

Industrial Relations and Other Legislation Amendment Bill 2022

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Submitted by: Uber Australia
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From: Polly Epov [REDACTED]
Sent: Friday, 8 July 2022 5:27 PM
To: Redlands Electorate Office; Education, Employment and Training Committee
Subject: Industrial Relations and Other Legislation Amendment Bill 2022 public hearing
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Dear Ms Richards,

I write to you today as the Chair of the Education, Employment and Training Committee.

We request the Committee call a representative from Uber Australia as a witness as part of the scheduled public hearing on the Industrial Relations and Other Legislation Amendment Bill 2022 for Thursday 21 July 2022.

There have been significant movements in this policy space nationally since the drafting of this Bill, and we would appreciate the opportunity to discuss this directly with the Committee.

We fully appreciate that the part of the Bill that deals with independent courier drivers is not the substantive of the Bill, nevertheless, we believe that it may have significant repercussions that were not explored in the limited consultation process during the drafting of the Bill.

Uber is committed to working with all governments to ensure we are operating safely and in line with community expectations. We want to work with the Queensland Government to continue to provide earning opportunities, and services to the community and part of the Queensland transport network.

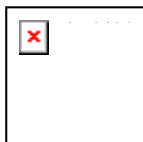
We are open to appearing in front of the Committee grouped together with similar industry representatives should that be more expedient for the Committee. We also ask to appear via videoconference.

I have attached a copy of our submission.

We appreciate and thank the Committee for the opportunity to contribute to this important inquiry, should you have any questions don't hesitate to contact me on [REDACTED]

Kind regards,

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Polly Epov

Public Policy and Government Affairs, Australia & New Zealand

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**Committee Secretary**

Education, Employment and Training Committee
PARLIAMENT HOUSE
QLD 4000

Dear Committee Members,

Industrial Relations and Other Legislation Amendment Bill 2022

Thank you for the opportunity to contribute to the development of the *Industrial Relations and Other Legislation Amendment Bill 2022*.

Our submission relates only to Chapter 10A of the Bill which empowers the Queensland Industrial Relations Commission (QIRC) to make orders setting minimum entitlements and conditions for independent courier drivers. To that end, we limit our submission to the application of Chapter 10A to online delivery drivers in the transport industry.

Our submission is structured as follows:

1. An overview of Uber in Australia and why platform-based work is popular amongst Australians
2. The importance of national regulation.
3. A summary of two national initiatives led by Uber to improve conditions for earners, including the Statement of Principles and Future Commitments for Workers in the On-Demand Economy and the National Food Delivery Safety Principles.
4. Notes for the Committee on matters of procedural unfairness inherent within the *Five-year Review of Queensland's Industrial Relations Act 2016*.
5. Our proposal for a way forward which recognises how Uber can support the Queensland Government to better understand platform based work.

It is our strong recommendation that the Bill be amended to exclude independent contractors accessing platform work from the scope and application of Chapter 10A given the announced reforms that the Australian Government intends to introduce into the Commonwealth Parliament, and the constitutional inconsistency of Chapter 10A with the *Independent Contracts Act*.

We look forward to working with the Committee to improve the future of independent work in Australia and deliver outcomes for independent workers that are consistent across the nation.

1. Why Australians value platform-based work

Hundreds of thousands of people across Australia earn through the Uber app, often as a supplement to other income or because they require flexibility to manage other life commitments.

Unlike most traditional jobs, including many independent contractor roles, people accessing the Uber apps to earn can choose when and where they log on, as well as retain the ability to do whatever other work suits them - including with competing platforms.

However, while we know delivery partners value their independence and the flexibility the app offers, we believe more can be done to improve the quality and security of independent work in the gig economy.

