

QUEENSLAND COUNCIL OF UNIONS

SUBMISSION

TRANSPORT AND OTHER LEGISLATION
(PERSONALISED TRANSPORT REFORM) AMENDMENT
BILL 2017



**Queensland
Council of Unions**

The Queensland Council of Unions (QCU) is the peak union council in Queensland. The QCU is in receipt of the submission made by the Transport Workers Union of Australia Queensland Branch (TWU) in relation to this Bill. That TWU submission is comprehensive and this brief submission is made in support of the TWU submission. It is therefore not intended to traverse all of the material covered by the TWU submission, but rather to emphasise some of the major points made by that submission.

The TWU submission also relies upon a report undertaken by Commissioner Brown as Queensland Workplace Rights Ombudsman in 2010, *Report on Investigation into the Taxi Industry in Queensland by Queensland Workplace Rights Ombudsman*. The QCU likewise relies upon that report because it sets out a thorough analysis of the structure of the taxi industry and the conduct of the principal players within that industry. It is useful to describe the lot of a taxi driver within that industry. Its timing means that it only just predates the age of digital disruption within the passenger transport industry that was caused by the arrival of Uber ride sharing. However, in our submission much of that which describes a taxi driver will describe the arrangement between Uber and its drivers, save for the level of regulation.

Like the TWU, the major concern of the QCU is the welfare of the workers within the industry, in particular the drivers. Driving a taxi is well described as low paid work when one considers the number of hours required to attend work which is often different to that of time spent actually driving and deriving an income. Driving a taxi is also a dangerous job that is associated with long shift operating a vehicle which, itself, exposes any road user to an element of risk. It follows that the more time an individual spends on the road the more likely they are to be involved in an accident. In addition to the ordinary risk associated with road transport, taxi drivers are exposed to a full range of anti-social behaviours especially those associated with passengers engaging in excessive consumption of alcohol and consuming drugs that

adversely affect their behaviour and judgement.

The TWU submission argues in favour of taxi drivers being treated as employees for all purposes. The TWU submission describes the bailment relationship that has been upheld in a number of federal court decisions. The QCU supports this submission but recognises some jurisdictional issues associated with implementing such a policy. Accordingly, if this objective is unable to be achieved in this particular process there are a number of alternative strategies that could be considered by the Queensland Government in order to improve the working conditions of taxi drivers. The Queensland Government may also feel disposed to make submissions to the Australian Government for matters that are beyond its jurisdictional control.

UNFAIR CONTRACTS

Section 471 of the *Industrial Relations Act 2016* empowers the Queensland Industrial Relations Commission (QIRC) to amend or declare void (wholly or partly) a contract for service where such a contract is unfair. This provision has existed in the Queensland jurisdiction for a considerable amount of time and was introduced to mirror legislation from the New South Wales parliament.

This power was intended to address the exploitation of a class of workers who because of their working arrangements were not considered employees and therefore not able to be afforded the protections enjoyed by employees under various industrial laws and instruments. This class of worker might be best described as “*dependent contractors*” in that they technically are not employees but their relationship with their principal cannot be in any way considered as independent.

In these arrangements, it is not a contract entered into between two equal parties but rather an unequal power relationship akin to that of employer and employee. The “*dependent contractor*”, as the name suggests, may not in reality be free to accept or reject work and their arrangements may make providing their services to other principals impractical or even impossible. Section 471 recognises this potential by providing

guidance as to when the QIRC might exercise this power, amongst other things, “*having regard to the relative bargaining power of the parties to the contract*”. The Queensland parliament saw the need to empower the QIRC to even the balance between the “*dependent contractor*” and his or her principal where such a contract is unfair.

If one is to describe the relationship between the bailee driver and licence holder for the taxi, that relationship is as contemplated by section 471. The driver is the price taker and has little capacity to influence the arrangements entered into between them and the licence holder. Moreover, the working of 12 hour shifts prohibits the driver from safely working for any other principal. All of these factors are well described in the *Report on Investigation into the Taxi Industry in Queensland* by the Queensland Workplace Rights Ombudsman. It follows that this power of the QIRC should be applicable to taxi drivers. If there is any doubt as to the application of section 471 of the *Industrial Relations Act 2016* to taxi drivers, then that Act should be amended to ensure application to taxi drivers.

