

Decision Impact Analysis Statement – Gig workers and bailee taxi and limousine drivers



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Executive summary

This Decision Impact Analysis Statement (Decision IAS) contains the Queensland Government's decision in relation to regulatory proposals to extend workers' compensation coverage to gig workers and bailee taxi and limousine drivers in Queensland.

Background to Decision IAS

The 'gig economy' is generally characterised by the provision of short-term services by individuals (gig workers) to consumers for a fee via digital platforms hosted by a third-party intermediary. Many gig workers are characterised as independent contractors rather than workers and lack workplace entitlements and protections including workers' compensation coverage. In Queensland, many gig workers do not meet the current definition of 'worker' in the *Workers' Compensation and Rehabilitation Act 2003* (WCR Act) and are not covered by Queensland's workers' compensation scheme.

Taxi and limousine drivers engaged under a bailment arrangement are similarly excluded from workers' compensation coverage in Queensland as the relationship between bailee driver and vehicle owner is one of bailment rather than employment.

In 2018, the second five-year operational review of Queensland's workers' compensation scheme (2018 Five-Year Review) recommended that workers' compensation coverage be extended to persons 'employed' within the gig economy and that 'intermediary' businesses be required to pay premiums.

To explore this recommendation, the Queensland Government released a Consultation Regulatory Impact Statement (Consultation RIS) between 7 June 2019 and 5 July 2019 outlining a regulatory proposal to extend workers' compensation coverage to gig workers.

To ensure consistency across the personalised transport industry, the Consultation RIS also outlined a regulatory proposal to extend coverage to taxi and limousine drivers operating under a bailment arrangement.

Reform proposals

The Consultation RIS presented the following options for gig workers:

Option 1	Maintain the status quo – Gig workers rely on voluntary private personal accident insurance and are not covered by Queensland's workers' compensation scheme.
Option 2	Amend the Workers' Compensation and Rehabilitation Act 2003 to extend workers' compensation coverage to gig workers and require intermediary businesses to pay premiums.

The Consultation RIS presented the following options for taxi and limousine drivers operating under a bailment arrangement:

Option 1	Maintain the status quo – Taxi and limousine drivers rely on voluntary personal accident insurance and are not covered by the workers' compensation scheme.
Option 2	Enhance existing private personal accident insurance and mandate this insurance via a condition on taxi and limousine licences issued by the Department of Transport and Main Roads under existing industry arrangements.

Option 3 Amend the Workers' Compensation and Rehabilitation Act 2003 to extend Queensland's workers' compensation scheme to include taxi and limousine drivers engaged under bailment arrangements.

At that time, the Government's preferred option for gig workers prior to consultation was to amend the WCR Act to extend workers' compensation to these workers and intermediaries (Option 2).

The Consultation RIS did not outline a preferred option for bailee taxi and limousine drivers but acknowledged that, compared to retaining the status quo (Option 1), Options 2 and 3 could achieve improved personal accident benefits for these individuals.

Consultation

Through the Consultation RIS, the Queensland Government sought public comment regarding the proposed options.

Feedback on gig worker proposals

Options	For	Against	Alternative options presented
Option 1: maintain status quo (i.e. voluntary adoption of private accident insurance)	7	None	8
Option 2: extend the workers' compensation scheme to cover workers in gig economy	6	6	

In relation to the options proposed for gig workers, stakeholder views were diverse.

Submissions generally acknowledged that gig workers lack workplace entitlements and protections and the potential benefits of extending workers' compensation coverage.

Submissions also raised the following concerns:

- unintended impacts on the employment relationship between gig workers and the gig business/intermediary within the federal industrial relations jurisdiction
- uncertainty about the scope of the proposed changes across the gig economy
- complexity around how workers' compensation would operate and apply in practice for gig workers (for example, determining when a gig worker is at work, liability during multi-app use and how obligations regarding rehabilitation and return to work could be accommodated)
- prematurely acting before broader national regulation of the gig economy
- the creation of jurisdictional inconsistency in Queensland and impacts on business; and
- increased control over how gig work is undertaken eroding the flexibility and attractiveness of gig work.

Feedback on bailee taxi and limousine driver proposals

Options	For	Against	Alternative options presented
Option 1: status quo (i.e. voluntary adoption of private accident insurance)	6	None	6

Options	For	Against	Alternative options presented
Option 2: mandatory private accident insurance	2	1	
Option 3: extend the workers' compensation scheme to cover taxi and limousine drivers	4	None	

In relation to the options proposed for bailee taxi and limousine drivers, stakeholder views were similarly diverse.

Submissions indicating support for retaining the status quo (Option 1) were largely driven by concerns about the financial and social costs for the taxi industry. Stakeholders cited that the value of taxi licences has significantly diminished in recent years, and there was potential to create an unlevel playing field across the personalised transport industry. Other key concerns centered on unintended consequences of extending workers' compensation coverage, including in the federal industrial relations jurisdiction.

There was some support for mandatory private accident insurance (Option 2), provided it did not result in significant change to existing private accident insurance requirements or increased costs.

Several stakeholders did not consider that drivers are disadvantaged under existing private insurance arrangements.

Various submissions advocated for expanded versions of Option 3, proposing coverage across the entire industry regardless of affiliation or ownership status, and recommending the imposition of a fare levy across the industry.

Subsequent consultation

In November 2023, targeted consultation was conducted in relation to these proposals with registered industrial organisations, industry groups, insurers, medical and allied health professionals, legal professionals and representatives from the taxi and ride share industry. This occurred as part of consultation on the outcomes of the 2023 five-year workers' compensation scheme review. Stakeholder feedback was generally consistent with submissions received in response to the Consultation RIS.

Developments since the Consultation RIS

Various developments have occurred in relation to the regulation of the gig economy since the release of the Consultation RIS. These include the release of:

- a 2019 report into the prevalence, nature and impact of digital platform work, which surveyed workers to understand the prevalence and characteristics of digital platform work, and the extent to which this work is combined with other forms of paid work¹
- the 2020 report of the Inquiry into the Victorian On-Demand Workforce, which considered the extent and nature of the on-demand economy in Victoria for the purpose of considering its impact on the Victorian labour market and the Victorian economy²

¹ P McDonald et al., 'Digital Platform Work in Australia: Prevalence, Nature and Impact (Digital platform work in Australia)', commissioned by the Victorian Department of Premier and Cabinet, 2019. Retrieved from www.eprints.qut.edu.au/203119/.

² James, N (2020), *Report of the Inquiry into the Victorian On-Demand Workforce*. Retrieved from <https://engage.vic.gov.au/download/document/7387>.

- the 2021 interim report of the federal Senate Select Committee on Job Security, which considered the impacts of on-demand platform work and Australian regulatory approaches (Job Security Report)³
- the 2022 first report of the New South Wales Select Committee on the Impact of Technological and Other Change on the Future of Work and Workers in New South Wales (NSW Gig Economy Report)⁴
- the 2023 report of the federal Productivity Commission's 5-year Productivity Inquiry, which considered the implications of platform work and the gig economy on productivity (Productivity Commission Inquiry)⁵
- the 2023 five-year operational review of Queensland's workers' compensation scheme, which made recommendations in relation to the workers' compensation coverage of gig workers and bailee taxi and limousine drivers (2023 Five-Year Review)
- the *Fair Work Legislation Amendment (Closing the Loopholes) Bill 2023* (Cth), which proposes federal industrial relations reforms aimed at improving terms and conditions for digital platform workers (now to be separately considered through the *Fair Work Legislation Amendment (Closing the Loopholes) No. 2 Bill 2023* (Cth)) (Closing Loopholes Bill).

These developments have informed the Queensland Government's decision on the options presented in the Consultation RIS.

Conclusion

The Queensland Government has considered all submissions to the Consultation RIS, the number of inquiries and reviews examining the potential rights and entitlements of gig workers, stakeholder feedback on the outcomes of the 2023 Five-Year Review, and the impacts, benefits and costs of the proposed options.

Gig workers

The Queensland Government notes that Option 2 provides a beneficial approach however further consideration is necessary once the full impacts of national developments are known. This approach is preferred because:

- the full impacts and scope of reforms to be progressed through the Closing Loopholes Bill are unknown
- significant complexities exist in extending coverage and these issues would benefit from consideration as part of a national policy response
- stakeholders continue to have diverse views on extending coverage.

However, to ensure the scheme has flexibility to respond in the future, it is proposed the WCR Act be amended to enable certain gig workers to be prescribed as a 'worker' and intermediaries to be prescribed as an 'employer' by regulation. Consideration will be given to using this head of power once the full extent of the impacts of the Closing the Loopholes Bill is known, such as any subsequent determinations by the Fair Work Commission on whether gig workers have 'employee-like' status.

³ Commonwealth Senate Select Committee on Job Security (2021), *First interim report: on-demand platform work in Australia*. Retrieved from https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/024635/toc_pdf/Firstinterimreporton-demandplatformworkinAustralia.pdf;fileType=application%2Fpdf.

⁴ New South Wales Senate Select Committee on the Impact of Technological and Other Change on the Future of Work and Workers in New South Wales, *First report – The gig economy*, 2022. Retrieved from <https://www.parliament.nsw.gov.au/lcdocs/inquiries/2591/Report%20No%201%20-%20Select%20Committee%20-%20The%20gig%20economy%20-%20First%20report.pdf>.

⁵ Commonwealth Productivity Commission (2023), *5-year Productivity Inquiry: Advancing prosperity*. Retrieved from <https://www.pc.gov.au/inquiries/completed/productivity/report/productivity-advancing-prosperity-all-volumes.pdf>.

Bailee taxi and limousine drivers

The Queensland Government considers current arrangements for bailee taxi and limousine drivers should be maintained and adopts Option 1 (status quo) at this time. This option is preferred because:

- well-established safety and insurance arrangements already exist for the taxi and limousine industries and cover bailee drivers
- the full impacts of extending coverage are unable to be accurately quantified as the extent of bailment arrangements within the taxi and limousine industries is not ascertainable
- stakeholders continue to have diverse views on extending coverage.

Further it is noted that the scheme is reviewed every five years and these matters can be revisited and considered as part of that review process.

Part 1: Overview of Queensland's workers' compensation scheme

Queensland's workers' compensation scheme is a short-tail, no-fault, centrally funded scheme that covers more than 177,000 employers and an estimated 2.8 million workers (as at June 2023). The scheme is established by the WCR Act.

A key objective of scheme is to provide entitlements for workers who sustain an injury in their employment, for dependents of deceased workers, and for other specified non-workers. The scheme is intended to maintain a balance between providing fair and appropriate entitlements for these individuals and ensuring reasonable cost levels for employers.

The WCR Act also contains an injury management framework that emphasises the rehabilitation of injured workers for return to work. This includes responsibilities on insurers and employers in relation to the rehabilitation and early return to suitable duties of injured workers.

The scheme is administered by the Workers' Compensation Regulator (Regulator), WorkCover Queensland (WorkCover) and self-insurers.

A summary of the scheme is at **Annexure B**.

Part 2: Gig workers

1. Background

1.1. What is the 'gig economy'?

The term 'gig economy' derives from the concept that a piece of work is akin to an individual 'gig' (e.g. a musician has a 'gig' to play). There is no standard definition of work performed in the gig economy. However, gig work is generally characterised by the engagement of workers in a series of predominantly short-term, paid tasks as opposed to regular or long-term ongoing traditional work arrangements.

The engagement of a person to perform work through the gig economy is often facilitated by an 'intermediary'. An intermediary is a person (including an individual or corporate entity) or a group of persons who facilitate the introduction of a person to another person for the purpose of the first person entering into an agreement (other than a contract of service) with the other person to do work for the person.

