

Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2024

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Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2024 (Qld)

Submission to the Education, Employment, Training
and Skills Committee, Queensland Parliament

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Who we are

The Australian Lawyers Alliance (ALA) is a national association of lawyers, academics and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual.

We estimate that our 1,500 members represent up to 200,000 people each year in Australia. We promote access to justice and equality before the law for all individuals regardless of their wealth, position, gender, age, race or religious belief.

The ALA is represented in every state and territory in Australia. More information about us is available on our website.¹

The ALA office is located on the land of the Gadigal people of the Eora Nation.

¹ www.lawyersalliance.com.au.

Introduction

1. The ALA welcomes the opportunity to have input to the Education, Employment, Training and Skills Committee ('Committee') of the Queensland Parliament on the Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2024 (Qld) ('Bill').
2. The ALA has been involved in consultations in the lead-up to the introduction of this Bill into the Queensland Parliament and we note some amendments were made after stakeholders provided feedback on the Consultation Draft of the Bill. The ALA's recommendations for amendments needed to the Bill can be found in our submission dated 21 March 2024.² That submission from the ALA also outlines in detail the history from 2018 to present regarding the 'gig economy' and its workers, as well as what ALA members see as a simple legislative solution that has long been supported by all stakeholders.
3. ALA members consider that the current drafting of the Bill does not allow sufficient clarity around access to statutory benefits for gig workers, statutory rights which the ALA considers to be of vital importance for gig workers and their families. Gig workers should have the same access to medical treatment, and other statutory and common law benefits when they are injured at work as all 'traditional' workers in Queensland have.
4. The ALA's submission will thus focus primarily on the proposed amendments to section 11 of the *Workers' Compensation and Rehabilitation Act 2003* (Qld) ('WCR Act'), including as outlined in clause 24 of the Bill.

The changes proposed by the Bill

5. Queenslanders have access to the strongest workers' compensation scheme in Australia – except gig workers, who are excluded from this scheme and who will continue to be excluded if the current proposed amendments to the definition of "worker" in the WCR Act remain unchanged.
6. We note that workers' compensation benefits in Queensland include access to timely treatment, rehabilitation and return to work assistance. In addition to this, and perhaps most

² See: Australian Lawyers Alliance, Submission to the Workers' Compensation Regulatory Services (Office of Industrial Relations, Queensland), *Consultation Draft Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2024* (21 March 2024) <www.lawyersalliance.com.au/documents/item/2693>.

importantly, workers' compensation benefits in Queensland include lump sum compensation to families/dependents if a worker is tragically killed in the course of their employment.

- a. In 2023 we saw the tragic death of Uber driver Scott Cabrie, killed in the course of his work in Hervey Bay, Queensland.³ In cases like this, any children or other dependents of the deceased – even if they are dependent on the deceased's earnings – do not have access to any workers' compensation benefits.
7. The current changes proposed by the Bill only allow for an *option* for the Queensland Government to regulate *if* Federal legislation is passed later this year. The ALA contends that there is no valid reason that the wording of the WCR Act cannot be changed now to allow a gig worker to be classified as a "worker" under the WCR Act and, in doing so, to provide clarity and certainty from the day the Bill is passed.
8. The ALA submits that this definitional change should simply allow that those who undertake gig work are considered workers for the purpose of receiving workers' compensation statutory and common law benefits in Queensland.
9. With regard to the above, the ALA makes the following recommendations for changes to how the amendments to section 11 and Schedule 3 of the WCR Act should read. We submit that these changes should be drafted and passed now; there is no reason for delay on this matter.

Recommendation:

That the proposed amendments to section 11 of the WCR Act concerning who is a worker, as presented in clause 24 of the Bill, should read as follows (please note: the highlighted text indicates additions and edits by the ALA):

Amendment of section 11 (Who is a worker)

(1) A **worker** is –

(a) a person who—

(i) works under a contract; and

(ii) in relation to the work, is an employee for the purpose of assessment of PAYG withholding under the *Taxation Administration Act 1953* (Cwlth), schedule 1, part 2-5; or

³ Jake Kearnan, Lucy Loram, and Grace Whiteside, 'Outpouring of grief for Scott Cabrie, allegedly murdered by teens while driving Uber', *ABC News* (online, 14 February 2023) <www.abc.net.au/news/2023-02-14/grief-for-uber-driver-allegedly-murdered-by-passengers/101969694>.

