Industrial Relations and Other Legislation Amendment Bill 2022

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Introduction

The Queensland Trucking Association (QTA) makes this submission in response to proposed Industrial Relations and Other Legislation Amendment Bill 2022, henceforth referred to as 'the IR Amendment Bill' or 'the Bill'.

The QTA acknowledge the intent of the state government to improve road safety and recognise the need to address new and emerging forms of precarious work, whether through legislative reform or other means. We support the introduction of enforceable proper and fair standards within supply chains and it is our experience that most operators within the road freight industry meet those standards.

However, it is the view of the QTA that:

1) If it is the intent of the Bill to provide addition protections to precarious workers and improve road safety, specifically those within the 'gig' or 'platform' economy, it is unlikely to have this intended effect.
2) The proposed Bill would disproportionately effect businesses that do not operate within the 'gig' or 'platform' economy. This is particularly inappropriate as:
    a) there is no new or heightened risk to the safety of independent couriers outside of the 'gig' or 'platform' economy within Queensland.
    b) there have been no changes to the nature of relationships between independent couriers and principal contractors within Queensland, outside of the 'gig' or 'platform' economy, that would require the legislation of additional protections.
    c) the proposed Bill would add further complexity to the operation of Queensland businesses, operating interstate and intrastate.
    d) the proposed Bill could result in Independent Couriers being worse off than they currently are if they fail to met new obligations to record their time and attendance.
3) The case for Chapter 10A's introduction as a means to provide addition protections to precarious workers and improve road safety, written as a close facsimile of the NSW IR Act Chapter 6, has not been properly made out. That is because the case fails to clearly demonstrate:
    a) the specific impact Chapter 6 has had on road safety in NSW in the absence of other factors (e.g. changes to vehicle design, enforcement activities, other legislation).
    b) the expected impact, if any, the introduction of the Chapter 10A would have on improving road safety in QLD.
    c) the impact Chapter 6 has had on Independent Couriers within the 'gig' or 'platform' economy as it has not covered this work.
4) The proposed Bill would not have a future effect of protecting precarious workers within the 'gig' or 'platform' economy should federal legislation change to either those workers as parties to an employment or 'employment-like' relationships to be covered within the National System. Should this occur, only independent couriers outside of the 'gig' or 'platform' will continue to be affected by Chapter 10A.
5) The proposed Bill would inappropriately impose conditions comparable to those imposed on National System Employers, outside of the control of the QIRC, at a state level without consideration to commercial operations of non-employees.

6) Should the state find the need for Independent Couriers Bill, it should be written in consultation with QLD stakeholders, taking into consideration their needs and the unique challenges faced by businesses operating within QLD.
7) Should the Independent Couriers Bill proceed, as written, transitional arrangements of 2 years from the introduction of the Bill are needed to review commercial contracts and administrative needs to appropriately manage those contracts in line with the Bill.

Who are we

The Queensland Trucking Association Ltd (QTA Ltd) is the peak industry body for road freight operators in Queensland.

We represent operators of all sizes, from all sectors and regions, suppliers, manufacturers and stakeholders who make up an industry that is a major contributor to the economy. Our purpose is to ensure that regulation is reflective of contemporary industry practices in all areas that impact the safety, productivity, efficiency and viability of the road freight industry.

Suitability of Chapter 6 to address safety

The IR Amendment Bill would introduce legislation closely reflecting that of Chapter 6 of the Industrial Relations Act 1996 (NSW) (*'Chapter 6'*). It is understood that this legislation was chosen as it 'appears to have a positive effect' on the health and safety of gig economy workers in NSW. This is simply not the case. There are no statistics specifically measuring the effect of the legislation on businesses primarily engaging gig workers for road freight activities, and until February 2022[1], it was unclear if any such business has come under that legislation.

While it is not disputed that the figures relied on demonstrated that the NSW legislation has had a modest effect over an extensive timeframe, the full effect is unclear. The figures relied on to find the health and safety effect of the legislation showed that:

- On average and under the same measure, states that did not have the legislation were already safer than NSW
- On average and over the 40 years course of the legislation, states that did not have the legislation have remained safer than NSW

Further, due to the 40 years course of the legislation with steady modest improvements over that time it is difficult to demonstrate whether improvements were the result of:

- Chapter 6
- Interactions between Chapter 6 and other legislation (state and/or federal)
- Other legislation (state and/or federal), in isolation or through their interactions, unrelated to chapter 6
- Improvements completely unrelated to state or federal legislation (e.g. technological improvements such as reversing cameras and sensors)