Work in the gig economy can be conducted via technology or an electronic platform (e.g. an app) or through traditional business modes (e.g. an agency). Regardless of the mode used to facilitate the work, gig work covers two primary forms of work:

- 'Crowd work' which involves an intermediary simply facilitating the introduction of two parties to a contract and interested parties bidding and negotiating their own contract terms. Examples include designers, skilled licensed trades, and writing and software developments who advertised multiple platforms and have control and discretion in relation to the work and contracts they perform
- '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. Examples include rideshare drivers and food delivery workers who are engaged via intermediaries in short duration activities. In this type of gig work, the person performing the work is almost wholly reliant on the intermediary to find them work and is not otherwise engaging actively in advertising outside of the intermediary or intermediaries to arrange work.

In practice, gig work can be provided under a number of different arrangements. Common arrangements are considered below.

Arrangement 1: The person performing the work is a worker of the intermediary (currently eligible for workers' compensation).

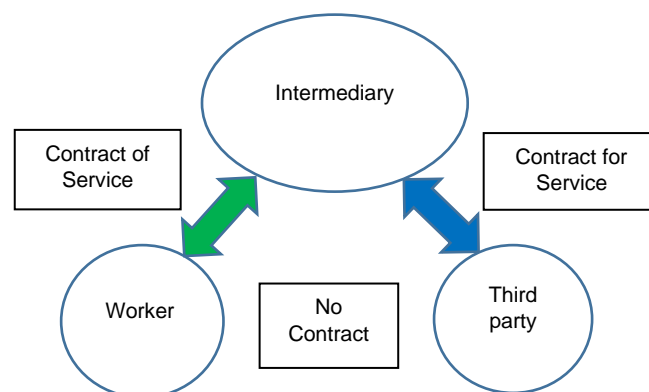


Figure 1: Person performing work is a worker of the intermediary

This type of arrangement is typically seen in labour hire arrangements. In this arrangement the intermediary may limit the reasonable ability of a worker to sublet work, require the worker to present to third parties in a certain way or to use specified equipment, and require offers of work to be generally accepted (with consequences for ongoing non-acceptance of offers). Often, the worker will not have a broader business that is incidental to the performance of the work.

In this circumstance the worker is likely to be an employee of the intermediary. If so, they will be a worker under the WCR Act and covered for workers' compensation. This category of worker is outside the scope of this Decision IAS.

Arrangement 2: The person performing the work is the worker of the third party (the business or undertaking, or the peer that the worker is performing work for) or an independent contractor (Outside the scope of the Consultation RIS and this Decision IAS).

a) Employment agent

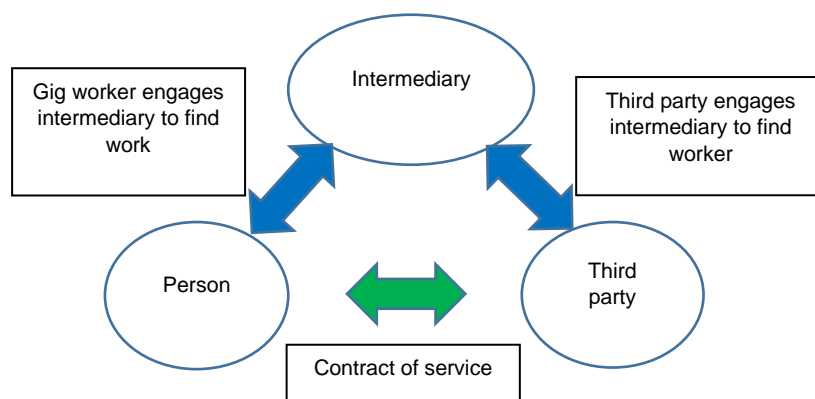


Figure 2: Intermediary facilitates employment relationship

In this arrangement the intermediary acts within the scope of their authority and brings about an employment relationship between the person performing the work and the third party. The intermediary is not a party to the employment contract but rather acts as the conduit to bring about the relationship. An example of such an arrangement is the engagement of a person to work as a nanny working set times with an expectation of ongoing work.

In this circumstance, the third party is the employer of the person performing the work, and that person is considered a worker under the WCR Act and covered for workers' compensation. This category of worker is outside the scope of this Decision IAS.

b) Bulletin board/job board/job aggregator/social media

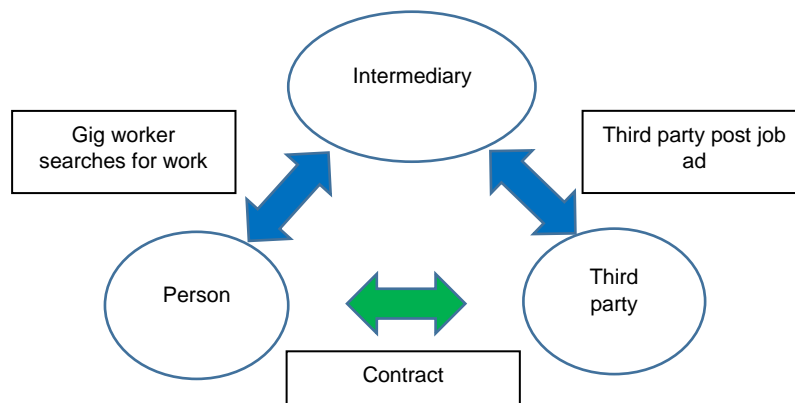


Figure 3: Intermediary advertises work available from third party

Job boards are used by recruiters and companies to post open positions and search resume databases. Job aggregators pull open positions from multiple sites and allow the job seeker to search for all available jobs in one place. An intermediary in this category could also include social media sites that allow people to post offers for work in groups, allowing a person to engage directly with the gig workers or third party. The intermediary is paid for placing an “ad” and has no role other than enabling the introduction of two or more people in a “yellow pages” advertising type arrangement, where any contractual relationship will only ever exist with the third party who engages the person to perform work.

In these arrangements the intermediary has no role determining the contract or the remuneration to be paid to the person performing the work. The person performing the work and the third party agree directly on the type of engagement, including the remuneration or charge rate to be paid by the third party. If the engagement is a contract of service (i.e. an employment contract) then the person performing the work will be considered a worker under the WCR Act. Alternatively, if the person performing the work is an independent contractor then they will not be covered by the WCR Act and will not be entitled to workers’ compensation.

This category of worker is outside the scope of this Decision IAS.

Arrangement 3: The person performing the work is introduced by an intermediary to perform work under a contract (other than a contract of service) for another person (a ‘gig worker’ within the scope of the Consultation RIS and this Decision IAS).

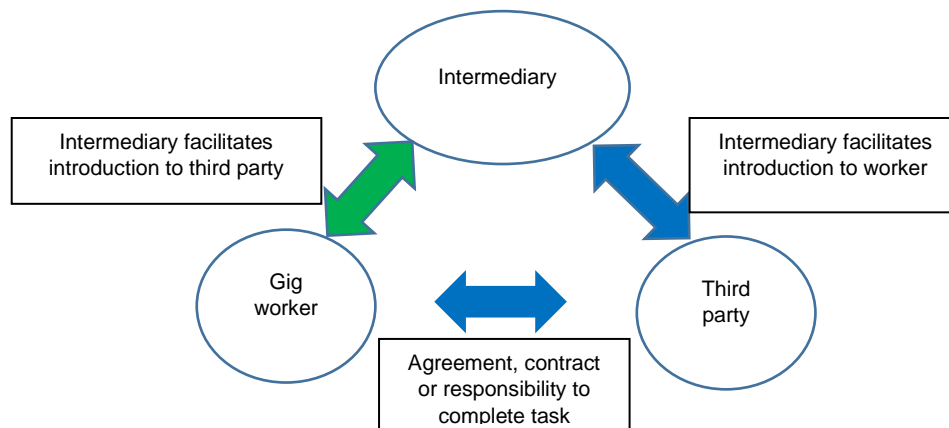


Figure 4: Intermediary facilitates engagement (other than contract of service)

This arrangement differs from the arrangement in (2a) in that the intermediary has facilitated work that is not a contract of service. It differs from the arrangement in (2b) in that the platform has influenced the type of contract (or what the contract is not), or the nature of the arrangement, to be entered between the person performing the work and the third party, or has set or otherwise influenced the charge rate (including minimums or maximums) to be paid by the third party. An example of this arrangement is a person who is engaged to perform short-term, task specific engagements (such as driving a third party from one location to another) at set rates with what could be multiple third parties.

The nature of the engagement between the person performing the work and the intermediary or the third party will generally be considered a contract *for* service, such that the person is an independent contractor rather than an employee. In this circumstance, the person performing the work is not a worker under the WCR Act and is not covered for workers' compensation. This is discussed further at **part 2 section 2.2**.

This category of gig worker is the focus this Decision IAS. For the remainder of this Decision IAS, the term 'gig worker' refers to this in-scope category of worker, unless otherwise specified.

1.2. Benefits of gig work

Gig work has a number of claimed benefits for both gig workers and consumers. These benefits were recently considered in the Productivity Commission's 2023 5-year productivity inquiry in the context of platform work,⁶ and are summarised below:

Claimed benefit	Explanation
Better matching	The use of platforms allows better matching between suppliers and consumers – for instance, the ability to virtually hail a ride instead of searching for an available taxi on a street or calling a taxi booking service.
Flexibility	Gig work can offer more flexibility for workers as it has a lower barrier to entry and exit than traditional employment models. ⁷ Workers seeking to use a platform are not subject to traditional hiring processes there are generally no restrictions on the number of people who can perform working using a platform. Additionally, gig work can offer workers the flexibility to choose when they work and how they provide their services, which is more restricted in traditional employment arrangements. The nature of gig work, which is often on-demand, can also enable workers to undertake work using different platforms at the same time (known as 'multi-apping'). ⁸ For example, a worker may perform both rideshare and food delivery work between customers.
More competition and improved consumer choice	The use of platforms can improve competition. For example, in the personalised transport industry, there are many platforms and taxi fleets competing, leading to lower prices for consumers. Platforms can also adopt different pricing structures to attract consumers with

⁶ Commonwealth Productivity Commission (2023), *5-year Productivity Inquiry: Advancing prosperity*. Retrieved from <https://www.pc.gov.au/inquiries/completed/productivity/report/productivity-advancing-prosperity-all-volumes.pdf>, Volume 7, 136-139.

⁷ Ibid 137.

⁸ Ibid.

Claimed benefit	Explanation
	different preferences (such as rideshare fares set in response to consumer demand and consumer demand).

Gig work also has a number of challenges, particularly for gig workers. These are set out at **part 2 section 2**.

1.3. What is the extent and size of the gig economy?

The exact size of the gig economy and number of all gig workers within Queensland or nationally is not known. This is due to the lack of regulation of this cohort and limited publicly available information regarding total revenue or the number of people performing work under these arrangements.

Various attempts have been made to estimate the size of the digital platform economy. These are as follows:

Source	Year	Estimate	Cohort
The Association of Superannuation Funds of Australia	2018	150,000	
Victorian National Survey ⁹ (Commissioned by the Victorian Department of the Premier and Cabinet)	2019	7.1 per cent (equates to 909,500)	Number of people currently offering services or doing work mediated by a digital platform or had done so in the last 12 months.
Industry Super ¹⁰	2019	275,500	Number of 'gig workers'.
Actuaries Institute ¹¹	2019	250,000	Number of workers in the 'gig economy workforce'. The gig economy is characterised by on-demand services, work as an independent contractor, and the use of digital platforms to mediate transactions. ¹²
Householder, Income and Labour Dynamic in Australia Report ¹³ (Funded by the Commonwealth Department of Social Services)	2020	0.8 per cent of employed people (equates	Number of people performing work that involves providing services on demand where they find customers and receive payment for each task

⁹ P McDonald et al., 'Digital Platform Work in Australia: Prevalence, Nature and Impact (Digital platform work in Australia)', commissioned by the Victorian Department of Premier and Cabinet, 2019. Retrieved from www.eprints.qut.edu.au/203119/.

¹⁰ Samardzija et al., 'Extending the super guarantee to gig workers', Industry Super Australia, 2023. Retrieved from www.industrysuper.com/media/extending-the-super-guarantee-to-gig-workers/.

