

Office of Industrial Relations:

Submissions invited – possible extension of workers' compensation coverage for certain gig economy workers, and bailee taxi and limousine drivers.

...While the five-year review did not make specific recommendations regarding the taxi and limousine industry, the review did report on the need to reduce inequality in the personalised transport industry. Consultation was undertaken with the taxi and limousine industry to develop options to extend workers' compensation coverage for bailee taxi and limousine drivers in Queensland...

...As a key industry stakeholder, we invite you to have your say about this proposal. The Government will have regard to issues raised in written submissions responding to this RIS. The RIS and information about how to respond can be found at getinvolved.qld.gov.au/gi/

We encourage you to share information about the RIS with your members and stakeholders...

Dear Sir/Ms,

RE: Taxi drivers injured at work – SOLUTIONS PROVIDING ALL DRIVERS with WORKCOVER:

In relation to the above extract sent to me from the WorkCover Review, please may I make the following submission in relation to WorkCover and the taxi industry on behalf of the **Consultative Committee for Workplace Fatalities and Serious Incidents**? The opinions expressed are my own.

From my personal conversations with taxi and Uber drivers in comparison with verbal submissions made by those from the taxi industry during a meeting of the WorkCover Review, I am uncertain as to whether or not the WorkCover Review is in possession of the full facts at this time. I do not have the ability to ascertain the facts myself. I declare here that I have no affiliations with anyone in working in the taxi or ride share industries and I have no personal interest in any of the outcomes that may result, other than that they should be fair and reasonable.

Taxi and ride share drivers provide essentially some of the same services as bus and train drivers: transporting members of the public in safety and also giving those who have consumed alcohol or mind altering substances a way of leaving the car at home (let's not pretend this doesn't happen). Unless we are saying that taxi and ride share drivers are somehow lesser beings than their bus and train driver peers who are covered by WorkCover, then there needs to be WorkCover coverage for all drivers covering a fare paying journey. I think we need to stop focussing on avoiding who gets coverage and how paying for it can also be avoided. I have therefore come up with a number of possible solutions that may be worthy of consideration and which could work for all.

Assaults by passengers and public policy:

The significant one here is assaults by passengers. Somebody has to take the drunks home if we don't want them driving, but there needs to be some injury cover for all drivers injured at work, if at all possible. It appears many WorkCover Review participants agree with this, but there is disagreement about who should fund such a scheme and its coverage. It is a matter of public policy that drink driving is not encouraged and that drinkers should make alternative arrangements to get home. It is an inevitability that some drunk fare paying passengers will not always behave as they should and that drivers will on some occasions be assaulted – a workplace injury in the performance of a service to the public, by any description. Indeed, there was no dispute amongst participant stakeholders that passenger assaults are one of, if not the most, significant risks for drivers' workplace injuries. Bus drivers and train drivers are often protected from passengers by some sort

of screen or are located in a separate compartment. Car drivers are not usually afforded any protection from passengers at all.

Who is an employed driver?

The issue arose of the definition of an employed driver compared to a self-employed driver – the latter being responsible for their own injury insurance, if at all. Uber presents a significant problem here. There were comments from taxi industry employer organisations that some drivers took some fares through the company and others were ‘hail and ride’ fares over which the company had no control, nor did they receive any benefit. So the driver is effectively both employed and self-employed – who is going to pay what proportion of any premium? From what I have been told by taxi drivers historically, I understood that taxi firms had an interest in all fares to some degree, even if only for a commission. However, this may be looking at the problem from the wrong way around, as there is no need to examine this if another method can be sought to cover all drivers.

Self-employed drivers with workplace injury insurance:

Taxi business stakeholders highlighted that some bigger taxi firms sometimes mandate self-employed workers to cover themselves with personal injury insurance. It was particularly interesting that the taxi industry employers/ reps stated that such self-insured compulsory policies were rarely claimed on by taxi drivers (I think they may have been comparing with proportions of claims on WorkCover policies) and that therefore WorkCover insurance wasn’t necessary for such workers. I believe that this submission could inadvertently have highlighted that such policies may be valueless to the policy holder in practice.