[1] Applications to vary the Transport Industry – General Carriers Contract Determination 2017 and Transport Industry – Courier and Taxi Truck Contract Determination [2022] NSWIRComm 1003

Lastly, the figures failed to demonstrate what effect, if any, the Independent Couriers Bill would have on QLD roads if modelled after Chapter 6. If no change to road safety is expected, due to existing QLD legislation already providing an optimal level of safety that is not further improved by the Bill's introduction, then it would be irresponsible for the state to invest in such a large change. Taken from World Bank's Global Road Safety Facility's Guide for Road Safety Interventions: Evidence of What Works and What Does Not Work[2]:

> …it is of profound importance that resources are not wasted on these ineffective interventions on behalf of road safety but rather that evidence-based road safety interventions…

Coupled with the lack of data relevant to gig workers, it is clear that the case for inserting Chapter 10A, over any other existing state legislation or purpose-built QLD legislation, has not been made out.

Suitability of Chapter 6 to address non-precarious gig work

Should the Bill be introduced it would have a much wider effect on non-gig workers then on gig-workers. Chapter 6 was introduced in NSW to address contract terms for owner-drivers and continues to do so. The Bill as written would have the same effect in QLD. This is of concern as business models involving owner-drivers have existed in QLD for over 100 years, and there has been no specific case made out as to why QLD owner-drivers outside of the gig-economy should now have this imposed upon them. As the peak industry body, the QTA is not aware of any case for legislation that is QLD specific.

It is important to consider that not all owner-drivers are precarious workers, and it is not beneficial for principal contractors within traditional forms of road freight operations to negotiate terms without fair remuneration and some certainty as to expected hours, days, loads an owner-driver may be needed. While there may be principal contractors who may have entered into exploitative arrangements with owner-drivers, and vice versa, this is not indicative of overall industry practices and it is unclear why a model specific to the gig-economy would not be more suitable.

It should also be considered that Federal legislation may change within the next few years to find workers within the gig economy as parties to employment or 'employment-like' relationship. Federal Minster for Industrial Relations, Tony Burke, has indicated support for gig workers to have an entitlement to superannuation, worker's compensation and sick leave, alongside minimum rates of pay set by the Fair Work Commission. Should this occur, it would leave only those outside the gig economy as being affected by the Bill. Over the past few years, including action earlier this year involving Menulog[3] there has been progress in finding that work within the gig economy could be covered under the federal IR system, with further progress expected. The QTA advocates for such changes to federal legislation as the most appropriate means to ensure protections for these workers. Should gig-workers not be covered by the proposed Bill at all, there is no justification made for the Bill's introduction now or in the future. Legislative sanction should be proportional to the issue. There is no evidence of a broader issue in the road freight industry to justify the intervention introduced with this Bill.

[2] "Turner, B., Job, S. and Mitra, S. (2021). Guide for Road Safety Interventions: Evidence of What Works and What Does Not Work. Washington, DC., USA: World Bank."

[3] Menulog Pty Ltd [2022] FWCFB 5 (28 January 2022)

Suitability of a state-based solution

Businesses within the road freight industry are national system employers and a large number work across states. Many of these businesses currently work under Chapter 6 and, should the Bill be introduced, there is no mechanism to ensure operations across the states would not be subject to different measures of fairness. This is despite the similarities in Chapter 10A *(QLD)* and Chapter 6 *(NSW)*, as determinations will be made by two different state bodies that are not required to consider determinations made under different jurisdictions. Other similar systems also already operate in Victoria and Western Australia, adding further complexity to operations.

Where the Bill does consider determinations made in other jurisdictions is in Federal industrial relations legislation around employment law and conditions. This adds further complexity as minimum standards under federal legislation for matters such as remuneration do not consider commercial considerations made by businesses such as business running costs, the commercial risk assumed by all parties and competition for freight services. This would mean that these important measures may either not be considered, or their value may otherwise at determined by a single commissioner with little or no experience within the road freight industry. This is a disturbing prospect given the effect this would have on ensuring fair standards and an even playing ground for all operators, both in and out of the gig economy.

Further, the comparative measures for remuneration are set at the federal level, outside of the control of the QIRC, thereby standards for owner-driver should also be set at a national level. It the view of the QTA that while there should be proper and fair industry standards, these are not standards that should be limited to QLD, in competition with other states, and in the limited scope of the Queensland Industrial Relations Commission. We advocate for a national body that, through its operation, would include a formal consultative mechanism with the involvement of road freight industry at large, all levels of government and registered organisations.