¹¹ Actuaries Institute, 'The rise of the gig economy and its impact on the Australian workforce', Green paper, December 2020, 5. Retrieved from www.actuaries.asn.au/public-policy-and-media/thought-leadership/green-papers/the-rise-of-the-gig-economy-and-its-impact-on-the-australian-workforce.

¹² Ibid 9.

¹³ Wilkins et al., 'The Household, Income and Labour Dynamics in Australia Survey: Selected Findings from Waves 1 to 20', Melbourne Institute: Applied Economic & Social Research, University of Melbourne, 2022, 89. Retrieved from melbourneinstitute.unimelb.edu.au/hilda/publications/hilda-statistical-reports.

Source	Year	Estimate	Cohort
		to 100,000)	through a mobile app or website.
Hireup ¹⁴	2020-21	6,000	Number of support workers actively engaged in working support shifts.
Mable ¹⁵	2020-21	11,000	Number of small business providers who have gone through an onboarding and approval process.
EASI ¹⁶	2020-21	5,000	Number of delivery users in New South Wales.
Doordash ¹⁷	2020-21	10,000	Number of drivers in New South Wales.
Ola ¹⁸	2020-21	24,000	Number of drivers in New South Wales.
Uber ¹⁹	2020-21	60,000	Number of active driver-partners.
Uber ²⁰	2023	150,000	Number of workers using the Uber and Uber Eats app.

The Commonwealth Government's regulatory impact statement for regulatory proposals proposed in the Closing Loopholes Bill estimated that nationally there were:

- 150,000 workers performing rideshare, taxi services, food delivery or other goods via digital platforms
- 16,300 workers performing care work such as aged care and National Disability Insurance Scheme (NDIS) support services.

More recently, the Australian Bureau of Statistics (ABS) has estimated that in the 2022/23 financial year, gig workers using digital platforms made up 0.96 per cent of the Australian working population (135,054 individuals). Using this data, independent actuarial analysis obtained by the Office of Industrial Relations (OIR) estimates there to be 27,351 digital platform workers in Queensland in the 2023/24 financial year. This is estimated to equate to a full time equivalent (FTE) workforce of 14,395. This figure is used for the purpose of cost impacts in this Decision IAS.

It is noted that the definition of gig work used in the Consultation RIS was not limited to work undertaken using digital platforms. However, to align with national developments since the Consultation RIS (including the Closing Loopholes Bill and ABS data), this Decision RIS will

¹⁴ New South Wales Senate Select Committee on the Impact of Technological and Other Change on the Future of Work and Workers in New South Wales, *First report – The gig economy*, 2022, 19. Retrieved from <https://www.parliament.nsw.gov.au/lcdocs/inquiries/2591/Report%20No%201%20-%20Select%20Committee%20-%20The%20gig%20economy%20-%20First%20report.pdf>.

¹⁵ Ibid 19.

¹⁶ Ibid 19.

¹⁷ Ibid 19.

¹⁸ Ibid 18.

¹⁹ Ibid 18.

²⁰ Uber, 'Elevating the voices of 150,000 Australian gig workers', March 2023. Retrieved from <https://www.uber.com/en-AU/newsroom/flexibility-works/>.

focus on assessing the impacts of extending workers' compensation coverage to gig workers who are digital platform workers.

2. Identification of the problem

2.1. Summary of the problem

Gig workers perform employee-like work but there is no legal requirement for these individuals to be covered by an accident insurance policy for work-related injury or illness, whether under workers' compensation law or otherwise. This exposes these individuals to a risk of uncompensated or undercompensated work-related injury or illness and creates disparity in the work-related entitlements available to these individuals in comparison to workers. Additionally, the injury and rehabilitation costs for work-related injuries sustained by these individuals is shifted to individual gig workers and the community via the healthcare system.

2.2. Gig workers are not covered by the workers' compensation scheme

An individual is automatically covered by Queensland's workers' compensation scheme if they meet the requirements of a 'worker' or a specified non-worker under the WCR Act. An individual is a 'worker' if they:

- work under a contract and, in relation to the work, are an employee for the purpose of assessment for Pay As You Go (PAYG) withholding under the *Taxation Administration Act 1953*, schedule 1, part 2-5
- are specified to be a worker in schedule 2 of the WCR Act.²¹

Gig workers within the scope of this Decision IAS are generally considered independent contractors. While independent contractors work under a contract, they are not an 'employee' for the purpose of assessment for PAYG withholding, which requires that a relationship of employment exist.²² Accordingly, they are not considered 'workers' within the first limb of the definition.

To meet the requirement of the second limb schedule 2, part 1, item 3 of the WCR Act specifies an independent contractor to be a worker if the contractor:

- makes a contract with someone else for the performance of work that is not incident to a trade or business regularly carried on by the contractor, individually or by way of partnership
- does not sublet the contract
- does not employ a worker
- performs part of the work personally if they employ a worker
- does not supply and use a motor vehicle for driving tuition.

This does not capture gig workers who regularly perform gig work as an independent contractor, as gig work performed by these individuals will necessarily be an incident of the trade or business they carry on as a gig worker (for example, the business of providing on-demand point-to-point transport services). However, it is arguable that the provision could deem gig workers who perform irregular gig work as workers.

As a result most gig workers are not currently workers under the WCR Act and are not eligible for workers' compensation entitlements. **Annexure A** summarises the current work

²¹ WCR Act, s 11(1), (2).

²² Australian Taxation Office, *Taxation Ruling TR 2023/4 – Income tax: pay as you go withholding – who is an employee?*.

arrangements for gig workers and how these arrangements compare to those for workers covered by the WCR Act.

2.3. Gig workers must source and fund their own personal accident insurance or remain uninsured

In the absence of workers' compensation coverage, gig workers can access accident insurance coverage from the following sources:

- voluntary accident insurance provided by WorkCover to the worker as a contractor or self-employed individual²³
- voluntary accident insurance purchased by the worker on the private insurance market
- accident insurance purchased from WorkCover by the intermediary that hosts the platform used by the worker to perform gig work
- private accident insurance provided by the intermediary that hosts the platform used by the worker to perform gig work.

WorkCover accident insurance

Gig workers not currently covered by the scheme can voluntarily take out an accident insurance policy with WorkCover as contractors or self-employed persons. This is known as Workplace Personal Injury Insurance (WPPI).²⁴ The minimum premium for this insurance is \$1,650 per annum (including GST and stamp duty).²⁵

Like workers who are automatically covered by the scheme, individuals covered by WPPI are entitled to weekly payments of compensation and reasonable medical and treatment expenses for work-related injury or illness. Unlike the coverage provided to workers, WPPI does not cover the payment of damages as part of a common law claim. This reflects the fact that the insured contractor or self-employed person, as the policyholder, cannot sue themselves. This may disadvantage a gig worker who successfully claims damages from a negligent intermediary, as the liability to pay is uninsured.

As the contractor or self-employed person is the policyholder, they bear the costs associated with taking out and maintaining WPPI, including the payment of excess and premiums. By contrast, the costs of covering a worker who is automatically entitled to workers' compensation are borne by the worker's employer.

Private accident insurance

As the exact number of gig workers in Queensland is unknown, it is difficult to measure the proportion of gig workers who have made their own accident insurance arrangements. Further, the total number of private accident insurance policies taken out is not publicly reported.

Research commissioned by the Victorian Department of the Premier and Cabinet in 2019 found that:

- nearly half (45.5 per cent) of respondents reported that their main platform did provide any type of work-related insurance
- 39.7 per cent of respondents reported that their platform required them to take out their own insurance

²³ WCR Act, s 23-24.

²⁴ Information on this type of insurance is available at www.worksafe.qld.gov.au/claims-and-insurance/workcover-insurance/types-of-insurance/workplace-personal-injury-insurance.

²⁵ WorkCover Queensland, 'Understanding your Workplace Personal Injury Insurance Policy: A Guide to Your Policy Cover and Conditions', 2023. Retrieved from https://www.worksafe.qld.gov.au/data/assets/pdf_file/0028/71866/WPII-policy-guide.pdf, 4.

- over 20 per cent of current platform workers did not know if their platform provided them with insurance or required them to take out their own.²⁶

Based on these figures, the proportion of gig workers who are not covered by intermediary-provided insurance, and who may be incentivised to make their own insurance arrangements, could be at least 45.5 per cent.

The low likelihood of the gig workers voluntarily taking out accident insurance was noted in the 2018 five-year review:

*'...[Gig workers] would be unlikely to adopt voluntary methods of compensation coverage even if such things were made available to them. This might be due either to ignorance, confusion or simply lacking the sources to take up voluntary cover. Those who do take voluntary cover may find that, as it offered at low volume and on a voluntary basis, it is more expensive than would be the case for a universal product.'*²⁷

The result is that, despite the availability of private accident insurance products, many gig workers may be uninsured against the risk of work-related injury.

Further, workers who do hold voluntary accident insurance may be *underinsured* against this risk. OIR has analysed a deidentified private accident insurance product issued by a general insurer against the entitlements and protections provided under the workers' compensation scheme (see **Annexure C**). This analysis shows that coverage under the private accident insurance product is generally of a lower standard than the coverage provided by the Queensland scheme.

Workers' compensation entitlements (**Annexure B**) include:

- no fault statutory compensation for all work-related injuries (including psychological and psychiatric injuries and aggravations of pre-existing conditions)
- lost time earnings
- all medical, treatment, counselling, and hospital related costs (including Medicare medical expenses)
- rehabilitation and return to work support
- costs incurred for travel, dental costs, counselling, rehabilitation and return to work services
- permanent impairment lump sum compensation
- lifetime treatment, care and support for serious personal injuries
- access to common law damages
- specific lump sum payments and ongoing weekly payments to deceased workers' dependants
- extensive independent review and appeal rights and judicial review rights for workers and employers, as well as access to the independent Medical Assessment Tribunals.

By contrast, private accident insurance products limit the nature of injuries able to be claimed for (including for psychological and psychiatric injuries and aggravations of pre-existing conditions). They also place tighter restrictions on the amounts and types of compensation available. In particular, Commonwealth legislation²⁸ prevents general insurers from insuring any Medicare-related medical expenses. As a result, the medical cost of

²⁶ P McDonald et al., 'Digital Platform Work in Australia: Prevalence, Nature and Impact (Digital platform work in Australia)', commissioned by the Victorian Department of Premier and Cabinet, 2019. Retrieved from www.eprints.qut.edu.au/203119/, 47.

²⁷ Peetz D (2018) *The Operation of the Queensland Workers' Compensation scheme: Report of the Second Five-Yearly Review of the Scheme*. Retrieved from https://www.worksafe.qld.gov.au/_data/assets/pdf_file/0021/24087/workers-compensation-scheme-5-year-review-report.pdf, 99.

²⁸ *Health Insurance Act 1973* (Cth) s 126(2).

injuries for gig workers is shifted from the business to the individual (or their private health insurer) or the public health care system.

Additionally, under private accident insurance policies, the intermediary is not indemnified for common law damages claims made by gig workers for work-related injuries. Depending on the circumstances of the injury a negligent party (which may include an intermediary) may be uninsured or have public liability insurance, or compulsory third-party insurance.

It is important to note that gig workers who are injured in a motor vehicle accident while undertaking driving-related services (such as those performing point-to-point transportation or food delivery services) may access compensation through their compulsory third party (CTP) insurance. However, unlike workers' compensation insurance, which operates on a no-fault basis, a person is only eligible to make a CTP claim if their injury was the total or partial fault of another vehicle owner or driver. Accordingly, compensation under the CTP scheme is only paid where the CTP insurer admits liability or the claimant is otherwise awarded damages in a common law action. This means for gig workers, CTP insurance does not provide the same coverage as the workers' compensation scheme or indemnify against the risk of work-related injury.

WorkCover accident insurance purchased by the intermediary

Intermediaries are currently able to purchase a workers' compensation policy from WorkCover covering gig workers. Section 26 of the WCR Act enables WorkCover to enter into a contract of insurance with a person, whether or not they are an employer, for injury sustained by other persons. The contract may cover a person who performs work or provides a service from which the insured person gains a benefit for the same entitlements provided to a worker, including cover for compensation and damages.

