

Workers' Compensation and Rehabilitation Consultation Office of Industrial Relations
GPO Box 69
BRISBANE
QLD 4001

Submission by
QLD TAXI LICENCE OWNER'S ASSOCIATION INCORPORATED
Workers' Compensation and Rehabilitation Consultation
Office of Industrial Relations

Qld Taxi Licence Owner's Association Incorporated (QTLOAI) acknowledges that the Qld WorkCover scheme is designed to;

- Provide fair and appropriate benefits for injured workers or their dependants and persons other than workers, and in ensuring reasonable cost levels for employers;
- Ensure that injured workers or dependants are treated fairly by insurers;
- Provide for the protection of employers' interests in relation to claims for damages for workers' injuries; and
- Provide for employers and injured workers to participate in effective return to work programs,

But it respectfully reminds the Minister and the Qld Government that the Scheme comprises only one small component of the Government's overall responsibility to ensure that Qld workers and small businesses owners are all able to operate with fairness and viability throughout the wider Qld Landscape.

In recent years the words, "Fair Go", have been bandied out by the Qld Premier and her Government, along with the Prime Minister and the very many who have challenged for his position and have been uttered by just about every sitting member of Parliament. The problem from the community's perspective is that all of these people seem to think that the concept relates to "them getting a Fair Go", rather than to them giving workers and small business owners a "Fair Go".

Do you believe workers' compensation coverage should be extended to gig workers or taxi and limousine drivers?

From the viewpoint of the QTLOAI, any proposed changes to the WorkCover Scheme will only be acceptable if

1. They are enacted in a spirit and manner which makes "workers of all types" equal in entitlement and
2. That "responsible employers" are adequately and properly defined, such that those who bear the cost of cover, do not end up being anyone other than the end user of services, or at the very least, those who profit most from the services being offered.

The QTLOAI is;

- In favour of both Taxi and Rideshare Drivers being included in a definition of an "eligible worker", but only on the above provisos, and on the basis that all taxi drivers, whether they be owner drivers, set pay or Bailee drivers are included in the same level of cover that is afforded to all Rideshare Drivers.
- Of the belief that the use of a common everyday personal asset, such as a family car, hardly invokes a proper "significant tool of trade argument" that might ordinarily accompany a finding attached to who is or is not a genuine Contractor or Sub-Contractor.
- Of the belief that if the matter of employment classification for Rideshare Drivers were properly tested in jurisdictions higher than the Australian Fair Work Commission, Qld Rideshare Drivers may very likely be held to be common law employees. QTLOAI notes that in relation to their UK counterparts, this is the current view of UK courts and that in the UK, the question of whether a Rideshare Driver is an employee, is at the last level of appeal. QTLOAI further notes that many overseas jurisdictions, perhaps best exemplified by the U.S. State of California, are now endeavouring to adopt laws that are designed to shore up any doubts concerning worker protection and entitlement rights.
- Also of the view that, in Queensland, Rideshare companies may fall under the classification of labour hire companies and that *Labour hire* is simply another form of casual employment and one in which workers deserve

proper and equitable treatment. QTLOAI notes that the Qld Government has enacted new laws in relation to Labour Hire Companies, but is unaware as to whether Rideshare companies, if caught by them, actually comply with these laws.

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Uber

Uber tribunal judges criticise 'fictions' and 'twisted language'

Judges who ruled that Uber drivers are not self-employed make scathing assessment of the company



▲ Jo Bertram, Uber's regional general manager. Photograph: Felix Clay for the Guardian

Shane Hickey
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This article is over 2 years old

The employment tribunal judges who ruled that the Uber drivers are not self-employed and should be paid the “national living wage” were scathing in their assessment of the company. Among the most unequivocal sections of the judgment were the following:

Any organisation ... resorting in its documentation to fictions, twisted language and even brand new terminology, merits, we think, a degree of scepticism.

The notion that Uber in London is a mosaic of 30,000 small businesses linked by a common ‘platform’ is to our minds faintly ridiculous.

“ The notion that Uber in London is a mosaic of 30,000 small businesses linked by a common ‘platform’ is to our minds faintly ridiculous.

“ Ms Bertram [Uber’s regional general manager for the UK] spoke of Uber assisting the drivers to “grow” their businesses, but no driver is in a position to do anything of the kind, unless growing his business simply means spending more hours at the wheel.

Uber loses right to classify UK drivers as self-employed

Read more

“ Reflecting on the [Uber] case, and on the grimly loyal evidence of Ms Bertram in particular, we cannot help being reminded of Queen Gertrude’s most celebrated line: ‘The lady doth protest too much, methinks’.

“ The absurdity of these propositions [Uber’s arguments on the contract between drivers and passengers] speaks for itself.

“ We are satisfied that the the supposed driver/passenger contract is a pure fiction which bears no relation to the real dealings and relationships between the parties.

“ It is not real to regard Uber as working ‘for’ the drivers ... the only sensible interpretation is that the relationship is the other way around.