Requirement for enforcement

The Bill's success, if implemented, would lie in how well it is enforced. At present, information surrounding what additional resources and training will be provided to the QIRC to inspect the operation of courier service contracts have not been provided. There appears to be no model of what resources would be required to ensure a suitable level of enforcement. Without suitable enforcement, the Bill would fail to provide for safer roads and fair conditions, as the operations of the many smaller operators are unlikely to be captured. In particular, the business practice of phoenixing is already a concern within the road freight industry, amongst smaller operators in particular, and insufficient enforcement of the Bill would incentive this practice.

Purpose-built legislation

Should it be determined that amendments are necessary to address precarious work within the gig-economy, then that legislation should be specific to the gig-economy – the proposed Bill fails in this regard. In this case, the insertion of Chapter 10A may not be suitable without further consideration as to the actual impact on Queensland business. The necessary information should be gathered through consultation and detailed comparison of this legislation to other existing systems. With this approach a more suitable fit-for-purpose legislation for QLD businesses could be developed that takes into context modern transport operations.

Additionally, consideration should be made as to the costs associated with implementing and managing contracts under the Bill. At present, traditional road freight business that operate solely within QLD are not required to record the start, finish and break times of owner drivers, nor do many owner drivers make such records. These records are necessary to conduct a review of remuneration and other conditions against those an employee would receive. Similarly, at present those same road freight business do not impose measures to manage the time of owner-drivers, which is something they would need to implement to prevent owner-drivers from potential future claims of underpayment resulting from their own poor time-management. The implementation of these systems bear a significant cost and require long-term changes in behaviour, especially among the owner-drivers. It would not be an appropriate outcome to the Bill's introduction that owner-drivers would lose work simply because they fail to remember to record and communicate the times they work. If the Bill is introduced, unilaterally we seek that the amendments not come into effect for 2 years. Any period shorter than 2 years is unlikely to be sufficient to implement systems without bearing undue financial risk and to change long-held behaviours and expectations.

Changes within the Bill

Should the Bill proceed, as written, several changes are required to ensure it takes a measured and proportional approach when addressing precarious work within traditional road freight businesses. In particular:

1. ***Chapter 10A*** should be amended to remove any reference to "similar work"
    - "Similar work" is highly subjective and the bill does not seek to define and classify "similar work".
    - The inclusion of the term would create unnecessary uncertainty surrounding what operations would be classed as similar so as to group completely unrelated businesses or misclassify work not considered similar by the road freight industry.

2. ***Chapter 10A*** should be amended to include a clause requiring the commission to consider a wide measure of working conditions and remuneration. The following clause is recommended:

> The commission must consider the following elements of remuneration and conditions when determining whether a single independent courier, within a class of courier service contracts, is disadvantaged:
>
> (a) Remuneration represents the fair recovery of the fixed and variable costs incurred in performing the services required;
> (b) Remuneration represents a fair return for the independent courier's labour
> (c) Remuneration represents a fair return on the independent courier's investment.
> (d) The level of commercial risk assumed by the independent courier's;
> (e) The security and certainty of the arrangements;
> (f) Whether the vehicle or equipment provided by the independent courier can readily be used to provide services to other principal contractors;
> (g) whether the vehicle or equipment is also used for personal use;
> (h) the efficiency and productivity of the independent courier;
>
> the market for the services.

- These additions ensure commercial business decisions made on an individual basis, not otherwise considered in an employment relationship, are taken into account when determining whether an independent courier is at a disadvantage when entering into a negotiated agreement.

Conclusion

Changes to state-based legislation are not suitable to address nation-wide issues. Similarly, it is not suitable to retrofit decades old legislation from another jurisdiction to address emerging issues, where that legacy legislation would disproportionately effect a different industry not central to the issues. Should the QLD Government seek to address issues of precarious work amongst workers within the 'gig' and 'platform' economy, then legislation should be specific to operators within that economy. The case has not been made out as to why Chapter 10A is the most suitable legislation to address the issues of road safety and precarious work and neither has the government justified the cost and confusion it would cause to QLD businesses within traditional forms of road freight where they have not presented any case to justify the need for changes within this industry. On this basis, the QTA cannot support the insertion of Chapter 10A within the Bill and strongly suggests it be abandoned.

Gary Mahon
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