While this would enable intermediaries to extend workers' compensation benefits to gig workers, purchasing a policy under section 26 is voluntary. OIR is not aware of any intermediaries that have adopted this option.

Private accident insurance provided by the intermediary

Some intermediaries provide their own private accident insurance cover for their gig workers, removing the need for gig workers to make their own insurance arrangements. The exact number of gig workers covered by these policies is unknown.

The analysis in **Annexure C** also includes a comparison of a deidentified private accident insurance product used by a leading intermediary against the entitlements and protections provided under the workers' compensation scheme. As in the case of accident insurance available on the general insurance market, this analysis shows intermediary-provided insurance is of a lower standard than coverage provided by the Queensland scheme.

This observation has been reflected in Victorian, New South Wales and Commonwealth inquiries. Specifically:

- the Victorian On-Demand Workforce Report noted it "is not always clear or obvious which work based activities are covered [by platform-provided insurance] and these schemes may involve additional fees for the worker".²⁹ It concluded that platform workers are often uncertain about insurance and may have inferior or inadequate coverage for work-related injuries³⁰

²⁹ James, N (2020), *Report of the Inquiry into the Victorian On-Demand Workforce*. Retrieved from <https://engage.vic.gov.au/download/document/7387>, 120.

³⁰ Ibid 121.

- the New South Wales Senate Select Committee on the Impact of Technology and Other Change on the Future of Work and Workers in New South Wales concluded that the level of coverage available under platform-provided insurance varies markedly and is significantly less than that provided under the workers' compensation scheme³¹
- the Productivity Commission Inquiry found platform-provided insurance is typically less generous than workers' compensation, noting they generally provide inferior entitlements to claim treatment expenses and have narrow definitions of when a worker is 'working'.³²

Accordingly, where gig workers are covered by intermediary-provided accident insurance policies, the risk of work-related injury is likely to be underinsured when compared to workers' compensation coverage. Further, gig workers do not receive the same rehabilitation and return to work support available within the workers' compensation scheme.

2.4. Gig workers are exposed to uncompensated or undercompensated risk of work-related injury

The key consequence of gig workers being excluded from workers' compensation coverage is that many are exposed to a risk of uncompensated work-related injury. Additionally, gig workers who do have access to accident insurance coverage are likely to receive entitlements that are inferior to those available under the workers' compensation scheme, leaving them uninsured or underinsured against the risk of work-related injury. These workers also lack the rehabilitation and return to work support available under the workers' compensation scheme.

As gig workers work across multiple industries, no single, homogeneous gig industry exists, and there is no single injury profile for gig workers or a single injury frequency rate. Accordingly, the extent of this risk cannot be precisely quantified.

Various Australian reports and inquiries have acknowledged the general risk of injury that gig workers face in the course of their work and the nature of that risk. The NSW Select Committee Report noted on-demand workers are "significantly at risk of injury in the course of their work".³³ The Senate Select Committee on Job Security noted in its interim report that safety is a "significant issue for many on-demand platform workers, citing a Transport Workers Union (TWU) survey which found that nearly 47 per cent of food delivery drivers had been injured at work or knew someone who had been injured at work."³⁴ The Committee additionally noted (footnotes omitted):

On-demand work can be unsafe for a variety of reasons, including:

- *the work environment – for example, inadequate road and path infrastructure, and lack of supervision*

³¹ New South Wales Senate Select Committee on the Impact of Technological and Other Change on the Future of Work and Workers in New South Wales, *First report – The gig economy*, 2022, 102. Retrieved from <https://www.parliament.nsw.gov.au/lcdocs/inquiries/2591/Report%20No%201%20-%20Select%20Committee%20-%20The%20gig%20economy%20-%20First%20report.pdf>.

³² Commonwealth Productivity Commission (2023), *5-year Productivity Inquiry: Advancing prosperity*. Retrieved from <https://www.pc.gov.au/inquiries/completed/productivity/report/productivity-advancing-prosperity-all-volumes.pdf>, Volume 7, 168-169.

³³ New South Wales Senate Select Committee on the Impact of Technological and Other Change on the Future of Work and Workers in New South Wales, *First report – The gig economy*, 2022, 102. Retrieved from <https://www.parliament.nsw.gov.au/lcdocs/inquiries/2591/Report%20No%201%20-%20Select%20Committee%20-%20The%20gig%20economy%20-%20First%20report.pdf>.

³⁴ Commonwealth Senate Select Committee on Job Security (2021), *First interim report: on-demand platform work in Australia*. Retrieved from https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/024635/toc_pdf/Firstinterimreporton-demandplatformworkinAustralia.pdf;fileType=application%2Fpdf, 72.

- *the nature of the work being done – such as working long hours, riding a bike in heavy traffic or wet weather, driving intoxicated clients, and fatigue*
- *unsafe models of work which encourage workers to take short-cuts to maintain their competitive edge – for example, ignoring traffic signals, workers having to take multiple jobs to maximise their income, and platform algorithms penalising worker for performance*
- *lack of training*
- *lack of safety equipment.*

*Unrealistic time and performance pressures, combined with high-risk work environments, and lack of training and appropriate protective equipment for gig workers place them at higher risk of injury at work.*³⁵

Citing other research and studies, the Productivity Commission Inquiry also noted:³⁶

- although there is no public data on the health outcomes of aged care platform workers, “aged care work involves physical and mental risks”, with about 12 per cent of such workers reporting a work-related injury or illness in the 12 months preceding 2016³⁷
- a TWU survey of rideshare workers found that 34 per cent of respondents had been involved in a car accident, 66 per cent had experienced harassment and 17 per cent had been physically assaulted³⁸
- the same TWU survey found that 34 per cent of respondents working on food delivery platforms had been injured when completing work.³⁹

Consistent with this, it has been recognised that care and support workers are vulnerable to various health and safety risks because of poor visibility of their work.⁴⁰ Undertaking this work via a platform may increase these risks, as workers may feel compelled to engage in unsafe work practices directed by clients to maintain client ratings.⁴¹

The health and safety risks faced by food delivery drivers have been recognised by national regulators and the Safe Work Australia (SWA) (the national policy agency for workers’ compensation and health and safety matters). The NSW State Insurance Regulatory Authority (SIRA) has noted food delivery drivers who use bicycles, motorcycles or scooters are at an increased risk of injury due to having less protection in a crash, and are subject to time pressure.⁴² Workplace Health and Safety Queensland has published guidance for food delivery businesses noting various on-road, environmental and psychosocial hazards and risks faced by food delivery drivers.⁴³ Consistent with this, SWA has published a fact sheet aimed at food outlets providing delivery services containing information on the operation of work health and safety duties in a food delivery context.⁴⁴ The deaths of five food delivery

³⁵ Ibid 75, 77.

³⁶ Commonwealth Productivity Commission (2023), *5-year Productivity Inquiry: Advancing prosperity*. Retrieved from <https://www.pc.gov.au/inquiries/completed/productivity/report/productivity-advancing-prosperity-all-volumes.pdf>, Volume 7, 164.

³⁷ Mavromaras et al (2017), *The Aged Care Workforce 2016*, 42.

³⁸ Transport Workers’ Union (2021) *Submission to Senate Select Committee on Job Security*, Submission No. 39, 14.

³⁹ Ibid 10, 14.

⁴⁰ F Macdonald, The Australia Institute, (2023), *Unacceptable Risks: The Dangers of Gig Models of Care and Support Work*, 37.

⁴¹ Ibid 36-37.

⁴² New South Wales State Insurance Regulatory Authority, (2021) *Consultation on personal injury insurance arrangements for food delivery riders in the gig economy*, 4. Retrieved from www.sira.nsw.gov.au/consultations/injury-insurance-arrangements-for-food-delivery-riders-in-the-gig-economy.

⁴³ Available at www.worksafe.qld.gov.au/laws-and-compliance/compliance-and-enforcement/industry-interventions-and-campaigns/transport-and-storage-industry-interventions-and-campaigns/ensuring-health-and-safety-in-food-delivery-services.

⁴⁴ Safe Work Australia, *Managing risks in the food delivery industry*, 2021. Retrieved from https://www.safeworkaustralia.gov.au/sites/default/files/2021-12/Gig%20Riders%20-%20Outlets%20fact%20sheet_Dec21_0.pdf.

workers in New South Wales in 2020 highlights the safety risks that these workers face in real terms.

In the absence of injury data about gig workers, Table 1 below highlights the Queensland industry injury profiles⁴⁵ as an example of some of the injury profiles that could be expected to be experienced by gig workers in some of the key industries they currently operate in.

Table 1: Selected industry profiles for potential claims in the gig-economy

Industry	Average finalised claim cost (2022-23) ^(a)	Estimated Claim Rate (per 1000 workers) ^(b)	Most likely injuries	Main cause of injury
Road passenger transport	\$18,257	50.3	<ul style="list-style-type: none"> • Trauma to muscles (11 per cent) • Anxiety / Stress disorder (10 per cent) • Unspecified trauma to muscles and tendons (6 per cent) 	<ul style="list-style-type: none"> • Falls on the same level (14 per cent) • Vehicle incident (12 per cent) • Muscular stress while handling objects (other than lifting or putting down) (10 per cent)
Labour hire^(c)	\$20,273	86.3	<ul style="list-style-type: none"> • Soft tissue injuries due to trauma (13 per cent) • Back pain, Lumbago and Sciatica (12 per cent) • Trauma to muscles and tendons (10 per cent) 	<ul style="list-style-type: none"> • Muscular stress while lifting and putting down objects (26 per cent) • Falls on the same level (9 per cent) • Muscular stress while handling objects (other than lifting or putting down) (7 per cent)
Automotive repair and maintenance	\$13,377	30.7	<ul style="list-style-type: none"> • Laceration or open wound not involving traumatic amputation (22 per cent) • Fractures not involving skull, facial bones, teeth and spinal 	<ul style="list-style-type: none"> • Hit by moving objects (14 per cent) • Being hit by moving objects (11 per cent) • Muscular stress while handling objects (other than lifting or putting down) (11 per cent)

⁴⁵ Queensland Workers' Compensation Scheme data, Workers' Compensation Regulator.

Industry	Average finalised claim cost (2022-23) ^(a)	Estimated Claim Rate (per 1000 workers) ^(b)	Most likely injuries	Main cause of injury
			column (10 per cent) <ul style="list-style-type: none"> Soft tissue injuries due to trauma (8 per cent) 	

Notes to Table 1:

a: Time lost and medical expense claims, statutory costs only

b: Estimated number of workers based on wages declared

c: Labour hire in transport sector only.

Additionally, Australia Bureau of Statistics (ABS) data for the 2021-22 financial year indicates that community and personal service workers, and machinery operators and drivers (two industries in which gig work is commonly performed), had the highest work-related injury rates at 7 per cent and 6.5 per cent respectively.⁴⁶ By comparison, rates for other workers (labourers, technicians and trade workers, sales workers, managers, professionals and clerical and administrative workers) were between 1.9 per cent to 5.7 per cent. Further, the work-related injury rate for community and personal service workers and machinery operators and drivers has increased since 2017-18, when it was 6.1 per cent and 5 per cent respectively. These rates may be indicative for some groups of gig workers. It was also noted that of the individuals who did not apply for workers' compensation, 14 per cent did not think they were eligible for workers' compensation, and 10 per cent were not covered or not aware of workers' compensation, both of which may be indicative of gig workers.⁴⁷

2.5. Exposure to uncompensated work-related risk and personal responsibility for insurance arrangements exacerbates vulnerability

While gig workers' individual circumstances may be variable, as a group, gig workers have been identified in various reviews and research as a vulnerable workforce. Gig workers' exposure to uncompensated or undercompensated work-related injury has the potential to compound this vulnerability.

The 2018 Five-Year review noted that many gig workers are unaware of their employment rights, including the right to seek compensation for a work-related injury, lack the resources to seek redress, and are at a higher risk of being disadvantaged in the labour market, often due to factors such as being lower-skilled migrant workers (including those on temporary visas), low-paid workers, non-unionised workers and workers in regional and rural areas.

