



OLA

**Submission in response to the Consultation
Regulatory Impact Statement (RIS)**

**Workers' compensation entitlements for workers in the gig economy
and the taxi and limousine industry in Queensland.**



Preface

Ola welcomes the opportunity to contribute to a productive discussion around the appropriate reach of the Queensland Workers' Compensation and Rehabilitation Act.

Ola is an online transport platform, established in 2011, and headquartered in Bengaluru, India. We currently operate in 169 cities across 4 major markets, India, Australia, New Zealand and the UK, with Australia becoming Ola's first international market in February 2018.

The Australian market was specifically selected by Ola due to its stable economy, ease of doing business, legal framework based on Commonwealth foundations and its diverse, cosmopolitan and progressive culture. Since its Australian launch Ola has rapidly expanded to include operations in 7 major cities across Australia - Melbourne, Sydney, Canberra, Brisbane, Gold Coast, Perth and Adelaide.

Today, Ola employs over 3,000 people and provides almost 2 million rides a day around the world. In Australia, Ola is primarily focused on consumer rideshare and has around 60,000 registered drivers, with approximately 6,000 of those based in Queensland.

Ola's goal is to provide people with sustainable, personalised mobility. We do this by harnessing technology to connect people with matching needs - drivers with underutilised vehicles to consumers who need transport. Ola is also conducting research in the mobility economy and electric mobility space, and determining what role we can play in transforming the future of mobility on a global scale. In working towards this goal, we actively collaborate with both the public and private transport service sector to achieve user-focused outcomes, supported by machine learning and advanced data analytics.

Ola's approach has always been one of responsibility - responsibility in terms of compliance with regulations, with payment of taxes and above all, responsibility to our drivers, users and the public. Towards this end, Ola is committed to initiating and participating in discussions, and to working with policy makers, regulators and other stakeholders to ensure that rideshare continues to benefit its users and the communities in which we operate.

As a means of incentivising use of the platform, Ola offers free personal accident insurance to drivers. We note that this insurance offers a maximum period of income protection that is 50% more generous than the sample insurance described in the RIS (45 days vs 30 days).

The benefits of rideshare to Queenslanders

Analysis by Roy Morgan has found that 19.5% of Queenslanders used rideshare in 2018, up from 9.1% in 2016. In contrast, the number of Victorians using taxis only fell by less than 4%.¹ This indicates that rideshare is servicing a significant body of people whose transport needs were not being met by existing for-hire car services, and has arguably become an important source of utility to Queensland consumers. This effect was quantified by Deloitte, in a study commissioned by Uber in 2016, which estimated the overall net benefit to consumers of UberX to be \$81 million.

¹ [Uber drives forward while taxis stall and new market entrants begin to accelerate](#) Roy Morgan, April 2019



The further expansion of the rideshare sector and the entry of new platforms such as Ola will arguably expand the size of that benefit and utilise competitive pressure to ensure that drivers and riders capture more of that value.

Submission overview

Ola is supportive of the need for Queenslanders to be suitably protected at work, both in relation to occupational health and safety considerations to prevent injuries, and in relation to insurance protection when injuries do occur. However we do have a number of concerns relating to this RIS, which appears in a number of cases to have not adequately considered the fundamental nature of the gig economy, nor the diversity of activity within that umbrella term, and which has not fully explored or explained the practical application of the Act in such a complex environment.

Specifically, we note that the RIS:

- 1. Provides insufficient justification for the inclusion of some types of gig work in the proposed extension to the exclusion of others;**
- 2. Fails to establish an evidential basis for the extension of workers' compensation to those segments of the gig economy;**
- 3. Fails to consider the full range of utility provided by the gig economy to its participants, including flexibility and control of work, and whether these elements would be eroded by the imposition of a workers' compensation scheme designed for industries which do not offer such benefits;**
- 4. Would likely require platforms to exert much greater degree of control over working conditions than is currently the case;**
- 5. Does not set out a model for payment and accountability for part-time participants who may use a variety of platforms; and**
- 6. Would unduly increase the administrative burden on intermediary platforms, who are not otherwise responsible for functions related to employment for users of their platforms.**

This submission will explore each of these shortcomings in more detail.

Without seeking to predetermine whether the Government should seek to extend coverage of the Act any further within the gig economy, and if so, to what platforms and participants, Ola submits that the detail and consideration provided in this RIS is not sufficient to recommend the extension of the Act as currently proposed.