Valueless workplace injury self-insurance:

Some years ago I had a mandated workplace injury insurance policy myself, as a self-employed worker for a government project in construction. The primary contractor mandated this and required a copy of the policy, although they did not appear to care what that policy was, other than that it meant they could legitimately state they were not obliged to provide the worker with workplace injury insurance. A policy that actually provided cover in the event of an injury was prohibitively expensive and many insurers would not offer one at all. My policy was valueless and the excess and detriment of making a claim outweighed any benefit – plus the increased premium following a claim could make claimant uneconomic to insure again, ending the working relationship.

Still, these insurance policies meet the requirements for the primary business/contractor to give out the work and it’s an easy loophole to take advantage of. In relation to submissions by taxi industry business representatives as to the infrequency of claims being made by self-employed taxi drivers, well of course they’re not going to make a claim if doing so could mean the self-insured worker can’t work again come next premium renewal. Why would taxi drivers self-insured for personal injuries be less likely to be injured at work than employed ones? That simply doesn’t make sense and may serve only to add weight to my argument here. And how on earth is a low paid taxi driver supposed to be able to afford a premium that would adequately cover them for work related injuries? They are not cheap, so folk living hand to mouth won’t be doing that – hence the loophole is self-sustaining: no policy = no work. So get yourself any policy that ticks the boxes on paper at least – I know I did. I doubt these kinds of policies are limited to one particular industry because the insurers generally provide insurance across the industries.

Solutions:

1. An affordable WorkCover policy be made available to self-employed drivers and other workers in similar situations. I have not checked, but I understand such an arrangement may already be available from WorkCover in some circumstances. If the take up is low, it may just be unaffordable. Industry in general receives cost benefits through utilising large numbers of small contractors and self-employed workers, who take responsibility for their own administration costs, have little or nothing in the way of employment rights and are easily dispensable, unlike employed workers. For this benefit, industry in general could subsidise the cost of these premiums as spread across industry as a whole.
2. The law then needs to be changed to mandate those insuring self-employed workers for workplace injuries to offer at least the minimum level of benefits comparable to those of the WorkCover self-employed policy. No insurer can argue that this is WorkCover unfairly competing in the workplace injury insurance market by dictating terms of insurance. Because if their policies do not provide adequate benefits or are actually valueless in practice now, it is likely they should not be selling them at all in the first place.
3. The law needs to be changed to mandate all self-employed workers to have a workplace injury policy. I know of a worker who was cut across the face by another worker wielding an electric saw. There was no WorkCover claim but the scar was permanent. It is likely this workplace injury was never included in any workplace injury statistics – there obviously has to be a reason for somebody to go through the inconvenience and scrutiny of reporting such an event in the first place.
4. For the taxi and ride-share industries, a simple levee could be applied to every fare. If the taxi industry cannot cover this levee or passengers would not be prepared to accept the full increased cost of the fare, then industry as a whole must subsidise it as a matter of public policy. I do not think any WorkCover Review participant would endorse drink-driving and would agree that for many, after a night out, a taxi or an Uber is the only viable way to get home. That could include those working in other industries at business functions where alcohol is served as well. A direct car service is an essential service to the public which also ensures that the less responsible members of society do have an easy and viable alternative to drink driving. This keeps us all safe on the roads, whether or not we regularly use a ride service ourselves. But those providing us with these services need protection in the event that they suffer the not insignificant risk of a workplace injury and in particular, injuries from assaults by members of the public.
5. Public transport such as busses and trains are subsidised. But I wouldn't have my wife get on either late at night after the pubs are emptying out. If I couldn't pick her up myself and there wasn't a taxi or ride service available, she wouldn't be going. So maybe funds could be sought from the same sources that subsidise public transport workers (who almost certainly are all covered for WorkCover as employees) to subsidise the cost of WorkCover premiums for everyone working in the taxi and ride share industries as part of a fair and holistic approach to public transport.

If what I suggest above could reflect some valid issues, the frequency and cost of reported injuries amongst drivers would almost certainly increase if my measures were adopted in some way. But is the possible alternative scenario whereby these workers may have a workplace injury, but it does not get reported and they get no workplace injury cover at all a better one? To me, that's a bit like saying "*It's just a hazard of the job, always has been, always will be. Suck it up princess*". Taxi drivers have feelings too...

Yours faithfully,
David Miles