Consistent with this, Queensland Government's 2018 submission to the Senate Select Committee on the *Future of Work and Workers*⁴⁸ noted that gig workers' access to industrial relations and related entitlements contribute to the precarious nature of gig work.

⁴⁶ Australian Bureau of Statistics (2023) *Work-related injuries*. Retrieved from www.abs.gov.au/statistics/labour/earnings-and-working-conditions/work-related-injuries/2021-22.

⁴⁷ Ibid.

⁴⁸ Queensland Government. (2018). *Submission to the Senate Select Committee's 2018 on the Future of Work and Workers, Hope is not a strategy – our shared responsibility for the future*. Retrieved from www.aph.gov.au/Parliamentary_Business/Committees/Senate/Future_of_Work_and_Workers/FutureofWork/Submissions.

Similar observations were made in the 2023 Five Year Review, which noted gig workers lack labour law protections (such as access to unfair dismissal remedies), have very low power compared to intermediaries, are underemployed, and often receive incomes below the relevant award rate.⁴⁹

The exposure of gig workers to uninsured work-related risk and their personal responsibility for insuring against that risk has the potential to exacerbate their vulnerability and lead to inequity of outcome when compared to workers in conventional forms of employment. This was noted in the NSW Select Committee Report, which found the requirement for gig workers to voluntarily take out accident insurance compounded their vulnerability.⁵⁰

Personal factors

There are indicators that individuals who belong to vulnerable societal groups are more likely to participate in gig work. Pre-pandemic evidence suggests younger people (aged 18-34), students and the unemployed, people living with disability, temporary residents, permanent residents and people who speak a language other than English at home have higher rates of participation in digital platform work.⁵¹

There is also evidence that gig workers may have a poor understanding of the nature of their gig arrangement. A 2019 national study found that a substantial minority of workers did not know whether their platform had a dispute resolution process, could restrict work opportunities or could change contract terms.⁵² Additionally, a sizeable minority of workers thought their platform treated them as an employee,⁵³ and were unaware whether their platform provided insurance coverage for them.⁵⁴

Lack of legal protections

As many gig workers are independent contractors, they do not have access to industrial relations entitlements and protections available to employees. Many gig workers:

- are responsible for their own superannuation and taxation
- have no access to leave entitlements
- are often paid at or below the rate that would be mandated by an industrial instrument in a traditional employment relationship⁵⁵
- lack the legislative ability to collectively bargain and, in turn, have no bargaining power to enter into meaningful negotiations on their pay or working conditions.

In September 2023, the Federal Government introduced the Closing Loopholes Bill in the Commonwealth House of Representatives, following which it was referred to the Senate Education and Employment Committee for inquiry. The Closing Loopholes Bill aims to improve terms and conditions for gig workers who meet the definition of an 'employee-like worker' by empowering the Fair Work Commission to make minimum standard orders for

⁴⁹ Fisher G and Peetz D (2023) *2023 review of the operation of the Queensland workers' compensation scheme – Final report*. Retrieved from https://www.worksafe.qld.gov.au/data/assets/pdf_file/0012/120063/2023-review-operation-Qld-workers-compensation-scheme.pdf, 93-94.

⁵⁰ New South Wales Senate Select Committee on the Impact of Technological and Other Change on the Future of Work and Workers in New South Wales, *First report – The gig economy*, 2022, 102. Retrieved from <https://www.parliament.nsw.gov.au/lcdocs/inquiries/2591/Report%20No%201%20-%20Select%20Committee%20-%20The%20gig%20economy%20-%20First%20report.pdf>.

⁵¹ P McDonald et al., 'Digital Platform Work in Australia: Prevalence, Nature and Impact (Digital platform work in Australia)', commissioned by the Victorian Department of Premier and Cabinet, 2019. Retrieved from www.eprints.qut.edu.au/203119/, 5.

⁵² Ibid, 82.

⁵³ Ibid.

⁵⁴ Ibid 47.

⁵⁵ Fisher G and Peetz D (2023) *2023 review of the operation of the Queensland workers' compensation scheme – Final report*. Retrieved from https://www.worksafe.qld.gov.au/data/assets/pdf_file/0012/120063/2023-review-operation-Qld-workers-compensation-scheme.pdf, 94.

these workers about matters such as payment terms, deductions, working time, record-keeping, insurance, consultation, representation, delegates' rights and cost coverage.

If passed in their current form, these reforms are likely to increase gig workers protections under the federal industrial relations framework. However, noting the states' and territories' responsibility for workers' compensation, the Bill will not impact the status of gig workers under workers' compensation laws.

Precarious nature of gig work

Gig work has been recognised as precarious in nature, including in the Queensland Government's 2018 submission to the Senate Select Committee on the *Future of Work and Workers*.⁵⁶

A survey of 1,036 gig workers in the food delivery, parcel delivery and rideshare sectors published by The McKell Institute Queensland in April 2023 (McKell survey)⁵⁷ found that respondents were dependent on gig work, were concerned about low pay, commonly experienced job loss through account deactivation, and faced abuse, assaults and injuries while working. Specifically:

- 81 per cent of respondents reported being dependent on the money earned from rideshare, food delivery or parcel delivery to pay bills and survive
- the highest reported concerns were low pay (76 per cent), not earning money while sick or injured (65 per cent), unpaid time waiting for jobs (64 per cent) and uncertainty of income (60 per cent)
- at least 45 per cent of respondents reported earning less than the minimum wage
- 79 per cent of respondents reported using multiple apps, either to receive enough jobs and money or for job security
- more than one quarter of respondents reported having had their accounts deactivated or suspended
- 51 per cent of respondents reported having felt pressured to rush or take risks to make enough money to protect their job
- more than half of respondents reported experiencing work-related stress, anxiety and mental health issues
- one in seven respondents reported experiencing sexual harassment and over a third reported being physically injured while working
- 55 per cent of respondents reported experiencing threatening or abusive behaviour, with 43 per cent reporting the risk of being abused by a customer was a significant concern
- 95 per cent of respondents supported government regulation for transport gig work.

A 2021 study published by the University of Melbourne's Melbourne Institute of Applied Economic & Social Research, which randomly sampled Uber drivers in Sydney, Melbourne, Brisbane and Perth, found that these drivers were relatively more likely to use Uber to earn supplementary income rather than their main source of income.⁵⁸ While for many drivers (43 per cent) this resulted in an increase income, for many others their income decreased (38 per cent) or remained the same (19 per cent).⁵⁹ Overall job satisfaction was reported to be

⁵⁶ Queensland Government. (2018). *Submission to the Senate Select Committee's 2018 on the Future of Work and Workers, Hope is not a strategy – our shared responsibility for the future*. Retrieved from www.aph.gov.au/Parliamentary_Business/Committees/Senate/Future_of_Work_and_Workers/FutureofWork/Submissions.

⁵⁷ The McKell Institute Queensland (2023) *Tough Gig – Worker perspectives on the gig economy*. Retrieved from mckellinstitute.org.au/research/reports/tough-gig-worker-perspectives-on-the-gig-economy/.

⁵⁸ O Alexander et al (2021) *Uber down under: The labour market for drivers in Australia* (Melbourne Institute Working Paper No. 18/21, September 2021), 1.

⁵⁹ Ibid, 15-16.

lower than for all workers (except for those drivers who expressed a preference for flexibility in their work), as was satisfaction with total pay and job security.⁶⁰ The study also found that drivers steadily exit the platform during their first six months, leaving the proportion of drivers remaining at between 50-60 per cent.⁶¹

Risks to gig workers in the care and support industry were also recently considered in a 2023 paper published by the Australia Institute. It was noted that care and support workers using gig platforms can be “*at far greater risk of losing future work if a relationship with a client turns sour, if a client is even somewhat dissatisfied, or if a client submits a false or unfair evaluation*”, noting that client ratings determine where a worker’s profile appears on the site.⁶²

2.6. Work-related injury costs are increased and shifted from intermediaries to gig workers and the community

It is widely recognised that statutory claim payments and common law payments (direct costs) provide only a partial estimate of the cost of work-related injuries to an economy.⁶³ To understand the total economic cost of a work-related injury, not only must the direct costs be considered, but also the broader cost incurred through the burden on the community, the employer and the worker (indirect costs).

The total economic cost of work-related injuries includes direct and indirect costs. Direct costs relate to payments that compensate a worker for a workplace injury (comprising common law and statutory claim payments, or otherwise amounts that involve actual monetary payments), while indirect costs are costs that are indirectly imposed on employers, workers and the community as a whole (for example, costs to the public health system or welfare system).

OIR estimates the total economic cost of work-related incidents to Queensland following the release of the Australian Bureau of Statistics’ ‘*The Work-Related Injuries Survey*’ (Cat. No. 6324.0) approximately every four years. Methodology used by Safe Work Australia⁶⁴ and Access Economics⁶⁵ was used as a basis to determine the estimated economic cost of work-related incidents for Queensland in 2017-18. The methodology is based on estimating the expected future costs of incidents occurring in the reference year. The costs that an injury or disease imposes in future years are discounted to present values. Where possible, Queensland-specific parameters are used to ensure the final estimate reflects the characteristics of Queensland’s economy.

Based on the above methodology, the estimated *total* cost of work-related injuries is approximately 5.2 times larger than the *direct* cost of work-related injuries for 2017-18. Applying this factor to the total cost of statutory claims in 2022-23 of \$1,248.8 million suggest that the total economic cost of these work-related injuries to the Queensland economy is around \$6.493.8 billion. For injured workers entitled to workers’ compensation, the direct

⁶⁰ Ibid, 22-23.

⁶¹ Ibid, 11.

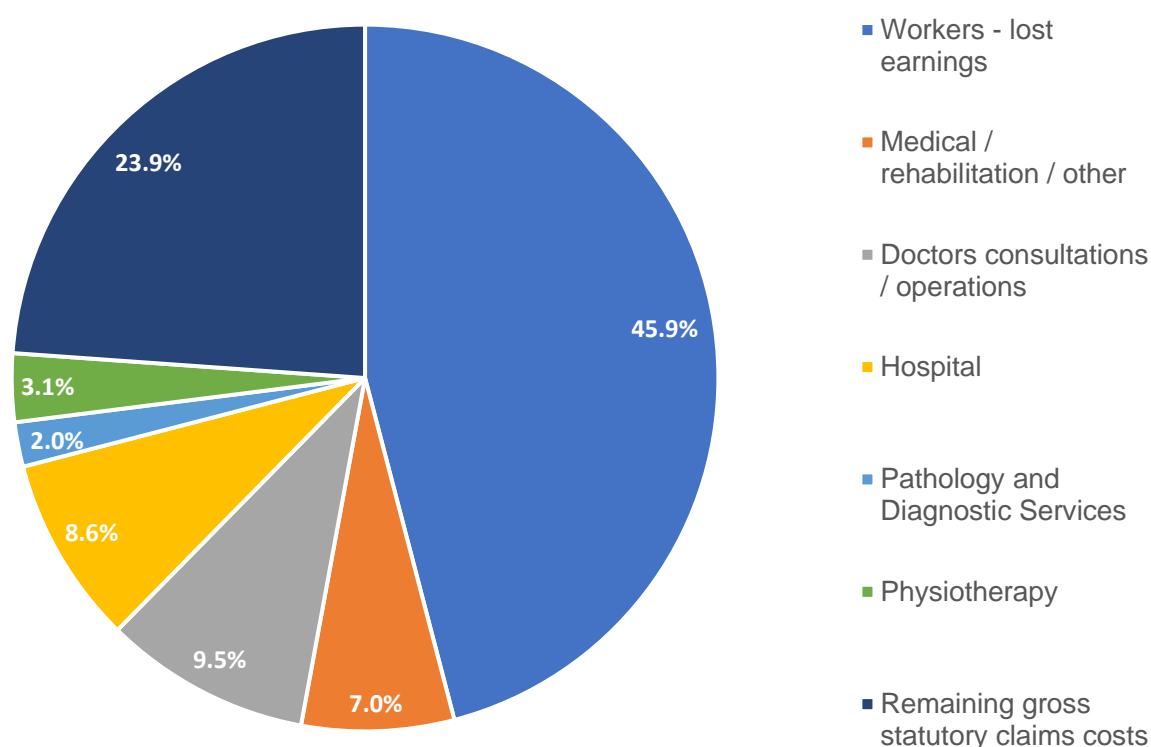
⁶² Macdonald F (2023) *Unacceptable Risks: The Dangers of Gig Models of Care and Support Work*, The Australia Institute, 28.