Appropriate segmentation of gig economy platforms

The RIS attempts to establish a dichotomy in gig work, between *“crowd work”, which typically involves an intermediary simply facilitating the introduction of two parties to a contract and interested parties bidding and negotiating their own contract terms* and *“work on demand”, which involves the intermediary not only facilitating the introduction of two parties, but maintaining control over important aspects of the work, including the price, standards and managing the workforce*”.

Ola submits that this distinction is arbitrary, and that platforms which would seem to fall into one category often share definitive characteristics with the other.



For example, crowd work platforms may exhibit control over the price of services offered. Airtasker does not post wage rates below minimum wage, and its policies have had a material effect on the wages being offered on its platform².

The nature of advertisements on crowd work platforms is also much more diverse than depicted in the RIS. Alongside the skilled workers cited are thousands of non-skilled crowd workers who complete physical tasks ranging from lifting sofas to entering data.

On the other hand, rather than being “wholly reliant on the intermediary” many rideshare drivers (who would presumably fall under the “work on demand” category in the RIS) work across multiple platforms and indeed multiple industries, fitting their rideshare in around their lives and reserving their labour when their time is better utilised elsewhere.

It is unclear precisely how these characterisations of the various parts of the gig economy relate to the scope of the proposed reforms, and particularly whether all crowd work platforms are intended to be excluded through classification as category 2(b), or whether some might fall into category 3.

What is also unclear is whether the RIS seeks to segment the gig economy based primarily on the level of control exerted on the contractual relationship between the service provider and the service recipient by the platform or whether the typical conditions applying to workers on that platform are the distinguishing factor.

If the former, the RIS is severely deficient in failing to distinguish between the levels of control exerted on the relevant contractual relationship by platforms within their designated category 3. The Fair Work Ombudsman³ and the Fair Work Commission (FWC)^{4,5} have ruled that the level of control exercised by Uber over this relationship is insufficient for it to be classed as anything other than an independent contractor relationship. In contrast, the FWC, in ruling that Foodora riders are employees, found that the platform had “considerable capacity to control the manner in which the applicant performed work”.⁶ Both of these platforms would appear to be grouped together in category 3, and subject to the extension of the Scheme, yet legally they have been found to exhibit significantly different levels of control over their users.

Similarly, the distinction between platforms to be included under the Act and those to be excluded is instead based on typical conditions applying to those using each platform, then the case to extend the Act to rideshare drivers is also unfounded. There is no credible evidence, based on actual earnings in an Australian context, to suggest that rideshare drivers are not earning sufficient returns to be able to self-insure for personal injuries that might occur in the line of their work on the platform – particularly when a number of platforms, including Ola, offer free, basic personal injury insurance to drivers as a way of incentivising them onto the platform.

The justification made by the RIS in this regard refers to reports of previous parliamentary inquiries which ascribe vulnerability to gig workers but at no stage establish it in the context of ridesharing. An example of

² Junor, A (2019) [Is Airtasker leading the way in gig labour standards?](#) University of NSW Business School BusinessThink, April 2019.

³ Fair Work Ombudsman (2019): [Uber Australia investigation finalised \(Media Release\)](#)

⁴ [Kaseris v Rasier Pacific \[2017\] FWC 6610](#)

⁵ [Pallage v Rasier Pacific \[2018\] FWC 2579](#)

⁶ [Kloogger v Foodora Australia \[2018\] FWC 6836](#)

this is its reference to the Queensland Government's 2018 submission to the Senate Select Committee on the *Future of Work and Workers*.⁷

This submission offers the unsupported assertion that *"cases where the traditional employer-employee relationship is claimed to be something other, e.g. one of independent contractor or gig employment, either by ignorance or design, often lead to the worker being responsible for their own superannuation and taxation, having no access to the entitlements of annual leave, sick leave etc., and payment at or below the rate that would be mandated by an industrial instrument in a traditional employment relationship."*

The excerpt above is not a definitive statement that all gig work, or even the concept of gig work, necessarily exhibits any or all of those attributes – it simply says that cases of this kind often lead to these problems. Yet in the RIS this submission is paraphrased to definitively attribute these characteristics to gig work.

The RIS also cites Professor David Peetz's identification of gig workers as a vulnerable workforce in the five-year review of the Scheme as justification for these reforms. Professor Peetz's analysis of gig economy pay in this review cited three studies: one from the UK which relies on self-reported earnings and has little relevance to the Australian context; and two which deal with crowd work, which has no relevance to rideshare and which may indeed fall outside of the scope of the proposed extension⁸.

It is clear that whichever factor is used to delineate this proposed extension of the Scheme – level of control or vulnerability – there is no apparent justification to support the inclusion of rideshare platforms when others are excluded.