(b) a person who is

- (i) an employee-like worker, or road transport employee-like worker, under the *Fair Work Act 2009* (Cwlth) to whom a minimum standards order, minimum standards guidelines or a collective agreement applies under that Act, chapter 3A; or
- (ii) prescribed by regulation to be a worker because they are engaged to perform work in the same or similar circumstances to a person mentioned in subparagraph (i) whether or not an instrument mentioned in subparagraph (i) applies.

Recommendation:

That the proposed amendments to Schedule 3 of the WCR Act concerning who is an employer, as presented in clause 59 of the Bill, should read as follows (please note: the highlighted text indicates additions and edits by the ALA):

Amendment of sch 3 (Who is an employer in particular circumstances)

- (9) A person is the employer of a person who is a worker under section 11(1)(b) if the person is—
- (i) a regulated business under the *Fair Work Act 2009* (Cwlth) who is covered by the minimum standards order, minimum standards guidelines, or a collective agreement that applies to the worker under that Act, chapter 3A; or
 - (ii) prescribed by regulation to be an employer of a worker under section 11(1)(b)(ii).

The need for urgent reform

10. Gig workers in Queensland are currently not equal under the law when it comes to workers' compensation rights and the ALA submits that there is no tangible reason why this ought to be the case. The common law has not kept pace with the growth and complexity of the gig economy and, in the view of the ALA, a legislative remediation of the situation is imperative.

11. The ALA submits that if the Queensland Government resolves to wait for the Federal Government to put in place legislation defining a gig worker, then Queensland will no doubt need to wait to see the impact of those federal reforms before the Queensland Government would initiated and undertake another process for the drafting of and consulting on Queensland's own regulations.

12. While all of that takes place, ALA members are concerned that Queensland will see more serious injuries and, tragically, more deaths – more serious injuries where ‘workers’ are left without a proper and reasonable safety net; more deaths where families are left without a loved one, and no monetary compensation to ease the burden. The ALA contends that legislative reform in Queensland to the WCR Act is urgently required in order to extend workers’ compensation rights to gig workers and to ensure that those workers and their families in Queensland are protected.
13. Further, increases in precarious work and contracting, and the increasing use of technology in the allocation of work all magnify the effects of poor employment practices. This includes the exploitation of the most marginalised and vulnerable workers – examples include young workers, visa workers, and those seeking to re-join the workforce. The ALA submits that this underscores the need for Queensland to legislate now for gig workers.
14. The ALA contends that participation in a workers’ compensation scheme will inevitably see an increased focus on safety for gig workers. Not only will gig workers have access to adequate compensation under amendments to the WCR Act (as discussed above), but those workers will in turn be working in safer conditions.
15. The reality for gig workers is that they have no safety net if they are injured at work. If an Uber driver, a Menulog delivery person, an Airtasker is earning an income to pay their living expenses and provide for their family they have no adequate protection if they are injured.
16. Some larger gig platforms, such as Uber, have some optional coverage. However, that coverage falls far short of that provided by the workers’ compensation scheme in Queensland. Such opt-in policies do not provide access to adequate rehabilitation and treatment costs, ongoing contribution towards wages for a sufficient period, nor adequate lump sum compensation in the tragic event of a death. These are vital rights – rights which should have been in place long ago for gig workers in Queensland.
17. The ALA notes that when recommendations to regulate the gig economy were made in 2018,⁴ there was strong support from employer groups. Employers who pay workers’ compensation premiums for their workforces are placed at a comparative disadvantage to gig platforms

⁴ See: Professor David Peetz, *The Operation of the Queensland Workers’ Compensation Scheme* (Report, 27 May 2018) <<https://cabinet.qld.gov.au/documents/2018/Jun/Rev2WC/Attachments/Review.PDF>>.

whose business models are designed to not meet obligations, including workers' compensation.

18. Amending Queensland's legislation now will benefit injured workers in the gig economy and their family and dependents, but it will also 'level the playing field' for employers who are doing the right thing and providing a safe and regulated workplace.