⁶³ Safe Work Australia. (2013). *The Cost of Work-related Injury and Illness for Australian Employers, Workers and the Community: 2012-13*. Retrieved from www.safeworkaustralia.gov.au/system/files/documents/1702/cost-of-work-related-injury-and-disease-2012-13.docx.pdf.

costs are funded by insurance premium paid by the employer. For injured workers who are not entitled to workers' compensation the direct costs are transferred to the community and the injured worker.

Chart 1 below provides an overview of WorkCover's distribution of *gross statutory claim costs* for the 2022-23 financial year.

Chart 1: WorkCover Queensland distribution of gross statutory claim costs (2022-23)



Note to Chart 1: 'remaining gross statutory claims costs' are paid for various lump sums to compensate for future medical needs, needs of dependants of injured workers and for claims administration.

Based on the methodology detailed above and the current distribution of gross statutory claims costs, Table 2 below shows the current cost distribution of total costs in 2022/23.

Table 2: Current cost distribution for statutory payments in 2022/23

	Direct costs (\$m)	Indirect costs (\$m)	Total cost (\$m)	Per cent of total cost
Community	\$0	\$2,832.3	\$2,832.3	44 per cent
Workers	\$0	\$1,940.6	\$1,940.6	30 per cent
Employers	\$1,248.8	\$472.1	\$1,720.9	26 per cent
TOTAL	\$1,248.8	\$5,245.0	\$6,493.8	100 per cent

Independent actuarial analysis suggests that under current arrangements, the total economic cost of work-related injuries sustained by gig workers for the 2023/24 financial year is \$90 million. This includes \$23 million in direct costs and \$67 million in indirect costs.

Gig workers are estimated to bear the highest proportion of the total economic cost (70 per cent), followed by the community (27 per cent) and intermediaries (4 per cent).

This is substantially more than the proportionate of total costs other workers bear under the analysis above (30 per cent). This is shown in Table 3 below.

Table 3: Current cost distribution for gig workers not entitled to workers' compensation

	<i>Direct costs (\$m)</i>	<i>Indirect costs (\$m)</i>	<i>Total cost (\$m)</i>	<i>Per cent of total cost</i>
Intermediary	0	3	3	4 per cent
Gig Worker	11	52	63	70 per cent
Community	12	12	24	27 per cent
TOTAL	23	67	90	100 per cent

2.7. A number of reviews have recommended reform for gig workers

Queensland is one of many Australian and international jurisdictions investigating potential reform in the gig economy.

The 2018 five-year review recommended extending workers' compensation coverage to gig workers, and requiring intermediaries to pay premium, as follows:⁶⁶

Recommendation 10.1: The coverage of the Act should be redefined to include any person engaged via an agency to perform work under a contract (other than a contract of service) for another person. This would exclude employees of licensed labour hire businesses and employees of firms that engage contractors, and specify that it applied where at least two parties were in Queensland at the time the work was undertaken.

Recommendation 10.2: Intermediaries or agents who engage any person to perform work under a contract (other than a contract of service) for another person should be required to pay premiums, based normally on the gross income received by the intermediaries or agencies.

The 2023 five-year review made a similar recommendation, as follows:

Recommendation 53: That, in light of the likely outcomes from developments in the federal sphere, the Minister:

- 1. Note the absence of impediments to legislating in the area of gig economy workers; and so*
- 2. Consider introducing a Bill to implement preferred options from the [Consultation RIS]. That is, in relation to gig economy workers, to:*

⁶⁶ Peetz D (2018) *The Operation of the Queensland Workers' Compensation scheme: Report of the Second Five-Yearly Review of the Scheme*. Retrieved from https://www.worksafe.qld.gov.au/data/assets/pdf_file/0021/24087/workers-compensation-scheme-5-year-review-report.pdf, 108.

- (a) *amend the Act to extend workers' compensation coverage to gig workers and require intermediary businesses to pay premiums (as per the recommendations of the 2018 Review)*
- (b) ...

Other Australian jurisdictions have undertaken reviews and inquiries to consider the emergence of labour market disruptions caused by the gig economy, including gig workers' lack of access to workers' compensation. Specifically:

- the New South Wales Select Committee on the Impact of Technological and Other Change on the Future of Work and Workers in New South Wales noted in its 2022 first report that it was “*of very significant concern...that gig workers, as independent contractors, are generally not covered by the state's workers' compensation scheme*”,⁶⁷ and recommended “*the NSW Government provide full workers compensation benefits to on-demand platform workers that are equivalent to the level of benefits currently provided to employees injured in New South Wales workplaces*”
- the Federal Senate Select Committee on Job Security noted in its 2021 first interim report that “*independent contractor status should not be an impediment to accessing state-based workers' compensation schemes*” and recommended that the Australian Government work with “*state and territory governments to lead the reform of state-based workers' compensation schemes so that they extend to platform workers, regardless of their visa or work status, and require platform companies to pay workers' compensation premiums for workers*”⁶⁸
- the Senate Education and Employment Committee's report into *Corporate Avoidance of the Fair Work Act* included a recommendation that the Federal Government work with states and territories to review health and safety and workers' compensation legislation to ensure companies operating in the gig economy are responsible for the safety of workers engaged in the gig economy⁶⁹
- the Federal Productivity Commission's 2016 *Digital Disruption* paper highlighted the need to consider changes to workplace relations regulations and income support to ensure they are not barriers to workforce engagement and help to reduce income volatility for low income workers.⁷⁰

3. Objectives of government action

The objectives of government action are to investigate whether it is necessary and appropriate to extend workers' compensation coverage to gig workers taking account of:

- the impacts of extending coverage on gig workers, intermediaries, the Queensland community and other affected parties
- the impacts of national developments in the regulation of the gig economy; and
- the need to ensure Queensland's workers' compensation scheme remains viable.

⁶⁷ New South Wales Senate Select Committee on the Impact of Technological and Other Change on the Future of Work and Workers in New South Wales, *First report – The gig economy*, 2022, 102. Retrieved from <https://www.parliament.nsw.gov.au/lcdocs/inquiries/2591/Report%20No%201%20-%20Select%20Committee%20-%20The%20gig%20economy%20-%20First%20report.pdf>.

⁶⁸ Commonwealth Senate Select Committee on Job Security (2021), *First interim report: on-demand platform work in Australia*. Retrieved from https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/024635/toc_pdf/Firstinterimreporton-demandplatformworkinAustralia.pdf;fileType=application%2Fpdf, 103.

⁶⁹ Parliament of Australia, Commonwealth Senate Education and Employment Committee (2016) *Corporate Avoidance of the Fair Work Act*. Retrieved from https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment/AvoidanceofFairWork/~/_media/Committees/eet_ctte/AvoidanceofFairWork/report.pdf.

⁷⁰ Commonwealth Productivity Commission (2016), *Digital Disruption: What do governments need to do?*. Retrieved from <https://www.pc.gov.au/research/completed/digital-disruption/digital-disruption-research-paper.pdf>.

4. Consideration of options

Based on the recommendations of the 2018 Five-Year Review and consultation of these recommendations, the options proposed in the Consultation RIS to address the identified problem for in-scope gig workers were:

Option 1: Status-quo – Gig workers rely on voluntary private personal accident insurance and are not covered by Queensland’s workers’ compensation scheme.

Option 1 would maintain the status quo and gig workers would continue to be unable to access Queensland’s workers’ compensation scheme (unless they take out a WIIP with WorkCover – see **section 2.3**).

Under this option, gig workers would continue to be responsible for sourcing and paying for their own personal accident insurance or relying on their intermediary to voluntarily provide personal accident insurance coverage. This option provides no regulation of or requirements on the level of coverage offered by personal accident insurance products.

Option 2: Amend the *Workers’ Compensation and Rehabilitation Act 2003* to extend workers’ compensation coverage to gig workers and require intermediary businesses to pay premiums (Preferred).

Option 2 proposes to amend the WCR Act to extend workers’ compensation coverage to gig workers and consequently would require intermediaries to pay workers’ compensation premiums to cover the cost of this coverage. At the time, this option was preferred by the Queensland Government in the Consultation RIS.

Under this option, workers’ compensation coverage would only be extended to gig workers. Intermediaries would hold employer obligations (including the obligation to insure) where they have a level of control or influence over the work, cost or conditions of work being performed by the gig worker.

This option would exclude intermediaries that operate bulletin boards or job finders and who do not exercise any control over the worker’s agreement, conditions or charge rates.

Additionally, the independent contractors who undertake work through these intermediaries would not be captured. This would exclude platforms such as AirTasker.

5. Consultation

5.1. Consultation process

Through the Consultation RIS, OIR sought the views of affected stakeholders and the wider public on proposed options for gig workers and bailee taxi and limousine drivers. The Consultation RIS was open for consultation between 7 June 2019 and 5 July 2019.

A total of 24 written submissions were received. Nine of these were confidential. The non-confidential submitters included:

- XNLT Chauffeurs
- Housing Industry Association
- Australian Lawyers' Alliance
- Transport Workers' Union Queensland Branch
- Master Electricians' Association
- Chamber of Commerce and Industry Queensland
- Queensland Taxi Licence Owners' Association
- Uber
- Ola
- Queensland Law Society
- Elaine Herold
- Phil Shield
- David Miles, Consultative Committee for Workplace Fatalities and Serious Incidents
- Stephen Lacaze
- Lucy and David Hooke.

5.2. Results of consultation

In relation to the options proposed for gig workers, stakeholder views were divergent. Results were as follows:

Options	For	Against	Alternative options presented
Option 1: maintain status quo (i.e. voluntary adoption of private accident insurance)	7	None	8
Option 2: extend the workers' compensation scheme to cover workers in gig economy	6	6	

Submissions generally acknowledged gig workers lack workplace entitlements and protections and the potential benefits of extending workers' compensation coverage. However, the following concerns were raised in relation to extending the workers' compensation coverage:

- unintended impacts on the employment relationship between gig workers and the intermediary within the federal industrial relations jurisdiction
- uncertainty about the scope of the proposed changes across the gig economy
- complexity around how workers' compensation would operate and apply in practice for gig workers (for example, determining when a gig worker is at work, liability during multi-

app use and how obligations regarding rehabilitation and return to work could be accommodated)

- prematurely acting before broader national regulation of the gig economy
- the creation of jurisdictional inconsistency in Queensland and impacts on business
- increased control over how gig work is undertaken eroding the flexibility and attractiveness of gig work.

Alternative options were also presented by a number of stakeholders, including:

- a per-gig workers' compensation levy paid by intermediaries
- a minimum private accident insurance requirement which does not alter the employment relationship
- support for gig workers to self-insure and an expanded version of Option 2 to all self-employed drivers.

Support for Option 1 – no legislative change and gig workers rely on voluntary private personal accident insurance

Six submissions provided express or implied support for Option 1. Stakeholders who supported this option raised concerns that extending workers' compensation coverage would result in:

- unintended consequences for the employment classification of gig workers in the federal industrial relations jurisdiction and the flexibility of gig work
- uncertainty and unintended consequences with respect to premium calculation
- premature action before broader regulation of gig economy arrangements in the federal industrial relations jurisdiction
- uncertainty around the scope of the proposed gig worker provisions
- complexity and impracticality regarding how workers' compensation obligations (such as rehabilitation and return to work (RRTW)) would apply.

