

Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2024

Submission No: 7
Submitted by: Maurice Blackburn Lawyers
Publication:
Attachments:
Submitter Comments:

13 May 2024

Committee Secretary
Education, Employment, Training and Skills Committee
Parliament House
George Street
Brisbane Qld 4000

By email only: EETSC@parliament.qld.gov.au

Dear Sir/Madam,

We welcome the opportunity to provide feedback in relation to the Committee's review of the *Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2024* (the Bill).

Maurice Blackburn Pty Ltd is a plaintiff law firm with 34 permanent offices and 30 visiting offices nationally throughout all mainland States and Territories. Our Queensland practice consists of 14 permanent offices and 8 visiting offices across rural, regional and metropolitan centres. The firm specialises in road injuries, work injuries, medical negligence, abuse law, employment and industrial law, dust diseases, superannuation (particularly total and permanent disability claims), negligent financial and other advice, and consumer and commercial class actions. The firm also has a substantial social justice practice.

Maurice Blackburn congratulates the Queensland Government on bringing forward this long-awaited Bill. We have continuously advocated, over a number of years, for the extension of workers' compensation coverage to gig economy workers across the country.

Queensland has been at the forefront of discussions around gig worker access to statutory workers' compensation schemes since the landmark Peetz review of the operation of the Queensland workers' compensation scheme in 2018.¹ Recommendations 10.1 and 10.2 of that review read as follows:

Recommendation 10.1: The coverage of the Act should be redefined to include any person engaged via an agency to perform work under a contract (other than a contract of service) for another person. This would exclude employees of licensed labour hire businesses and employees of firms that engage contractors, and specify that it applied where at least two parties were in Queensland at the time the work was undertaken.

Recommendation 10.2: Intermediaries or agents who engage any person to perform work under a contract (other than a contract of service) for another person should be

¹ https://www.worksafe.qld.gov.au/__data/assets/pdf_file/0021/24087/workers-compensation-scheme-5-year-review-report.pdf

required to pay premiums, based normally on the gross income received by the intermediaries or agencies.

While recognising that the Commonwealth has a role to play in determining the minimum standards for those in the broader gig economy, we believe that the recommendations from the Peetz Review were pivotal in starting a national conversation about achieving appropriate employment conditions for independent contractors.

For example, following the Peetz review, this matter also featured in the 2021 Interim Report of the Senate Select Committee on Job Security.² Recommendation 6 from that inquiry reads:

Recommendation 6: The committee recommends that the Australian Government works with state and territory governments to lead the reform of state-based workers' compensation schemes so that they extend to platform workers, regardless of their visa or work status, and require platform companies to pay workers' compensation premiums for these workers.

Queensland's national leadership in this area was further demonstrated through the conducting of a consultation on a Regulatory Impact Statement on this issue in 2019.³ The outcomes of that RIS process, we believe, underpinned the Government's stated commitment to ensuring gig workers access to workers' compensation in the 2020 Queensland State election.

Thus we see the development of the current Bill as being the result of many years of consultation and commitment from the Government to ensure that the most vulnerable workers, in the most precarious of employment circumstances, enjoy the same levels of protection as other workers.

Unfortunately the Bill, as presented, falls short of achieving the worthy outcomes envisaged throughout the development period. Disappointingly, the Bill seeks only to legislate an option for the Queensland Government to act if Federal legislation is passed. Contrary to the ideal of Queensland playing a national leadership role in ensuring all workers have access to the same protections when injured at work, in effect the Bill unnecessarily abdicates the rights of Queensland workers to decision makers at the federal level.

To our mind, there is nothing stopping the Queensland Government from proposing a change in the definition of 'worker' in the *Workers' Compensation and Rehabilitation Act 2003* (the WCRA) to include gig workers – regardless of what's happening at the federal level. This is what we, and those we serve, hoped the current Bill would achieve.

