

Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2024

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About the TWU

The Transport Workers' Union ('TWU') represents over 70,000 men and women in Australia's aviation, oil, waste management, gas, road transport, passenger vehicle and freight logistics industries. Of those transport workers represented, approximately 20,000 of those workers are owner drivers and contractors.

With over one hundred years' experience in conducting Australia's passenger and freight task, the TWU has been active in establishing industry standards that improve the lives and safety of transport workers, their families and the community. This work has included a long history of establishing innovative regulatory systems. These systems have helped to ensure that owner drivers, also often referred to as contractors, and all other transport workers have access to fair rights and entitlements in their workplaces.

The TWU also represents workers in the transport sector of the emerging 'gig economy' which includes rideshare, food delivery and more recently, parcel delivery couriers. Since 2018, the TWU has been leading a campaign to ensure that transport workers in the gig-economy are provided access to safe, fair and ethical work standards.

Introduction

The TWU welcomes the opportunity to have input to the Education, Employment, Training and Skills Committee ('Committee') on the Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2024 (Qld) ('Bill').

The TWU has contributed to the stakeholder consultation on the Bill, supported by the Queensland Council of Unions.

Furthermore, the TWU has contributed to both the 2017 and 2022 reviews of the Queensland Industrial Relations Act and in both cases, supported the inclusion of gig workers in the Queensland Workers' Compensation Scheme. In both reports, the inclusion of gig workers in the Scheme has been recommended by the reviewers. It has also been an election commitment at both the 2017 and 2020 elections by the Labor Government.

The TWU supports the proposed Bill, however, holds significant concerns that the proposed legislation places too high and unnecessary a threshold on exploited gig workers, relies on a new Federal system that is not yet in effect, is too reliant on Ministerial discretion and may take many years before any inclusion of road transport or other forms of gig workers are included in the scheme. During this period of delay, gig workers will be seriously injured and die without adequate coverage or the provision of funding for remaining family.

It is critical that the draft legislation is amended to provide a swift and certain pathway for gig workers, who are some of the most exploited workers in our economy.

The Problem

Gig workers are highly exploited, highly dependent workers that have little or no protections under Australian law.

These workers have been intentionally misclassified as ‘independent contractors’ by gig companies, but are in reality, highly dependent, highly controlled workers who face constant risks of ‘deactivation’ for raising safety, workplace or pay issues. Most of these workers have limited understanding of their rights and Australian law. Research also shows that 57% of gig workers earn below minimum wage.¹

What is not considered in headline reported income is that workers must also pay for vehicle maintenance expenses such as fuel, insurance, and vehicle depreciation, as well as other costs like phones and phone bills.

In a recent study by the Mickel Institute, which involved the largest ever survey of gig workers, half of all gig workers surveyed have experienced work-related stress, anxiety, and mental health issues. One in seven experienced sexual harassment, while over a third have been physically injured while working.² 62 per cent of gig workers state they’ve lost income due to being sick or injured.³

Due to the low wages and job insecurity, workers are pressured to take risks and cut corners. Research shows that 51 per cent of gig workers have felt pressured to rush or take risks to make enough money or protect their job, which puts both worker safety and customer safety at risk.⁴ This figure was higher within the food delivery sector (56 per cent), which is a particular concern considering at least 15 food delivery riders have been killed while working in Australia since 2017.

The lack of entitlements of these workers has a ripple effect across the economy. Injured workers inevitably end up on employment or other Government assistance for longer and are a burden on the public health system. Furthermore, by exploiting these workers, companies such as Amazon and Uber receive a competitive advantage which undermines traditional employment and secure jobs in the transport sector.

Whilst some of these issues need to be addressed within the Federal system, the Queensland Government is in a unique position to provide increased security for these workers and their families by making a small number of changes to the current Bill.

Capturing these workers inside the Workers Compensation Scheme will incentivise the primary contractors to improve the safety and conditions of their workplaces – or face higher insurance premiums.

There has been some commentary that these additional workers may somehow threaten the existing scheme. The Workers Compensation Scheme has a proven ability to effectively price risk via insurance premiums for what is a small group of workers in the overall workforce.

Problems with the Current Bill

The Bill presents a number of significant challenges that may unnecessarily delay or deny access to protection for gig workers.

¹ Mickel Institute Queensland: ‘Tough Gig Worker Perspectives on the Gig Economy.’ April 2023. Available at: <https://mckellinstitute.org.au/research/reports/tough-gig-worker-perspectives-on-the-gig-economy/>

² Ibid, pg 7.

³ Ibid, pg7.

⁴ Ibid, pg21.

Firstly, the Bill as worded requires a ‘minimum standards order’ (MSO) from the new Road Transport division of the Fair Worker Commission, and then requires the Minister to prescribe the group of workers under regulation.

The Road Transport Division of the Fair Work Commission will not be in force until six months from the assent of the Closing the Loopholes Bill, which received assent in February 2024. This means that the earliest an MSO could be taken to the Commission would be August 2024.

If an application were to be filed with the consent of a principal contractor such as a major gig company, this would still take weeks or months to be ratified by the commission and may be challenged by other principal contractors active in the industry. This means that any minimum standards order may take years to be approved and likely longer to come into force.

Furthermore, different minimum standards orders may apply to different sectors of the road transport gig economy. This may divide different work groups based upon who can be the fastest group to receive an order. This may lead to sub-standard orders being agreed to, in order to be quickly secured and a patchwork of coverage for workers conducting similar work.

Under the proposed arrangement, where an MSO will subject a gig company to the additional expense of Workers Compensation premiums, some gig companies will likely fight all orders brought to the Fair Work Commission. This will present a perverse incentive for companies not to engage in the jurisdiction or attempt to bargain with workers and their representatives. This will likely create further delays for these highly vulnerable workers.

Additionally, any decision of the relevant Minister to designate under regulation would require a regulatory impact statement, which would add significant time to the process. This risk, combined with the risks outlined above, threaten delaying any outcome for years, with devastating impacts for these workers and their families in the meantime.

The Solution

The TWU agrees with the Australian Lawyers Alliance submission, consistent with prior submissions from the Queensland Council of Unions, in relation to the legislative drafting solution that could provide a simple solution to the issues raised. The TWU strongly recommends that the Bill be amended as below:

Amendment of s 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
 - b. a person who is:
 - (i) ~~a regulated worker~~ 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; **and 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.**

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 ~~to which~~ a minimum standards order, minimum standards guidelines, or a collective agreement that applies to the worker** under that Act, chapter 3A; **and or**
 - ii. prescribed by regulation to be an employer of **the a worker under section 11(1)(b)(ii).**

Conclusion

Gig workers are some of the most exploited groups of workers within the Australian and Queensland economy. They currently are not covered if they are injured at work, and their families receive little or no support if they are killed at work.

Currently, the Queensland and Australian Government are paying the price for the injuries of these workers, their treatment, and the impacts it has on their families if they are killed at work. It is only fair that the large gig companies profiteering from a lack of standards for workers' pay their fair share and contribute to the Workers Compensation Scheme. The level of risk these workers present should be priced into the insurance premiums in the same way this currently applies to employees.

Gig workers cannot wait any longer. The Bill in its current form will create unnecessary delays. During this time more workers will be injured and killed without cover and without protection for their families.

The Government must fix this Bill by removing the impediments to these workers accessing the scheme. The drafting supported by a number of stakeholders would provide a simple and straightforward solution.