Submissions that expressly or impliedly supported Option 1 raised the following issues:

Stakeholder	Submissions
Queensland Law Society (QLS)	<p>QLS noted gig workers can already obtain a WorkCover policy under sections 24 and 25 of the WCR Act. However, QLS acknowledged such coverage is voluntary, does not include the payment of damages, and would be funded by gig workers.</p> <p>Despite this, QLS expressed significant reservations about extending coverage of the scheme under option 2. This included concerns that:</p> <ul style="list-style-type: none"> • intermediaries exercise far less control than employers, making return to work difficult and raising issues as to whether a common law duty of care is owed • there are likely to be numerous statutory disputes as to whether a gig worker is working when they are waiting for work through a digital platform • wages will be difficult to calculate for premium setting purposes • defining 'intermediary' will be difficult • the financial viability of the scheme may be impacted if gig workers receive normal weekly earnings that are disproportionate the declaration of wages provided by the relevant intermediary

Stakeholder	Submissions
	<ul style="list-style-type: none"> reform may be premature in the absence of greater regulation of gig economy arrangements (for example, under the <i>Fair Work Act 2009</i> [FW Act]).
<p>Chamber of Commerce and Industry (CCIQ)</p> <p>(now the Business Chamber Queensland)</p>	<p>CCIQ submitted workers' compensation coverage for gig workers should remain voluntary. However, it supported enhancing private personal accident insurance coverage so it is comparable or similar to the level of coverage available under the scheme.</p> <p>CCIQ opposed Option 2 on the basis that it would add to operating costs, create a jurisdictional abnormality and serve as a disincentive to do business in Queensland due to additional administrative burden.</p> <p>CCIQ's primary concern was that extending coverage may limit the way intermediaries conduct their operations or introduce new industrial relations obligations.</p>
Uber	<p>Uber submitted Option 2 represented a significant change for platform businesses and had implications for users. Uber requested further time to consult and consider the proposed reforms.</p> <p>Specifically, Uber submitted:</p> <ul style="list-style-type: none"> the proposal to extend coverage is inconsistent across the gig economy Uber having the same rights, obligations and responsibilities as an employer under workers' compensation legislation is neither practical or achievable, since Uber does not have the same level of control, management or oversight as employers the definition of injury and 'journey claim' eligibility are problematic as claims may be made while a worker is temporarily absent from the 'place of employment' during and ordinary recess or travelling to or from work. This may create complexity noting earning through the Uber app is highly flexible allowing workers to be in their own home, performing their normal household tasks but with an active app open (or even multiple apps) the proposal for premium calculation does not adequately address the many variables in gig worker arrangements including multi-apping. This could lead to double claims being made with no ability for an insurer to manage this.
Ola	<p>Ola submitted rideshare drivers should be encouraged and supported to obtain their own insurance and ensure they are remunerated in a way that allows them to do so.</p> <p>Ola submitted that extending workers' compensation coverage to gig workers may not be the best way to ensure the safety and income security of these workers, and questioned whether the available evidence demonstrated current arrangements were deficient in the rideshare context. Specifically, it submitted:</p> <ul style="list-style-type: none"> no evidence has been provided that demonstrates rideshare driver earnings are not sufficient to allow drivers to self-insure personal accident schemes offered by platforms already extend to much of what would be covered by the workers' compensation scheme

Stakeholder	Submissions
	<ul style="list-style-type: none"> there is no adequate justification in terms of the level of control or vulnerability of rideshare participants to support the extension of workers' compensation coverage to some forms of gig work and not to others extending workers' compensation coverage would require intermediaries to exercise a greater level of control over the work of rideshare drivers it is unclear how irregular hours and multi-platform work would be accounted for in the application of the scheme to rideshare activities extending workers' compensation coverage would impose significant administrative burden on intermediaries.
Housing Industry Association (HIA)	<p>HIA opposed Option 2, submitting it would:</p> <ul style="list-style-type: none"> result in additional costs to the scheme be at odds with the existing approach to determining who is a 'worker' for the purposes of workers' compensation coverage, and contrary to recent decisions of the Fair Work Commission and Fair Work Ombudsman be an unwarranted and unjustified interference in how work is performed. <p>HIA raised concerns about the unintended consequences for independent contracting arrangements in the residential building industry and coverage of genuine independent contractors which may undermine the scheme as a whole.</p>
Master Electrician's Association (MEA)	<p>MEA was opposed to Option 2, submitting lack of clarity around the definition of 'gig worker' may impact on the current status and viability of the workers' compensation scheme. MEA raised concerns that a broader range of independent contractors could be inappropriately captured by the proposal, including electricians who use Facebook, Gumtree and paid subscription services to undertake work.</p>
Confidential submitter	<p>This submitter supported Option 2 but submitted this option was underdeveloped.</p>

Several submissions referred to recent Fair Work Commission and Fair Work Ombudsman decisions regarding the classification of gig workers as either employees or independent contractors. Several submitters were concerned about workers' compensation obligations placed on intermediaries which would see an increase in the exertion of their control over gig workers, and in turn, potentially impact on the classification of gig workers as employees in the federal industrial relations jurisdiction.

While Option 1 was not expressly supported in two of the confidential submissions, both echoed concerns about the unintended consequences in the federal industrial relations jurisdiction as a result of intermediaries having to exert increased control over how gig workers undertake gig work and working conditions.

Support for Option 2 – Extend Queensland's workers' compensation scheme to cover gig workers

Six submissions provided express or implied support for Option 2 (extend the scheme to cover in-scope gig workers).

Primary themes in support of Option 2 include that gig workers are vulnerable, existing private accident insurance policies are inadequate, there is currently no incentive for

intermediaries to improve health and safety, and workers' compensation will provide the best protection for gig workers.

Submissions that expressly or impliedly supported Option 2 raised the following issues:

Stakeholder	Submissions
Australian Lawyers' Alliance (ALA)	<p>The ALA supported Option 2 on the basis that it would:</p> <ul style="list-style-type: none"> • protect gig workers by providing fair and equal access to workers' compensation entitlements • improve injured workers' chances of achieving a durable return to work • maintain the flexible work arrangements offered by the gig economy by not altering and limiting the way in which intermediaries operate; • provide a level playing field by ensuring intermediaries pay the same proportion of workers' compensation costs paid by employers in the same industry • reduce cost-shifting to the community • result in improved work health and safety outcomes. <p>In support of this position, the ALA submitted:</p> <ul style="list-style-type: none"> • intermediaries have leveraged new technology and exploited out of date legislation to circumvent industrial laws • gig work has a disproportionate impact on the most vulnerable Australian cohorts, including immigrants, young people, students, women, people with disability, older workers, Aboriginal peoples and Torres Strait Islander peoples, early school leavers and people returning to the workforce • while costs may increase, they are relatively small and place intermediaries in line with employers currently covered by the scheme, creating a market more conducive to competition • the largest challenge lies in drafting but the focus should be on ensuring intermediaries do not evade their responsibilities to workers • the development of an appropriate definition of 'gig worker' and 'intermediary' requires a national approach, and the Queensland Government should advocate for the Commonwealth to make changes to the federal definition of 'employee' and empower the Fair Work Commission to arbitrate minimum standards for independent contractors.
TWU (Queensland Branch)	The TWU supported the ALA's submission. The TWU submitted there is currently little to no incentive for intermediaries to deal with health and safety issues and changes will have broader impact on road safety.
Confidential submitter	This submitter stated Option 2 provides the most protection of the options considered.
Confidential submitter	This submitter supported Option 2.
Confidential submitter	This submitter did not provide express support for Option 2 but recommended reforms encompass those who work under agency arrangements and require payment of premiums by intermediaries or agents.

Stakeholder	Submissions
Confidential submitter	This submitter supported Option 2 on the basis that gig workers regularly appear to be unempowered and disadvantaged. They recommended extending coverage for periods when ride share drivers are genuinely available for accepting work from the relevant platform. For ride-sourcing drivers who drive exclusively for one platform without interruption (except for routine breaks), it was submitted the platform should be responsible for providing workers' compensation cover from when the drivers leave home until when they return home.

Some submissions (David Miles, Stephen Lacaze, Lucy and David Hooke and one confidential submitter) advocated for an expanded version of Option 2.

Submissions from Ola, HIA, MEA QLS and two confidential submitters expressly rejected any extension of the workers' compensation scheme to gig workers.

Alternative options proposed

Several submissions proposed alternative options.

A levy to be paid by intermediaries

One confidential submission argued ride share drivers should be covered by workers' compensation insurance, however considered Option 2 was unworkable. The submission instead proposed an approach where:

- all intermediaries add a percentage to each trip or gig and pay that to the Queensland Government each quarter (a workers' compensation fee)
- if a passenger cancels, the workers' compensation fee is added to the cancellation fee
- the workers' compensation fee is paid out of the driver's share and is collected at point of sale or end of trip
- the total for the quarter can be tracked back to logs of trips and GPS traced.

It is not clear from the submission how this levy would apply to gig workers outside of ridesharing.

A further submission from Stephen Lacaze put forward the suggestion of a potential for the Queensland government to impose a 'fare levy' across the entire industry. A submission from David Miles also supported a levy applied to each fare in both the taxi and ride-share industry, and posited that if the taxi industry cannot cover this levy or if passengers not prepared to accept the increased cost of the fare, then the industry must subsidise it as a matter of public policy.

Mandatory minimum private accident insurance

Uber's submission suggested the Queensland Government could consider a legislative requirement for intermediaries to hold minimum insurance, providing fair protections for gig workers, without the imposition of a rigid legislative scheme designed for employers.

Several submissions highlighted the importance of protecting gig workers from an injury prevention and insurance perspective without risking the way intermediaries conduct their operations and resulting in industrial relations implications for the classification of gig workers.

Ola's submission supported a model that enables gig workers to obtain their own insurance for injury:

“The (Consultation) 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.”

To achieve a balance between Options 1 (maintain the status quo) and 2 (extend the scheme), CCIQ’s submission proposes enhancement of the existing private accident insurance arrangements at a level comparable or similar to a workers’ compensation insurance policy, which does not limit or restrict the way gig economy businesses conduct their operations or introduce any new industrial relations obligations.

Another confidential submission advocated for a similar model, mandating intermediaries to offer a minimum level of insurance in a way that does not risk gig workers being re-classified as employees in the federal industrial relations jurisdiction.

Uber’s submission suggested that if workers’ compensation is extended to the gig economy, it should take the form of a special policy of insurance, with each gig platform paying a sector-specific contribution ‘per gig’. Uber also advocates for the definition of ‘injury’ to be amended in section 32 of the WCR Act to align with its private accident insurance policy which defines the period for which cover should be extended.

Expanded versions of Option 2

David Miles’ submission proposed:

- mandating an affordable workers’ compensation insurance policy for self-employed drivers and other workers in similar situations to at least the minimum level of benefits available under a WorkCover policy
- subsidising the cost of taxis and ride shares as part of a fair and holistic approach to public transport.

Stephen Lacaze’s submission outlined a philosophical inconsistency in analysis to date and assessed that all drivers, whether taxi or other ‘gig workers’, were vulnerable, and that if WorkCover coverage were considered being extended, it should apply and be imposed equally on all drivers in the personalized transport industry. Mr Lacaze noted positive benefits would be horizontal equity and the ‘large pool size’ would spread risk more broadly. Mr Lacaze also submitted there may be potential for the Queensland Government to impose a ‘fare levy’ across the entire ride share industry. Mr Lacaze’s proposal was endorsed by another confidential submitter and Ms Hooke duplicated Mr Lacaze’s submission in her submission.

In addition to the Consultation RIS process, scheme stakeholders were consulted on the proposed options as part of the SRG convened in relation to the outcomes of the 2023 review. Feedback received during this process did not raise any issues not already raised in submissions to the Consultation RIS.

6. Impact analysis of the options

The impacts, costs and benefits of each option is set out below with anticipated cost impacts based on independent actuarial analysis. The methodology of these costings, including relevant assumptions and limitation, is in **Attachment C**.

The cost impacts of each option are based on an assessment of the allocation of the costs of work-related injury within the scheme.

