

## **Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2024**

**Submission No:** 9  
**Submitted by:** Uber Australia  
**Publication:**  
**Attachments:**  
**Submitter Comments:**

# Uber

Submission to the  
Education, Employment,  
Training and Skills  
Committee on the *Workers'  
Compensation and  
Rehabilitation and Other  
Legislation Amendment Bill  
2024*

Uber welcomes the opportunity to provide a submission to the Queensland Education, Employment, Training and Skills Committee's Inquiry into the *Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2024*.

Uber's mission is to reimagine the way the world moves, for the better. We started in 2010 to solve a simple problem: how do you get access to a ride at the touch of a button? More than 32 billion global trips later, we're building products to get people closer to where they want to be. By changing how people, food, and things move through cities, Uber is a platform that opens up the world to new possibilities.

The first Uber ride in Australia was taken in 2012, and ever since we have played a significant role in transforming the way Australians move, eat, shop and earn. In fact, more than 150,000 people now earn with the Uber app each month and more than 50,000 Australian merchants are partnered with the Uber Eats platform. In 2023, across the Uber and Uber Eats platforms, Australians earned more than \$4.2 billion driving or delivering with Uber.

Uber believes drivers and delivery people on our platform should be supported to carry out their work safely. Uber remains focused on its long-standing commitment to raise the bar for safe rideshare and delivery. Uber provides every driver and delivery person in Australia with free, specialised insurance that covers certain accidents and injuries, as well as income support, should something go wrong while they're on a trip and we believe there should be a national obligation on all platforms to do the same, with specified minimum coverage levels.

We strongly oppose the proposed amendment to the definition of "worker" in section 11 of the *Workers' Compensation and Rehabilitation Act 2003* (WCR Act) for the following reasons:

- The reform process undertaken and this subsequent Bill has not taken into account alternative public policy solutions such as insurance.
- Platforms workers will benefit from a national approach to reform.
- The Bill fails to take into account the unique nature of platform work and no attempt has been made to understand the incompatibility of elements of a system designed for employees as they would apply to gig workers.
- The Bill has been put forward prematurely without proper consultation.
- The Bill provides no certainty for businesses wanting to invest in Queensland

It is our view that a nationally consistent approach to safety, via platform funded insurance, is the best way to ensure a high standard of safety across the sector.

## The value of flexible work

It's clear that for a growing number of people, flexibility and independence in work are increasingly important priorities. Work that is flexible to people's schedules — in particular family life or studies — has traditionally been hard to find.

We've conducted research with third parties and we've spoken directly to drivers and delivery people to understand what works and what needs to be improved for our partners.

Research undertaken by Ipsos<sup>1</sup> in 2022 found:

- Flexibility is crucial to rideshare and delivery drivers: More than 9-in-10 (91%) driver and delivery partners say they would not keep driving or delivering if it didn't offer flexibility.
- Drivers want policymakers to preserve flexibility: More than 9-in-10 (93%) driver and delivery partners want any changes to laws regarding app-based driving and delivering to protect their flexibility.
- Drivers prefer to be independent: Two-thirds (66%) of driver and delivery partners prefer independent contractor status over employee status.

Uber supports a collaborative approach to policy reform which acknowledges the importance of the gig economy to hundreds and thousands of Australian workers, as well as the unique attributes of platform work and the benefits the gig economy provides for merchants and consumers alike.

We are committed to working with governments, driver partners and delivery people, and key stakeholders in the industry to ensure that we continue to raise the bar for Australia's gig economy, and that any reform solutions put gig workers at their core. We have demonstrated this through our work with the Commonwealth Government to ensure the Closing Loopholes Bill that delivers minimum standards for gig workers is fit for purpose for the industry and addressed the concerns of the incoming Albanese Government.

It is vitally important that any reforms considered by the Queensland Government do not negatively impact this way of working that is so highly valued by gig workers across the state. At a time when cost of living is increasing and the opportunity to earn supplemental income is beneficial to so many, this vital earnings opportunity should not be threatened by legislative reform.