We've heard from drivers and delivery people about what works for them and what they want to see us do better. According to recently commissioned research by global independent research firm Ipsos:



- Flexibility is crucial to delivery drivers: More than 9-in-10 (91%) delivery partners say they would not keep driving or delivering if it didn't offer flexibility.
- Earners want policymakers to preserve flexibility: More than 9-in-10 (93%) delivery partners want any changes to laws regarding app-based driving and delivering to protect their flexibility.
- Earners prefer to be independent: Two-thirds (66%) of delivery partners prefer independent contractor status over employee status.
- Earners want flexibility and benefits: The majority of delivery partners (82%) support a proposal that would combine the flexibility of being an independent contractor with some benefits and protections typically associated with being an employee.

While we are prepared to work with the Queensland Government to improve conditions for platform workers in Queensland, we submit to the Committee that the best legislative solution for the future of independent work in Australia is a national industrial relations framework led by the Australian Government.

2. The importance of national regulation

Uber agrees with the Queensland Government that platform sector specific minimum standards should be developed for gig workers.

However, in the interests of regulatory efficiency, Uber submits that the Federal Government is best placed to provide earners, platforms and businesses who benefit from platform services with harmonised standards for independent work in Australia. State based regulation would not be in the national interest when all the major platform businesses operate nationally and when Australia has a national workplace relations system. This concern is heightened by the fact that Chapter 10A of the Bill is not capable of operation and would be invalid under the Australian Constitution without the Australian Government making a regulatory amendment to permit Chapter 10A to operate. Without an amendment to Federal legislation, it is inappropriate and redundant for the Queensland Government to introduce the Bill in circumstances where it will be constitutionally inoperative from the outset and dependent on the Australian Government.

The concept and advantages of a national workplace relations system was comprehensively considered in 2009, with support from key stakeholders in businesses, unions and academia, calling for an end to the complexity, duplication, and confusion created by competing state and federal systems. While we acknowledge the efforts of the Queensland Government to introduce protections for platform workers, we strongly oppose the Bill as a backwards step ultimately leading to greater duplication and regulatory burdens for platforms.

The Albanese Government announced under its Secure Australian Jobs Plan that it intends to regulate "employee-like" forms of work, including the setting of minimum pay and conditions for precarious workers who operate in the gig economy. The proposal reflects the recommendations of the *Senate Select Committee on Job Security – Job security report* of February 2022. Ultimately, with the Australian Government on track to introduce comprehensive, nationwide regulation covering the same area as the Bill, it is difficult to see what benefits will be gained by the Queensland Government passing the Bill. The Bill will be an unnecessary interim measure, creating a layer of regulation and compliance costs for



platforms, that could be overcome by excluding platform workers from the application of Chapter 10A or waiting for the Federal regime to be introduced.

Led by the Albanese Government, the Australian Job Summit in September creates an important forum for Uber and other delivery platforms to inform the national discussion on the future of independent work. The Australian Government is committed to using the findings of the Summit to produce a White Paper that will underpin a national framework for app based work.

Any efforts to legislate prior to this important milestone will undermine the integrity and intent of the national Summit to provide a harmonised approach to industrial relations and 'improve the quality of work in Australia'. Instead, we encourage the Queensland Government to use insights gleaned from the Five-Year Review and its Parliamentary inquiry to take a leadership role and better inform the national debate and reforms.

3. National initiatives led by Uber to improve conditions for earners

Statement of Principles and Future Commitments for Workers in the On-Demand Economy

The need for national level reform was the cornerstone of the recently announced agreement between Uber and the Transport Workers Union.

In early July 2022, Uber and the TWU signed a *Statement of Principles and Future Commitments for Workers in the On-Demand Economy* focused on providing a safety net for workers in the on-demand economy while protecting the flexibility that earners value.