Looking further afield for other measures which may warrant such a distinction, such as safety or the skill level of the workforce, is no more fruitful. There exists little visibility as to the safety and conditions of work sourced on bulletin board style platforms, and indeed many of these may encompass occupationally hazardous activities such as removal work. There is also no reason why the skills and personal equipment of rideshare drivers should be regarded as not sufficient to render them appropriate candidates for skilled contractor status. Sharefarmers, for example, either fall into or outside of the Scheme by virtue of the capital assets they employ in their work which are not necessarily of lesser value than rideshare drivers⁹.

Preserving utility in rideshare

Alongside the significant consumer surplus provided to consumers, rideshare provides utility to drivers that extends beyond monetary returns.

Given the highly variable nature of the work and hours involved, rideshare driving does not suit everyone. However, a study published in 2017 in the American Economic Review found that there was a significant tail of the workforce who valued flexibility so highly that they were willing to trade off pay in order to obtain

⁷ Queensland Government (2019): [Submission to the Senate Select Committee on the Future Work and Workers](#), February 2019

⁸ Peetz D. (2018): [The operation of the Queensland Workers' Compensation Scheme: Report of the second five-yearly review of the Scheme](#), Queensland Government May 2018

⁹ *Workers' Compensation and Rehabilitation Act 2003*

greater flexibility.¹⁰ These findings are supported by another study conducted in that year which found that if Uber drivers were denied the ability to adjust their labour supply to meet variable reservation wages, they would require 50% higher compensation to maintain the same level of supply.¹¹

The RIS, recognising the value placed on flexibility by gig economy workers, contends that the reform will *“support the flexibility offered by the gig economy (which is a strong driver of participation and job satisfaction of many gig workers), by not altering or limiting the way in which Intermediaries operate”*.

It also states that *“the reforms considered in this Consultation RIS are limited to workers’ compensation and personal accident insurance only, and do not seek to limit or otherwise restrict the way persons are engaged or the way work is undertaken in the gig economy or the taxi and limousine industry.”*

These intentions are commendable but unlikely to be accomplished. One of the objects of the Workers’ Compensation Scheme is *“encouraging improved health and safety performance by employers”*, which implies that the extension of the scheme will change how platforms operate in ways which materially affects the health and safety of drivers.

The RIS itself discusses the potential role of the Workers’ Compensation Scheme in encouraging platforms to intervene in the work of their drivers in the name of health and safety:

“An employer’s workers’ compensation premium plays a crucial role in encouraging a sharper focus on injury prevention and participation in rehabilitation and return to work. Workers’ compensation premium is directly linked to injury rates and work health and safety of the business; the safer a business’s work - the lower their premium will be.

“This nexus between safety and premium is a significant motivator to encourage improved health and safety performance. Intermediaries electing not to insure gig workers are not incentivised in this way to improve work health and safety, resulting a higher risk of injuries occurring compared to workplaces subject to workers’ compensation insurance.”

It is difficult to see how these aspirations for greater safety performance may be accomplished without increasing levels of control on the part of the platforms.

Safe Work Australia identifies a number of risks for transport workers which currently lie outside the control of platforms, including vehicle design and irregular hours. In addition, a number of other risks imply a duty to consider the driver’s physical condition, such as injuries from lifting weights and cardiovascular disease from inactivity.¹² Platforms currently do not select drivers or impose any kind of supervision of their physical condition.

If the Workers’ Compensation Scheme were extended to rideshare, platforms would necessarily need to exert control in these and other areas which to this point are outside of their purview. It is not hard to imagine platforms having to screen drivers for age and physical condition, in order that they are deemed fit to work, and also to create a base point from which subsequent health impacts may be measured. The

¹⁰ Mas, Alexandre, and Amanda Pallais. 2017. "Valuing Alternative Work Arrangements." *American Economic Review*, 107 (12): 3722-59.

¹¹ Judith A. Chevalier, M. Keith Chen, Emily Oehlsen, and Peter E Rossi (2017), "The Value of Flexible Work: Evidence from Uber Drivers," *Journal of Political Economy*, March 2017

¹² Safe Work Australia (2019): [Safety by Industry and Business - Transport](#), updated January 2019.



level of scrutiny relating to driver health would necessarily be quite high, lest the lack of other barriers to signing up as a driver attract bad actors seeking to obtain coverage for pre-existing conditions.

Under an extended Scheme, platforms may also start to give direction to aspects of the work carried out, such as the ergonomic settings in the drivers' vehicle and the frequency with which they must take exercise breaks, but currently the exclusive domain of the driver.