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<sup>1</sup> <https://www.uber.com/en-AU/newsroom/ipsosau/>

## Safety first

Safety is fundamental to Uber and built into our technology. Work, health and safety (WHS) laws in Australia are intended to ensure everyone has a role to play in promoting safety in every workplace. Platforms, like Uber, have a responsibility to our drivers and delivery people, riders, consumers and the community to keep people safe. Uber has led the way for the industry with a number of long-standing policies, processes and features built into our technology to support the safety of everyone who uses our app. These include:

- Insurance and support package: Since 2018 Uber has provided every driver and delivery person in Australia with free, specialised insurance that covers certain accidents and injuries, as well as income support, should something go wrong while they're on a trip.
- Fatigue management: Our Fatigue Management approach involves a range of controls that include education, flexibility and hard in-app features, for example our Driving Hour Limit feature forces drivers and delivery people to take an 8 hour break once they've been online on the app for 12 cumulative hours without an 8 hour (or longer) break. In addition, there is a feature which acts to educate and prevent drivers and delivery people from completing trips on multiple consecutive days in a row.
- Driver and delivery person education modules: Before anyone can offer a ride or make a delivery with Uber, they must complete education modules to help keep them safe.
- Public Safety Team: We have a team of former law enforcement professionals who are on hand to work with police at all times, respond to urgent issues and assist during an investigation
- Incident Response Team: Everyone using the Uber app has the ability to report any concerns or issues to us via the app that goes to our 24/7 support team. This is a team of dedicated Incident Response experts trained to handle safety incidents.
- Personal protective equipment: Since 2018, we have provided free safety gear (outer garment + bicycle safety kit), in 2022, we added a free delivery bag to two-wheel delivery people. In July 2023, we released a redesigned set of high vis and high quality safety PPE gear made available for free to all new and active bicycle, scooter and motorbike delivery people.
- National Work, Health and Safety Committee: Following a period of consultation with delivery people across the country in 2023, Uber Eats has established a National Work, Health & Safety Committee. The Committee is a formal way for Uber Eats to continue to consult with delivery people in relation to matters that affect their health and safety.

As detailed in our previous submissions on the Review of the WCR Act and mentioned above, drivers and delivery partners using the Uber/Uber Eats app are supported in the event they are injured on a trip. The protection package extends benefits to our partners through an insurance agreement with Chubb for on-trip accidents, providing different types of payments if they are injured including payments if they are unable to work following an injury. This insurance cover is provided to delivery and driver-partners at no cost. Importantly, the policy provides fast response and payment to delivery and driver-partners when something goes wrong. We strongly believe this model is the most appropriate and fit-for-purpose for gig workers because it supports gig workers to resolve claims quickly and efficiently.

We note similar insurance arrangements are now held by many other platforms in food delivery and rideshare and we are proud of our legacy as an industry leader in this space.

## **National Food Delivery Platform Safety Principles**

Uber has proactively worked with industry experts, governments, partners and peers to help strengthen safety practices in the online food delivery industry and in July 2021 we were pleased to sign on to the National Food Delivery Platform Safety Principles, a world first for workers in the national food delivery sector.

Developed by food delivery platforms in consultation with peak industry body Ai Group, these Principles outline the standards of practice that food delivery platforms have committed to, to help ensure the ongoing safety of food delivery people. The Principles focus on safety practices including training and information, delivery equipment and personal protective equipment, support, standards and policies, consultation, and incident reporting and investigation.

Within the Principles, we draw attention to 3.6 which commits the signatory parties to:

*Insurance coverage: Provide free, automatic insurance protections that cover delivery workers for accidental injuries that arise while delivering on food delivery platforms.*

Importantly these Principles take a nationwide approach to ensure accountability across every state in Australia. We firmly believe a nationally consistent approach to safety in the sector is the best way to ensure a high standard of safety.