Legislating the 'unknown' and scheme sustainability

19. The ALA acknowledges that there may be concerns about legislating the gig economy and what the impact may be on a sustainable and affordable workers compensation scheme.
20. However, we submit that those concerns are not meritorious.
21. Scheme stability concerns are not supported by the numbers. Although we know that the gig economy is growing, data from the Australian Bureau of Statistics demonstrates that less than 1 per cent of the overall workforce is retained in the gig economy.⁵ A 2019 survey found that 7.1 per cent of people had undertaken some work via a platform in the preceding 12 months.⁶ Even if the figure is closer to 5 per cent, the numbers are still small – noting that the Australian workforce is around 14 million people and 5 per cent of that is 700,000. We note that Queensland has 20.4 per cent of the Australian population.⁷
22. Therefore, at its highest, legislating to include gig workers in Queensland's workers' compensation scheme would mean coverage for maximum another 150,000 people in Queensland.
23. Insurance schemes like WorkCover have – in Queensland and internationally – always balanced the premium setting framework to risk. This is an opportunity for WorkCover Queensland to garner more premium income. With gig 'employers' having more data than any other employer ever about 'gig workers', then the ALA submits that it would not be difficult to do proper analysis and set premiums at the right rate.

⁵ Australian Bureau of Statistics, Digital platform workers in Australia, (Web Page, 13 November 2023) <www.abs.gov.au/articles/digital-platform-workers-australia>.

⁶ Premier of Victoria, 'Revealing the true size of Australia's gig workforce' (Media Release, 18 June 2019) <www.premier.vic.gov.au/revealing-true-size-australias-gig-workforce>.

⁷ Queensland Treasury, Queensland Government, *Population growth highlights and trends, Queensland* (15 December 2022) <www.qgso.qld.gov.au/issues/3071/population-growth-highlights-trends-ql-2023-edn.pdf>.

24. The ALA submits that the time for Queensland to legislate is now. Since the size and complexity of the gig workforce will only grow, it is prudent to do something now – before the problem becomes too great to tackle and before the human impact is even more intolerable.

Recommendation:

That the Committee urges the Queensland Government to legislate now to address extending workers' compensation rights to gig workers in Queensland through the WCR Act.

Why relying on the Fair Work Act does not and will not provide adequate coverage

25. The current draft of the Bill references the *Fair Work Act 2009* (Cwth) (*'Fair Work Act'*). The amendments to the *Fair Work Act* that are reference in the Queensland draft Bill have been passed by the Commonwealth Parliament and come into effect on 26 August 2024.
26. The ALA contends, however, that relying on the Fair Work Act provisions as a 'bridge' to the Queensland legislative rights is severely inadequate.
27. The current wording of the Queensland Bill would mean that in order for any gig worker to have rights, that a 'group' of gig workers for a certain platform would have to take steps to put in place a minimum standards order, or collective agreement. The ALA notes that this is not a simple process.
28. This process first requires some collective action, then it requires co-ordination and an application to the Fair Work Commission. This application then has to be granted. At best, *if* this all occurs, it would only apply to a certain group – for example, 'Uber Eats drivers'. It would not confirm rights for all gig workers of a certain category. The ALA also notes that these minimum standard orders or collective agreements would be subject to change – they could be altered and they could be revoked.
29. Then, *if* all of the above occurs, there would need to be further regulatory steps by the Queensland Government.
30. This whole process, *if* it goes to plan, would take many months (if not years) each and every time a certain group of gig workers took that initial step.

31. Every time a gig worker was injured, it would be a lengthy process just to confirm that these several steps had taken place and/or that any Fair Work order was current.
32. No other group of workers is subjected to jump through these hoops to gain access to fair workers' compensation in Queensland. The ALA submits that this situation would be inequitable, would cause significant frustration for gig workers across Queensland, and is simply inadequate. Gig workers would have no certainty or clarity regarding workers' compensation rights in Queensland at all.
33. If the Queensland Government is not prepared to put a standalone definition of gig worker in the WCR Act, then the bare minimum is to ensure some equitable access to workers' compensation through the amendments to the current wording of the Bill proposed by the ALA earlier in this submission (see pages 6–7).
34. The ALA calls on the Queensland Government to undertake an updated Regulatory Impact Statement (RIS) process regardless of the terminology in the final Bill, as the last RIS undertaken was in 2019.⁸

Conclusion

35. The Australian Lawyers Alliance (ALA) welcomes the opportunity to have input to the Education, Employment, Training and Skills Committee regarding the Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2024 (Qld).
36. The ALA is available to provide further assistance to the Committee on the issues raised in this submission.



Sarah Grace

President, Queensland Branch Committee

Australian Lawyers Alliance

⁸ Office of Industrial Relations, *Consultation Regulatory Impact Statement: Workers' compensation entitlements for workers in the gig economy and the taxi and limousine industry in Queensland* (2019) <<https://cabinet.qld.gov.au/documents/2019/Jun/WCgig/Attachments/RIS.PDF>>.