Uber ... in numbers

40,000 The number of Uber drivers in the UK

£5 The hourly wage that one of the drivers who took the case claims he earned in some months

\$62.5bn Uber’s valuation based on its last round of funding

7 The years that Uber has been in operation

460,000 The number of people who could be falsely classified as self-employed in the UK

£314m The yearly estimated cost in lost tax and employer national insurance contributions from falsely classified employees, according to Citizens Advice

Topics

Uber

Couriers/delivery industry / Employment law / Pay / Employment tribunals / National living wage /

Work & careers / news

QTLOAI believes that it is time that the Qld Government not only considers changes in relation to the Work Cover Scheme for Gig Economy and Personalised Transport Industry workers, but that it should also be adopting far more overreaching changes that actually fix the Personalised Transportation debacle that it has both created and overseen.

The Stage Three Review Process currently being undertaken is being performed more as some form of autopsy, rather than a component of any critical life-saving operation.

Most of the emerging work practises in the GIG Economy and Personalised Transport Industry all seem to be predicated upon the adoption of various models of worker “wage theft” and practises that enable shifting business costs and risks onto Workers and Qld Taxi Licence Owners. All of these changes have merely resulted in **workers performing the same work as before, but under vastly worse conditions and with arguably far less entitlements and economic viability.**

Whilst QTLOAI applauds the Qld Government’s response to these concerns at a Work Cover level, via its consideration of measures that ensure that gig workers are not being unreasonably denied access to the benefits that the scheme affords to other Queensland’s workers, QTLOAI would strongly recommend that the Government should more properly undertake an overall assessment of the Personalised Transport Economy and Industry, and expand its concerns to more properly address the more important and greater issue of **economic viability** within the Industry.

Economic viability for Qld worker drivers and for Qld Taxi Licence Owners has been the most ignored aspect of the Qld Government Personalised Transport Industry reforms, and Qld Taxi Licence Owners, **many of whom themselves are drivers / workers whilst not necessarily “responsible employers”, deserve equality in all respects.**

QTLOAI takes the view that it is the Qld Government that has broken the Industry and it is the Qld Government that needs to fix it, and applying a “band aid” measure via changes to the Work Cover scheme, does nothing to mend the “gaping wounds” suffered by Drivers / Workers and by all Qld Taxi Licence Owners.

What is your preferred option? Please justify why.

QTLAOI’s view is that;

- **For Work Cover purposes, the status of “responsible employer” should fall directly upon the holder of any Booking Entity Authorisation, and that each of these holders should be responsible for all of the “eligible workers” that attach to their entity at any point in time.**
- **It is essential that a “responsible employer” should be forcefully precluded from being able to pass on the costs of these responsibilities, onto workers or other industry Stakeholders, other than end consumers.**
- **That self-employed driver / workers and business owners of all types, should all be afforded the same level of protection that is afforded to traditional employees, not only when it comes to Work Cover rights, but also in their ability to earn a minimum wage equivalent or an adequate return on their investment.**

QTLOAI would query why any “Fair” Government should allow or encourage for its citizens to be treated differently or taken advantage of?

Given the costs and responsibilities that come with being an employer, it is natural that employers will always look at ways to change the definition of who is a worker. In the Qld Personalised Transport Industry, because of a lack of appropriate action by the Qld Government, the role of Independent contractors’ within the Industry feature far more heavily than ever before. Worker’s rights have been abandoned under a pretence that allowing workers greater “flexibility” makes them “Independent contractors”, but all the Qld Government has achieved to date is to not afford Qld workers the same benefits that are afforded to other Qld employees.

This should change!

QTLOAI is comfortable with the concept that Taxi Drivers should be captured by the provisions, irrespective of the concept of Bailment, provided that Drivers, Owner Drivers, Taxi Licence Owners or Operators, are not left to bear the cost, and that all Ride Share Drivers are covered equally and under the same methodology.

QTLOAI provides the following analysis of Industry functions, which clearly demonstrates why Driver workers, Operators, and Qld Taxi Licence Owners should not be the parties that bear the brunt of any implementation costs.

RELEVANT STAKEHOLDERS FUNCTIONS					
Entity	BHTX required ?	Owns Car	Rents Car	Can set Price	Economic Viability?
Major BEA	N	S	N	Y	Y
Minor BEA	N	S	N	Y	S
Taxi Operator	N	S	S	N	N
Bailee Taxi Driver	Y	N	Y	N	N
Leasing Taxi Driver	Y	S	S	N	N
Taxi - Owner Driver	Y	Y	S	N	N
Rideshare Driver	Y	S	S	N	N
Qld Taxi Licence Owner	S	S	S	N	N
Y = Always S = Sometimes N = No					
Viability is a measure of the ability of an enterprise to consistently generate a fully funded wage equivalent and a small surplus.					

QTLOAI welcomes any opportunity to discuss any of the above matters further.

PAUL SCAINI
 CEO
 QLD TAXI LICENCE OWNER'S ASSOCIATION INCORPORATED