Each signatory platform has pledged to adopt and implement these standards, while continuing to raise the bar through their own initiatives, technology and research. Importantly, the Principles include an accountability mechanism, with a review of the Principles and platform compliance, facilitated by Ai Group.

## **Concerns with the development of the Bill**

Our comments are limited to the proposed amendment to the definition of “worker” in section 11 of the WCR Act:

*4 Amendment of s 11 (Who is a worker)*

*Section 11(1)–*

*omit, insert–*

*(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 purposes of assessment of PAYG withholding under the Taxation Administration Act 1953 (Cwlth), schedule 1, part 2-5; or*

*(b) a person who is–*

*(i) a regulated worker under the Fair Work Act 2009 (Cwlth) to whom a minimum standards order or collective agreement applies under that Act, chapter 3A; and*

*(ii) prescribed by regulation to be a worker.*

Uber is deeply concerned that the process leading to the introduction of the Bill failed to canvass all policy solutions available. The above amendment stems from recommendations arising out of 5 year reviews of the Act and a Regulatory Impact Statement. Respectfully, we submit that throughout this process, there has been a lack of appetite to consider how insurance presents a viable, and in our view, superior solution to the policy problem that is designed specifically with gig workers in mind and is consistent for all gig workers across Australia. There is broad industry support for mandatory platform-funded insurance and many platforms are opting to hold insurance voluntarily. This fit for purpose benefit should not be overlooked.

The Bill has been put forward prematurely and provides no certainty for businesses wanting to invest in Queensland

As noted in the Decision Impact Analysis Statement (DIAS)

*“considerable complexity exists in ensuring the scheme is able to accommodate extended workers’ compensation coverage for gig workers. While the WCR Act currently extends to individuals who are not employees, the WCR Act operates most efficiently in relation to traditional employment arrangements. The scheme’s ability to meet the following key issues is uncertain and would require significant additional consultation with gig economy participants to resolve.”*

Those key issues identified in the DIAS are: multi-apping, setting of wages, coverage of work-related injury and common law access.

The DIAS acknowledges the work of Safe Work Australia in attempting to develop a national policy response, which the Queensland Government is participating in. It goes on to say:

*“To ensure these issues are thoroughly considered, and in the interests of promoting a national consistent approach, it is preferable that Queensland continues to participate in this forum to inform the development of a considered policy position for gig workers. If Queensland were to extend workers’ compensation coverage at this time, it would risk legislating a position that may ultimately be inconsistent with approaches taken in other Australian jurisdiction.”*

The Government has been unable to answer fundamental questions about how this policy would be implemented and the impact on platforms and the availability of platform work. As noted above, the existing scheme works best in relation to traditional employment, not the gig economy. We would go further to assert the existing workers compensation scheme is not fit for purpose for the gig economy and concepts fundamental to workers compensation are inconsistent with the flexibility inherent in gig work. This is canvassed in more detail below.

No public policy case has been made for putting forward this amendment before addressing the major challenges identified by the Government. This is poor public policy making, and it provides no certainty for businesses wanting to continue to grow and invest in Queensland. In short, the proposed amendment is premature.

We note the comments of Minister Grace when she introduced the Bill into the Parliament:

*“To provide the ability to respond to these determinations, the Bill inserts a narrow head of power into the act that enables a regulation to prescribe who is a ‘worker’ and ‘employer’ where an individual has been determined to be a ‘regulated worker’ by the*



*Fair Work Commission. Therefore, this amendment will only take effect once the Fair Work Commission begins to exercise these new powers and determinations are made. This approach allows the Queensland government to be appropriately guided by decisions at the national level on the legal status of gig workers which will provide certainty and consistency for industry.*