Maurice Blackburn has read the submission to this inquiry provided by the Australian Lawyers' Alliance (ALA). In it, they recommend some adjustments to the Bill which would better satisfy the desired policy outcomes. We commend their submission to the Committee.

Part of Maurice Blackburn's advocacy on this matter has centred around our view that there is a degree of urgency to this issue. Waiting for movement at the federal level means accepting that this issue receives a high priority amongst their crowded legislative agenda. This could take considerable time, and that has consequences for Queenslanders. To illustrate:

- i. Delays will fail to reduce the incidence of injury

²https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Job_Security/JobSecurity/Interim_Report/session?id=committees%2freportsen%2f024635%2f75899

³ Ref: <https://cabinet.qld.gov.au/documents/2019/Jun/WCgig/Attachments/RIS.PDF>

Any delay in having gig workers covered means an increased possibility of death or injury to those workers. Entities whose workers are covered by statutory compensation schemes have a vested interest in ensuring that their workplace health and safety policies and processes are up to scratch. Failure to do so may result in higher premiums and greater reputational damage. This is particularly acute for entities engaged in higher risk activities.

ii. Delays will disadvantage more injured workers

Any delay increases the likelihood of injured workers receiving inadequate compensation for their work related injuries. While some platforms offer some degree of private insurance coverage, the benefits available are vastly inferior to statutory schemes.

The table below offers a thumbnail sketch of the differences between coverage through Queensland’s statutory scheme, and the insurance scheme offer by Uber.⁴

	Statutory Scheme	Uber
Coverage	<p>A personal injury arising out of, or in the course of, employment if the employment is a significant contributing factor to the injury.</p> <p>May include an aggravation of a pre-existing condition, a disease, a medical condition, loss of hearing, death, a psychological condition and journey claims.</p> <p>No fault.</p>	<p>Covers an <i>accident</i> causing bodily injury. There are 26 discreet categories of injuries listed in the policy. No coverage for any sort of soft tissue injury: whiplash, tendons, ligaments etc. The injuries listed are almost exclusively fractures.</p> <p>‘Accident’ is defined as an identified, sudden and external event that happens by chance and could not have been expected from the perspective of the Covered Person.</p> <p>This definition potentially adds an element of fault and therefore refusal of the claim by the insurer.</p>
Income Replacement	<p>Based on pre-injury earnings:</p> <ul style="list-style-type: none"> - average of earnings for 12 month pre accident. - Includes overtime and bonuses. - Referred to as Normal Weekly Earnings (NWE) <p>Total incapacity payments</p> <ul style="list-style-type: none"> - 85% of NWE for up to 26 weeks of incapacity - 75% of NWE 26 – 104 weeks of incapacity - Incapacity for longer than 2 years if 15% degree of impairment 75% of NWE 	<p>Coverage for income loss (Part C, temporary total disablement).</p> <ul style="list-style-type: none"> - \$150 per day - Up to a maximum of 30 days / maximum benefit of \$4,500 <p>Additional benefit “bodily injury – income supplement benefit”:</p> <ul style="list-style-type: none"> - if the driver is admitted to hospital within 5 days of the injury \$1,500 is payable for up to 4 nights in hospital and \$5,000 for 5 or more nights. <p>Note - often hospital admissions occur in the months post accident</p>

⁴ Derived from: https://www.uber.com/au/en/drive/insurance/injury-protection/?_gl=1%2Ap1k9eo%2A_ga%2AMTA5NzUwNDI4MC4xNzE1MzEzMzk3%2A_ga_XTGQLY6KPT%2AMTcxNTMxMzM5Ny4xLjEuMTcxNTMxMzQxOS4wLjAuMA..&uclid_id=ffdcd71-8d4d-44da-8d4f-72fcaefc0a4c