This could potentially compromise the nature of the rideshare relationship in the eyes of the law and jeopardise the flexibility inherent to the nature of the rideshare sector to the detriment of drivers, not to mention being completely unworkable for drivers who only work occasionally or for a short period of time.

One of the foundations for the rideshare sector is that drivers exert a high degree of control over the nature of their work, and research shows that this is valued by drivers. Ola is not supportive of reform proposals that would alter this dynamic.

Implementation

The RIS identifies potential issues with implementation that are to be dealt with at a future stage in the reform process, stating that *"actuarial advice would be obtained by WorkCover to more accurately assess the premium required to adequately fund the cost of extending workers' compensation"*.

Whilst obtaining expert opinion on this subject is advisable, it is impossible for Ola to support this proposal without further detail about the costs that would be associated with covering drivers who work irregular and unpredictable hours.

The RIS also seemingly fails to account for the fact that many drivers use multiple platforms, in proposing that drivers be covered for periods when *"a gig worker may cease work but continue to hold themselves available for further work without returning home"*. It was not explained which platform might be held responsible for Workers' Compensation during that period but it would appear to be difficult to determine, for example, in the case of a driver who overwhelmingly accepted rides on one platform and was involved in an accident forty minutes after accepting one ride on another platform.

Administrative burden

One of the reasons that rideshare has been responsible for a greater number of Queenslanders using personalised transport solutions is that they have been able to deliver these services at lower cost than previous alternatives. There is no evidence that this has taken place at the expense of drivers' earnings; in fact the opposite may be true.¹³

For this level of efficiency to continue it is important that rideshare platforms remain intermediaries, and not engage in more complex levels of administration which would be more commonly associated with employers.

¹³ A comparison may be made between [Alphabeta's recent analysis conducted for Uber](#), which found average driver earnings for Sydney to be \$21.00 net of costs and including a paid commute, and the \$7.55-\$14.82 per hour for bailee taxi drivers cited in [2012 research conducted by the Centre for International Economics](#) for the NSW Independent Pricing and Regulatory Tribunal.



Current arrangements made by Ola with regard to the personal accident insurance offered as a driver incentive suit this low-cost model, with responsibility for administration falling primarily with the insurer. In contrast, if drivers were to be brought under the Workers' Compensation Scheme the administrative burden to platforms would be significant. Our current operations are set up to deal with employment issues for a much smaller number of regular, full-time administrative employees, and given the large number of driver partners and the irregularity of their working patterns this additional burden is likely to be disproportionate to the total working hours of drivers actually brought under the WorkCover umbrella.

There are other aspects of the Workers' Compensation scheme that seem ill-fitted to a flexible rideshare model, such as the requirement for a rehabilitation and return to work co-ordinator. It is difficult to see how this concept might fit with an activity that the injured person might have only been performing intermittently, where there is no ongoing obligation at all and there may indeed be no intention on the part of that person to use the platform in the future.

Conclusion

Ola suggests that the extension of the Worker's Compensation Scheme according to the proposal laid out in the RIS may not be the best way to ensure the safety and income security of gig economy workers, and questions whether the available evidence actually suggests that the current system is deficient in the context of rideshare. To summarise:

- No evidence has been provided through this process that demonstrates that rideshare driver earnings are not sufficient to allow drivers to self-insure, especially since personal accident schemes offered as incentives by the platforms already extend to much of what would be covered by Workers' Compensation.
- No adequate justification in terms of level of control or vulnerability of rideshare participants has been made to support the extension of the Scheme to some forms of gig work and not to others. Inconsistencies are evident in the current delineation of platforms.
- Despite the proposal's intention to preserve flexibility in the gig economy, it is evident that in the context of rideshare the extension of the Workers' Compensation Scheme would necessarily entail a more intrusive level of control on the part of the platforms into the work of drivers.
- The proposal fails to adequately detail how irregular hours and multi-platform work would be accounted for in the application of the scheme to rideshare activities.
- The extension of Workers' Compensation to businesses which are fundamentally digital platforms, not large-scale employers, would entail significant administrative burdens for those platforms.

The issue of liability is an apt proxy for the issues inherent with this proposal. The RIS argues that one of the benefits of the proposal is that it indemnifies employers for compensation and common law damages under the Act— but platforms aren't employers and it's far from clear that they are liable for injuries occurring to riders or drivers in a similar manner to employers, absent negligence, in which case they would still be liable for damages under Queensland law even were the scheme to be extended.

We submit that a more appropriate objective for these sentiments, and the direction being pursued by Ola, is an effort to encourage and support gig workers in providing for their own insurance and ensure that they are being remunerated in a fashion that allows them to do so.