, approved a claim that as clearly outside the scope of the legislation and yet we as the employer, were looking at a potential long term compensation claim. **Our point is that no public service Department or Officer should be permitted to approve claims that fall outside any in force state or federal legislation, which is binding on all persons.**
3. **No Application for a Drivers Authority (DA) should be approved unless the employer, prospective employer is provided with a copy of the Medical Certificate used to Approve the DA. (Normal Expectations would be that the employer is entitled to know about conditions stated on the medical certificate.)**
4. **Employers need some certainty that the legislation will be followed in the event of a disputed claim. We acknowledge that this is outside the scope of this review, however, what happened in our case clearly established that some consideration be given to this matter along with other regulatory protection for employers.**

The Workcover Legislation Potential Changes that we would recommend to the consultation RIS are as follows:

Our preference is that the following option should be implemented:

Option 3: Amend the Workers' Compensation and Rehabilitation Act 2003 to extend Queensland's workers' compensation scheme to include all taxi and limousine drivers engaged either Full Time, Casually, Part Time. Employees performing any work under a bailment arrangement would be regarded as Casual Employees for the purposes of Workers Compensation Insurance. (Keeping in mind that at some time it is logical to expect that these persons will be engaged in some activity within the confines of a workplace, either collecting the vehicle or returning the vehicle from premises or locations such as " Normal Places of work".) Our reasons for this are that for too many years the Taxi Industries and some Limousine Companies have been shielded from employer responsibilities by loopholes in the law that allow some employers to regard drivers as sub-contractors who are denied minimal workplace conditions.

We would also recommend to the RIS is that consideration should also be given to the minimal standards of work conditions identified within and as per MA-000063 Limousine and Shuttle Bus Drivers Award. This would allow portability of employment options, certainty surrounding conditions of work and payment schedules for employees within the industry and allowances for penalty rates, after or pre-hours of work and other such determinations.

In regard to the questions for focus:

1. Do you believe that Workers Compensation Coverage should be provided to Limousine, Taxi Drivers and Ride Share Drivers? **YES (See Above)**
2. What is our preferred option and why? **Option Three (See Above for information regarding our reasons).**
3. What are the costs and benefits or disadvantages associated with the current arrangements and your preferred option? **(See above information) Costs are reasonable for protections offered, provided that the employer is not taken for a ride by actions imposed on the employer by Workcover approving claims and denying the employer right of reply.**
4. Are there any costs or benefits or disadvantages that have not been identified Please provide substantiating evidence where possible. **(The disadvantages in not legislating workcover protection, are that any failure of the system of government to implement appropriate and reasonable employee protection in the workplace , from workplace injury, falls back onto the cost to the community in terms of medical treatment, support systems, rising health costs, short and long term loss of employment, rehabilitation costs and or death/disability cover. Why should the average taxpayer be forced to once again supplement businesses that have long been afforded specialized treatment whilst enjoying cartel protectionism that does not extend to other employer groups across Queensland. Workcover protection is relatively cheap and inexpensive based on the number of employees and the wages paid. No business in Queensland should be exempt from payment for the greater protection of their employees.)**

5. Are there any features in the options presented that you have concerns with? Or, are there any features that you consider should be included. Please justify why and provide substantive evidence where possible. **Yes I have some concerns with the terminology "gig economy". This industry used to be a reasonable option for a family business, that provided opportunities for an income that was reasonable for the services offered. The cost to the Limousine Industry was substantial given the regulatory requirements imposed on them and the outlay for the luxury vehicles. Never the less, there was a percentage of people, who, for whatever reason, chose to not ride in a taxi, or use other public transport. To state that this is a "gig economy" is demeaning and inexcusable terminology. This industry, was the highest standard available. The drivers were/are impeccably dressed, sober and courteous at all times, the vehicles were/ are still clean. Local Governments respected that drop off zones included limousine standing areas, Major Venues catered for the public that rode in Limousines by the provision of close drop off and pick up zones. On special occasions special people were carefully transported to their desired venue and with great care, deposited at the front door. (Now a privilege that in the main is left for Ministers of the Crown or the most Senior Public Officials it would seem).**

So, having said that, who pray tell, now stands back and states that this is a "gig economy" ? If it is, may we suggest, that is because it has been pulled, kicking and screaming into forced changes because of ride share companies and taxi companies daring to insist that this industry, should be forced to comply with the same regulations as they have to. Did anyone really look to note the differences between Limousines and Taxi Cabs, Ride Share Vehicles and their drivers? Why is that, the industry was willing to show the differences? Statistically, accidents were lower, Enforcements were probably lower, Maintenance was probably better, the vehicles were/are probably cleaner, the drivers were better attired then why was it so important to push changes onto this industry? What was the intent and where was it required ? Was there any push from the public that there should not be a special occasion mode of transport available? I think Not. Was it driven by similar industry? Maybe , a percentage of the fare is never enough is it when you can try and get all of it? Now, for the final pull down, we utilize the buzz words "Gig Economy". That is not the industry we invested in, nor the industry that we go on losing our money in. We were an essential part of a modern city, where affordable luxury was/is available if that is what people choose to want who use it. Soon it will be NO ECONOMY as there will be NO LIMOUSINE INDUSTRY.

Where is the proof that the public of Queensland were not happy with the limousine industry? Where is the proof that the public of Queensland refer to this industry as a Part of the "Gig Economy"?

"Buzz Words" do not belong in this discussion. You are in the process of making changes to peoples lives, their livelihoods and hopefully, for establishing a "minimum standard of protection in the event of an injury ". Any change will come at a cost to someone , somewhere. We need to be absolutely sure, that the price we pay, is for the best cover we can get for our money. Successive Governments, in years gone by have looked away before when this topic arose, some even developed the impractical system that is in place today. A system that some workers were denied access to workcover entitlements. I challenge this Government, to make a change that protects people at work, the same way other Queenslanders have protection in their chosen employment from Workplace Injury, Disease and or Accidental Death at work. The benefits will far outweigh the cost.

Claude W Chase BM
Operations Manager