The Statement of Principles articulates Uber's and the TWU's joint support for the Australian Government legislating for an independent body, or a stream of an independent body, specific to platform work, comprising industry experts, with the capacity to:

1. Set minimum and transparent enforceable earnings and benefits/conditions for platform workers based on the principle of cost recovery, taking into account the nature of the work.
2. Facilitate a cost effective and efficient mechanism to resolve disputes such as deactivation of relevant platform worker accounts. Any dispute resolution mechanism must be fit for purpose for platform work.
3. Ensure the rights of platform workers to join and be represented by the relevant Registered Organisation are respected and that platform workers have an effective collective voice.
4. Ensure that appropriate enforcement exists to meet these standards and objectives.

These principles are intended to cover independent contractors who work as on demand delivery and rideshare drivers in the transport industry. The Statement of Principles aims to create a level playing field for all platforms and seek to provide certainty for more than 100,000 drivers and delivery people using the Uber platform.

Uber's agreement to the Statement of Principles with the TWU shows that we are committed to working constructively with important stakeholders in the community. Any duplicated efforts from State Governments to legislate these matters would create an unnecessary degree of regulatory disunity amongst Australian States.

National Food Delivery Platform Principles



In 2020, Uber, Deliveroo, Menulog, DoorDash and Hungry Panda established the National Food Delivery Platform Principles to provide delivery earners with national safety standards specific to the delivery platform sector.

These Principles were an important step from the major platforms in the industry to commit to minimum safety standards across the sector, reduce the risks associated with online food delivery platform work and provide protection when incidents occur.

The Principles reflect the willingness of the industry to improve the lived experiences of platform workers and to further improve the quality of independent work in Australia. Platform workers are located all over Australia and use multiple platforms, so it is important that these Principles and any future regulation operate at the national level.

4. Matters of procedural unfairness

We are disappointed the Five-Year Review of Queensland's Industrial Relations Act 2016 was subject only to consultation by invitation. Correct identification of interested and/or affected stakeholders is critical to the overall effectiveness of regulatory consultation and we believe the platform sector has valuable insights that could have assisted the Queensland Government in understanding and assessing the issues of safety and standards in the gig economy.

Respectfully, we further submit that a range of policy options have not been adequately considered. The Five-Year Review does not meaningfully consider any option other than modelling Chapter 10A of the Bill on Chapter 6 of the *Industrial Relations Act 1996* (NSW). We have seen no consideration of the cost or regulatory impacts on the platform sector in the Final Report or the Bill.

Uber was given no opportunity to participate in the Five-Year Review or any discussions around alternatives to the reforms contained in the Bill before the report was published. We were only consulted once a Bill had been drafted and after we approached the Department seeking the opportunity to be included in consultation.

We appreciate being provided copies of the Consultation Draft of the Bill, however, the timeframes to provide feedback were grossly insufficient, particularly in circumstances where we were prohibited from seeking advice from external counsel. Uber received no response from the concerns raised regarding consultation, regulatory impact and other options to the proposals under the Bill.

It is our view the reforms contemplated in the Bill will lead to significant adverse impacts on the platform sector. In particular, the additional layer of regulation is likely to increase business costs, alter or limit the way platforms operate and limit innovation.

5. Supporting the Queensland Government

Whilst Uber submits that the matters covered by Chapter 10A of the Bill should be regulated by the legislation to be considered by the Commonwealth Parliament, we are willing to engage with the Queensland Government so that it can better understand the interests, needs and asks of platform workers.

Research shows that the majority of platform workers (82%) support a proposal that combines the flexibility of being an independent contractor with benefits and protections. They also overwhelmingly (93%) want policymakers to preserve their flexibility.



The insights gained from our delivery earner forums may be of interest to the Queensland Government to gain a better understanding of platform work before it introduces legislation that will have a profound effect on the livelihoods of thousands of Australians who choose platform work to make a living in the State of Queensland.

We appreciate the opportunity to contribute to this important process and we encourage the Committee to reach out to Uber's public policy team with any additional lines of inquiry.

Sincerely,

A handwritten signature in black ink, appearing to read "Polly Epov".

Polly Epov
Public Policy and Government affairs