	otherwise single pension rate	(eg for surgery), rather than immediately. That would not be covered.
Permanent Impairment	<ul style="list-style-type: none"> - Lump sum varies depending on impairment assessed - Up to \$431,125 (indexed annually) - Additional lump sum available for gratuitous care for workers who have an impairment of more than 15% - up to \$431,125 (indexed annually) 	<p>Benefits are categorised within the 26 discreet categories of injuries listed in the policy. They range from:</p> <ul style="list-style-type: none"> - \$500,000 for death or quadriplegia, to - \$600 for a simple fracture to the neck, skull or spine to \$150 for a fracture, to - Fracture of the hand or foot.
Medical Expenses	<ul style="list-style-type: none"> - No caps on medical and hospital treatment - Medical treatment stops when the worker is not likely to improve with further medical treatment 	<ul style="list-style-type: none"> - Medical and like expenses up to a maximum of \$5,000
Death Entitlements	<p>Payment of funeral expenses</p> <p>Dependency payments as follows: (Payments based on QOTE (Queensland full-time adult's ordinary time earnings) currently \$1,760.70)</p> <ul style="list-style-type: none"> - \$712,854 for the family members; plus - \$19,068 for a dependant spouse; plus - \$38,101 for each dependant family member under 16 or student; and - \$140.86 pw per child to spouse while children are under 6 yrs; - \$176.07 pw per dependent child/family member while children/family members under 16 yrs or a student. 	<p>\$15,000 coverage for funeral expenses</p> <p>Dependency payments as follows:</p> <ul style="list-style-type: none"> - \$500,000 lump sum - \$25,000 to any spouse or child up to a maximum of \$75,000 (ie if more than 3 dependents no further payments)

What this might look like in practice:

Sam is 32 years old, and took up food delivery for Uber when he was made redundant from his previous workplace during the pandemic. It helps support his young family while he continues to look for more stable work. One evening, Sam suffered a back injury while making a delivery.

If Sam had been directly employed by the restaurant, he would have been entitled to access to statutory workers compensation benefits including treatment, loss of wages and return to work assistance. He would be able to retrain and find an alternate job working at a reduced capacity, but would have still had an income in the months following his injury, meaning his family wouldn't have to sell their house.

Because he was only covered by Uber's opt-in insurance, he was only entitled to defined benefits as a contribution of his wages for a reduced period, plus a contribution towards his treatment. This left him significantly out of pocket and needing to fund physiotherapy himself just so he was able to get through the week helping around the house with his children. There was no retraining and no return to work co-ordinator to assist Sam during his recovery.

Sam and his family now face an uncertain financial future after they lose their house and Sam is uncertain what his future career entails, solely on the basis of the employment arrangement he was under.

The stark differences between the coverage of the statutory scheme and the insurances offered by platforms may mean that workers like Sam will be increasingly reliant on the public purse via other safety nets, and lead to increased reliance on already stretched charitable services.

iii. Delays will exacerbate competitive disadvantage

Any delay will mean that those businesses which actually provide stable, non-precarious employment opportunities will continue to have to operate on an uneven playing field. They are forced to compete with platforms which pay no premiums, and do not have the same regulatory pressure to ensure their workers are safe.

Maurice Blackburn is delighted that the Queensland Government has now acted upon its promise to bring forward draft legislation aimed at ensuring equality for all Queensland workers, in the event that they are injured at work. Unfortunately the Bill, as presented, is a poor reflection on the nation-leading stance taken by the Government.

We urge the Committee to consider making the following recommendations as part of its report from this inquiry:

1. That the adjustments to the Bill suggested by the ALA be adopted, in order to better satisfy the desired public policy outcomes, and
2. That the Government to undertake a fresh and targeted RIS process on the provisions of the Bill, regardless of the final terminology adopted.

Please do not hesitate to contact me and my colleagues on [REDACTED] or via [REDACTED] if we can further assist with the Committee's important work.

Yours faithfully,

[REDACTED]

Michelle James
Principal Lawyer
Maurice Blackburn