*If the Government proposes to make a regulation, comprehensive public consultation along with regulatory impact analysis will be undertaken to ensure there are no unintended consequences. This would include: consideration of the terms of the relevant minimum standards order; minimum standards guideline or collective agreement made by the Fair Work Commission; any existing insurance arrangements in that industry; and impacts on scheme sustainability, regulatory burden, compliance costs and other impacts on business and industry.”*

While we welcome the Government’s recognition that significant further work needs to be done, we submit this is putting the cart before the horse. A regulatory impact analysis should be undertaken before legislation is passed. The impact of shoehorning the gig economy into workers compensation on scheme sustainability should be known before legislation is passed. Finally no compelling reason has been provided to industry as to why this Bill should be passed before the federal reforms have been fully implemented through the creation of minimum standards for gig workers.

We appreciate the commitments made within comments, however the amendment as drafted provides no such guarantee in legislation. We submit that it is far more sensible to ensure the myriad of issues have been solved before amending legislation.

## **CHALLENGES WITH WORKERS COMPENSATION**

### **The Bill fails to take into account the unique nature of platform work.**

One of the strengths of the recent federal industrial relations reform was the recognition by the Federal Government that gig work is fundamentally different to employment, and that gig workers themselves do not want to be treated the same.

Minister Burke noted:

*“Most people who work on these platforms don't want to be employees. They like the flexibility of knowing that they can hop on the app when they've got a spare minute and see if there's some work available. If they go off for a few weeks, it doesn't matter.*

*They like that flexibility. Sometimes they have a secure job and they're doing this for extra money on top. There can be a whole lot of reasons. Sometimes they're using a friend's vehicle and it's not always available. There's a host of different circumstances here, but neither the platforms nor the workers want to be turned into employees.<sup>2</sup>*

Digital platform work is not comparable to employment and workers compensation, as a scheme broadly designed for traditional employment, is not fit for purpose for independent contractors undertaking gig work. Noting the complexity of the workers compensation system, we have set out a few examples below to highlight areas of the scheme which would lead to unintended consequences in the gig economy.

## **Eligibility for claims**

Under the *Workers' Compensation and Rehabilitation Act 2003*, individuals covered are eligible for compensation for an injury or illness if:

- it arose out of, or in the course of, the worker's activities and the activity was 'a significant contributing factor' to the injury
- It was sustained on a journey between work and home
- It was sustained on a work break

Each of these eligibility criteria present particular difficulties in relation to the way drivers and delivery people perform work.

Firstly, it would be difficult to determine whether an accident occurred during the course of work. Drivers and delivery people are free to log on to the Uber/Uber Eats app at any point with no obligation to accept any trip that is sent to them. Drivers and delivery people may be online with the Uber or Uber Eats app while in their own homes, or performing any range of other tasks. Many drivers and delivery people also engage in multi-apping - that is, they are online for more than one platform at the same time, choosing which trips to accept from which platform. They also may be online and driving around with no intention to accept any immediate trips - this is the benefit of the gig worker and platform relationship - there is no obligation to accept work nor is there any control exerted over the gig worker. If time a gig worker was online but not on a trip was considered to be a 'work activity' and platforms therefore liable for injuries that occur in this time, the flexibility gig workers value would be threatened as platforms would have to consider measures to limit how and when a gig worker could come online.

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<sup>2</sup> Speech - Kingsley Laffer Memorial Lecture, the University of Sydney, 25 August 2023, accessed [here](#)

Further, there are no ordinary or scheduled breaks for users of the app (subject to a fatigue tool), which is what the Act appears to contemplate when it talks about "ordinary recess" so it is unclear how this time could be designated. Uber also does not ask drivers or delivery people to attend a workplace at a particular time or on particular days.

Concerningly, the Government has been unable to explain how the workers compensation system will account for multi-apping. It would be difficult to determine if a worker is covered, and if so, which platform would be liable. If platforms were at risk of being responsible for workers compensation claims for gig workers who were also online with our competitors, it may be necessary to reconsider if the practice of multi-apping is sustainable, thereby risking the flexibility that gig workers value so much.