In addition, the QIRC’s ability to conciliate on general matters in dispute, broader than the fairness of contracts, could assist drivers within the passenger vehicle industry. This extension of jurisdiction could be achieved by broadening the application of section 471 to bring the work of bailees and Uber drivers under the terms of the Act.

PUBLIC SAFETY

The QCU supports strong public safety laws, particularly when they apply to the protection of a worker in a workplace. The *Report on Investigation into the Taxi Industry in Queensland* by Queensland Workplace Rights Ombudsman established, in our submission, that a taxi driver is a worker and that a taxi is a workplace. This, in our view, provides support for taking measures to ensure the safety of drivers.

A range of measures have rightly been imposed upon the licensees of taxis. For example, all taxis were required to install safety cameras. The installation of safety cameras was not without

some expense but are essential in providing both a safe system of work and ensuring public safety. The holding of a taxi licence also brings with it a range of obligations in terms of safety audits and roadworthy tests on vehicles. The TWU submission provides detail as to the current obligations placed on taxi licensees that does not apply to Uber drivers. This inconsistency places considerable risk to public safety and the safety of drivers and creates an unfair competitive disadvantage, in terms of costs associated with operating a taxi as opposed to Uber.

The QCU position is that if it was essential for taxis to meet certain standards in the interest of public safety, it defies logic to not apply those same measures to Uber. Otherwise it cannot be said that public safety is a priority in terms of passenger transport.

OTHER CONDITIONS

As previously mentioned it is our submission that a taxi driver is a worker and taxi is a workplace for all intents and purposes. We have above advocated for the power of the QIRC to intervene in unfair contracts established between driver and principal but would also suggest that there are two other fundamental conditions that no Australian worker should do without. Workers’ compensation and superannuation provide a safety net for workers during their working life and into their retirement. It is completely incongruous to allow one class of worker to be excluded from these fundamental provisions that are enjoyed by the rest of the workforce. It is our submission that workers compensation premiums and superannuation contributions should be paid on behalf of taxi drivers regardless of their status as bailees.

IMPACT ON WORKERS

As previously stated, the *Report on Investigation into the Taxi Industry in Queensland* by Queensland Workplace Rights Ombudsman provides a graphic description of the taxi industry including the many disadvantages to taxi drivers. Much of the discussion concerning taxi drivers is reminiscent of the recent public outrage in response to the

Fair Work Commission decision to cut penalty rates for retail and hospitality workers working on Sundays and public holidays. Taxi drivers, like those retail and hospitality workers, work much of their time when the vast majority of the community are enjoying time with their family and friends at social and sporting events. Taxi drivers however do not receive any compensation or recognition for working those unsociable hours.

Twelve hour shifts are the norm for taxi drivers. Twelve hour shifts are excessive by comparison to the rest of the community and again the remuneration of the taxi driver is not the subject of any particular recompense for working these long shifts. In fact, the taxi driver is subjected to a potentially very low hourly rate of pay because of time spent not driving but waiting for work or returning from jobs. As previously discussed, these long shifts also create an increased risk for the driver by virtue of extended periods of time on the road, not to mention the potential of driver fatigue.

This already dangerous work environment is coupled with the challenges associated with passengers engaging in excessive consumption of alcohol and consuming drugs. All this occurs within an isolated workplace where the taxi driver might be alone and confronted by many assailants. This environment can easily generate a feeling of lacking any control over the work environment for the driver. Where other workers might be faced with abusive and intoxicated members of the public, they may well be accompanied by workmates, some specifically trained to deal with such situations. As important as surveillance mechanisms are, they do not provide an immediate protection for the driver.

In summary, the taxi driver is paid poorly to work in an increasingly dangerous environment. The QCU urges the Queensland parliament to take the steps necessary to alleviate the disadvantages to taxi drivers by whatever steps are available to it through this process. The QCU supports the TWU submission that seeks to improve working conditions and workplace health and safety for this group of vulnerable workers.