## **Calculation of Premiums**

It is unclear how the existing approach to premium calculations could be applied fairly to platform companies like Uber. Workers compensation premiums are currently calculated by multiplying an employer's bill for payments to relevant individuals by their premium rate which in turn is predominantly determined by claims history. While we have outlined above the safety measures we have introduced, and how safety continually evolves on our platform, platforms do not exert the same control over drivers and delivery people as employers exert over employees. It is therefore incongruent to calculate premiums in the same way. This is particularly true when combined with the inability to enforce return to work obligations, which is set out in more detail below.

## **Rehabilitation, Suitable Duties and Return to Work**

These elements of the Queensland Workers Compensation scheme have been designed with a traditional employer/employee relationship in mind and are unsuitable for an on-demand gig economy setting.

It is important to note that the Commonwealth's Closing Loopholes legislation preserves the independent contractor status of employee-like workers and is clear that the relationship is not one of employment.

As independent contractors, drivers and delivery people have no obligation to accept any trip that is sent to them, even once logged on to the app. If gig workers are shoehorned into the existing Queensland workers compensation scheme, presumably they would have obligations to participate in a return to work program, however platforms will have no levers to compel an injured worker to participate in their return to work. Platforms risk being

exposed to spiralling claims costs, with no ability to manage these costs in the same way an employer can. This example highlights the fundamental incompatibility between the employment-based workers compensation scheme and independent contracting in the gig economy.

In regards to suitable duties, the nature of the relationship is only really suited to the specific purpose of driving or delivering - at the discretion of the driver or delivery person. Platforms cannot offer suitable duties in circumstances where gig workers have complete control over what driving or delivering jobs they choose to accept and when they choose to undertake them. Requirements to do so would fundamentally disrupt the relationship between gig workers and platforms, and threaten the ways of working within platform work that gig workers appreciate so much.

## **Fraud**

The unique nature of gig work leads to a heightened risk of fraud. Drivers and delivery people are able to undertake trips on the Uber/Uber Eats app after meeting the onboarding requirements, which is able to be undertaken digitally. There is no face to face engagement nor a traditional physical workplace. This ability to earn extra income quickly and easily is valued by gig workers but also leaves platforms and the workers compensation scheme more exposed to fraud.

Without eligibility requirements for instance, only a few days of on-app engagement by a gig worker could establish the basis of earnings used to calculate potentially years of payments for injury or alleged mental injury. As noted above, it would be extremely difficult to execute a typical return to work program, meaning the gig worker could receive benefits for years with no accountability.

Should gig workers receive workers compensation entitlements as they currently exist, we could see increased incentives to make inflated or fraudulent claims. Benefits for gig workers who are injured while using ridesharing or delivery platforms to earn complementary income would be calculated based on the worker's total compensation, including earnings from other sources from gig work and primary occupations. The prospect of receiving an outsized and long-lasting stream of benefits over a period of years would likely create an incentive for making fraudulent claims.

The Government has not yet indicated how the workers compensation system would manage this increased fraud risk, to ensure platforms are not exposed to unfeasibly high claims costs.

## **Impact on Business**

If passed, the amendment proposed creates uncertainty and inconsistency across industries and businesses, and is anti-competitive insofar as it allows for the inclusion of rideshare but not taxi into the workers compensation scheme. We note, in the reform process to date, mandatory insurance was considered as an option for the taxi industry but not for rideshare. There is no sound policy reason to treat point to point competitors so differently and to impose significant increased costs on one party but not another.

To date, there has been no attempt to resolve issues of potential double or triple coverage, and no consideration of the substantial and unjustified costs for platforms and significant difficulties for both platforms and regulators and authorities in managing the complexities arising from the contracting relationship between gig workers and platforms.

Should the Queensland Government choose to make this amendment and use this power, it is likely the increased costs would impact the cost of our services in Queensland, further adding to the cost of living pressure.