6.1. Option 1 (Status quo)

Option 1: Status quo – Gig workers rely on voluntary private personal accident insurance and are not covered by Queensland's workers' compensation scheme			
Stakeholder	Benefits	Impacts	Costs
Gig workers	<ul style="list-style-type: none"> Gig workers are able to access to personal accident insurance from the market if they wish to be insured or have access to insurance where it is provided by their platform. 	<ul style="list-style-type: none"> No impact on existing workers' compensation or other rights, responsibilities or entitlements. To be covered, gig workers must either obtain insurance from their intermediary, WorkCover (as a contractor or self-employed person) or a private insurer. Gig workers who do not have insurance coverage will be exposed to uncompensated risk. Gig workers who do have insurance coverage will likely have inferior entitlements to those available to workers covered by the scheme. Higher risk of delayed medical intervention for work-related injury 	<ul style="list-style-type: none"> No additional costs. Most gig workers must source and fund their own insurance if they wish to be insured against work-related risk. Gig workers bear an estimated \$11 million of the direct cost of work-related injury in the 2023/24 financial year. Gig workers bear an estimated 70 per cent (\$63 million) of the total cost of work-related injury in the 2023/24 financial year.

Option 1: Status quo – Gig workers rely on voluntary private personal accident insurance and are not covered by Queensland's workers' compensation scheme			
Stakeholder	Benefits	Impacts	Costs
		and having poorer return to work outcomes.	
Intermediaries	<ul style="list-style-type: none"> No mandatory insurance costs. No responsibility for rehabilitation and return to work. Competitive cost advantage against employers in their industry. Uninsured intermediaries have a competitive cost advantage against intermediaries who voluntarily insure. Flexibility to design their own insurance arrangements if they wish with the private market. 	<ul style="list-style-type: none"> No impact on existing rights and responsibilities. Intermediaries who do not insure gig workers will not be incentivised to improve health and safety performance to reduce their premiums, leading to a higher risk of injuries occurring compared to workplaces subject to insurance. 	<ul style="list-style-type: none"> No mandatory insurance premiums or associated administration costs. No direct cost of work-related injuries. Employers bear an estimated 4 per cent (\$3 million) of the total cost of work-related injury in the 2023/24 financial year.
Employers	<ul style="list-style-type: none"> Nil. 	<ul style="list-style-type: none"> No impact on existing rights and responsibilities for workers' compensation. Employers who compete with intermediaries are at a competitive disadvantage to intermediaries, as 	<ul style="list-style-type: none"> No additional costs. Employers continue to pay workers' compensation premiums, excess and associated administration costs.

Option 1: Status quo – Gig workers rely on voluntary private personal accident insurance and are not covered by Queensland's workers' compensation scheme			
Stakeholder	Benefits	Impacts	Costs
		they must maintain workers' compensation insurance.	
Business that use gig workers as part of their operations (e.g. restaurants who offer food delivery)	<ul style="list-style-type: none"> Nil. 	<ul style="list-style-type: none"> No impact on existing rights and responsibilities for workers' compensation. 	<ul style="list-style-type: none"> No additional costs.
WorkCover	<ul style="list-style-type: none"> Nil. 	<ul style="list-style-type: none"> No change to the existing scope of the scheme. 	<ul style="list-style-type: none"> No additional costs.
Accident and personal injury insurance providers	<ul style="list-style-type: none"> Gig workers who are not otherwise covered under an intermediary's insurance policy must purchase a private insurance policy if they wish (or are required) to be insured. 	<ul style="list-style-type: none"> No direct impact on current demand for private accident and personal injury insurance.⁷¹ 	<ul style="list-style-type: none"> No additional costs.
Community	<ul style="list-style-type: none"> Costs efficiencies in using the services of intermediaries. 	<ul style="list-style-type: none"> Health system, public welfare system and personal health insurance industry are relied upon by injured gig workers. 	<ul style="list-style-type: none"> The community bears an estimated \$12 million in the direct cost of work-related injury in the 2023/24 financial year. The community bears an estimated 27 per cent (\$24 million) of the total

⁷¹ It is possible that there may be increased demand for these insurance products if workers' compensation coverage is not extended.

6.2. Option 2 (Extend workers' compensation coverage)

Option 2: Amend the <i>Workers' Compensation and Rehabilitation Act 2003</i> to extend workers' compensation coverage to gig workers and require intermediary businesses to pay premiums			
Stakeholder	Benefits	Impacts	Costs
Gig workers	<ul style="list-style-type: none"> • Access to workers' compensation entitlements for work-related injury. • Same workers' compensation rights as other working Queenslanders who are covered by the scheme. • No need to privately obtain accident or personal injury insurance. • Improved timeliness of medical intervention for work-related injuries. • Improved durable return to work outcomes. 	<ul style="list-style-type: none"> • No impact on other industrial relations rights or entitlements. • No impact on the flexibility of gig work. • Inconsistency of coverage with workers in other jurisdictions or working across jurisdictions. 	<ul style="list-style-type: none"> • No direct cost of work-related injury. • Gig workers would bear an estimated 58 per cent (\$52 million) of the total cost of work-related injuries (compared to 70 per cent and \$63 million under Option 1) in the 2023/24 year.
Intermediaries	<ul style="list-style-type: none"> • Improved work health and safety outcomes as intermediaries will be incentivised to improve performance through premiums and the inability to insure against excess. • Rehabilitation and return to work obligations are likely to 	<ul style="list-style-type: none"> • Intermediaries would be required to take out a workers' compensation insurance policy with WorkCover or self-insure (if eligible). • Intermediaries would become subject to workers' compensation obligations including obligations to support rehabilitation, report compensable 	<ul style="list-style-type: none"> • Premium costs will vary from business to business depending on the business's predominant industry and the claims experience observed for each business. • Intermediaries would bear an estimated \$23 million in the direct costs of work-related injury (compared

Option 2: Amend the <i>Workers' Compensation and Rehabilitation Act 2003</i> to extend workers' compensation coverage to gig workers and require intermediary businesses to pay premiums			
Stakeholder	Benefits	Impacts	Costs
	<p>reduce disruption to the workplace, increase productivity and improve gig worker morale.</p>	<p>injuries, pay premium and cooperate with WorkCover.</p> <ul style="list-style-type: none"> Does not limit or restrict how intermediaries conduct their business or how they engage persons. Intermediaries would pay the same proportion of costs for workers' compensation as current employers pay in the same industry. Intermediaries that operate nationally would be subject to different workers' compensation laws. Potential loss of competitive advantage over traditional employers arising from insurance liabilities. If workers' compensation costs are passed onto end users, this may impact demand for gig services. 	<p>with no direct costs under Option 1) in the 2023/24 financial year.</p> <ul style="list-style-type: none"> Intermediaries would bear an estimated 29 per cent (\$26 million) of the total cost of work-related injury (compared with 4 per cent and \$3 million) in the 2023/24 financial year. Increased administrative costs of declaring remuneration and maintaining a workers' compensation insurance policy. Increased costs may be potentially offset against any personal accident insurance the intermediary is currently purchasing. Costs of public liability insurance may be potentially offset due to the common law indemnity provided under a workers' compensation insurance policy.
Employers	<ul style="list-style-type: none"> Creates a level playing field noting they will be required to factor in the cost of workers' compensation into business costs. 	<ul style="list-style-type: none"> No impact on existing rights and responsibilities for workers' compensation. 	<ul style="list-style-type: none"> No additional costs. Employers continue to pay workers' compensation premiums, excess and associated administration costs.

Option 2: Amend the <i>Workers' Compensation and Rehabilitation Act 2003</i> to extend workers' compensation coverage to gig workers and require intermediary businesses to pay premiums			
Stakeholder	Benefits	Impacts	Costs
Business that use gig workers as part of their operations (e.g. restaurants who offer food delivery)	<ul style="list-style-type: none"> Nil. 	<ul style="list-style-type: none"> Gig workers used by businesses to undertake operations or reach consumers will be subject to workers' compensation coverage, which may have cost impacts for these business (see opposite). 	<ul style="list-style-type: none"> Any increased costs associated with maintaining workers' compensation coverage may be passed on to these businesses by intermediaries. It is not currently possible to quantify the extent of these costs as they depend on the .
WorkCover	<ul style="list-style-type: none"> Nil. 	<ul style="list-style-type: none"> Increase in the number of workers covered by the scheme, impacting scheme costs and potentially impacting resourcing, decision-making timeframes and claims management processes. 	<ul style="list-style-type: none"> Increased scheme costs (statutory compensation and potentially, common law payments) estimated at \$23 million in the 2023/24 financial year. However: <ul style="list-style-type: none"> scheme costs would be largely offset by the collection of premium from intermediaries. If the current headline average premium rate were charged for gig workers, this would generate an estimated \$19 million in premium in the 2023/24 financial year (compared to an estimated \$23 million in scheme costs); and additionally, there may be some offset where a worker makes both a workers' compensation claim and a CTP claim under the <i>Motor Accident Insurance Act 1994</i>, as WorkCover recovers amounts paid under the CTP scheme. In 2022-23, WorkCover made significant

Option 2: Amend the *Workers' Compensation and Rehabilitation Act 2003* to extend workers' compensation coverage to gig workers and require intermediary businesses to pay premiums

Stakeholder	Benefits	Impacts	Costs
			<p>recoveries in relation to almost 1,500 individual workers' compensation claims.</p> <ul style="list-style-type: none"> Administrative costs of managing claims for a new cohort of workers, including potential resourcing costs to maintain current claims management performance (for example, decision-making timeframes).
Accident and personal injury insurance providers	<ul style="list-style-type: none"> Nil. 	<ul style="list-style-type: none"> Loss of current gig worker accident and personal injury insurance market. 	<ul style="list-style-type: none"> Due to the limited scope of gig workers and the limited current uptake of personal accident insurance for gig workers, it is not expected that the proposed option would have a noticeable impact on general insurers.
Community	<ul style="list-style-type: none"> Reduction in the impact of work-related injury on families and the community. Reduction in the impact and total cost of work-related injuries on the public health, public welfare and private insurance schemes. 	<ul style="list-style-type: none"> The cost of using intermediaries to obtain services may increase to accommodate increased business costs from workers' compensation liabilities. 	<ul style="list-style-type: none"> No direct cost of work-related injury. The community would bear an estimated 13 per cent (\$12 million) of the total cost of work-related injuries (compared to 27 per cent and \$24 million under Option 1) in the 2023/24 financial year.

Economic cost of work-related injury

The estimated total economic cost of these work-related injuries to the Queensland economy is around \$90 million.

Option 2: Amend the *Workers' Compensation and Rehabilitation Act 2003* to extend workers' compensation coverage to gig workers and require intermediary businesses to pay premiums

Stakeholder	Benefits	Impacts	Costs
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Based on the methodology detailed above and the current distribution of gross statutory claims costs, Table 5 shows the cost distribution for gig workers if they were entitled to workers' compensation.

Table 5: Cost distribution for gig workers if they were entitled to workers' compensation

	<i>Direct costs (\$m)</i>	<i>Indirect costs (\$m)</i>	<i>Total cost (\$m)</i>	<i>Per cent of total cost</i>
Intermediary	\$23	\$3	\$26	29 per cent
Gig worker	\$0	\$52	\$52	58 per cent
Community	\$0	\$12	\$12	13 per cent
TOTAL	\$23	\$67	\$90	100 per cent

7. Conclusion and recommended option

The Queensland Government notes the preferred option in the 2019 Consultation RIS was Option 2 and this would provide a beneficial approach. However, it is decided further consideration of this issue is necessary taking into account the status of national work being undertaken from an industrial and workers' compensation perspective as well as industry and scheme impacts, implementation complexities and cost burden identified in consultation.

To ensure the scheme has flexibility to respond in the future, it is proposed the WCR Act be amended to enable a certain gig workers to be prescribed as a 'worker' and intermediaries to be prescribed as an 'employer' by regulation. Consideration will be given to using this head of power once the full extent of the impacts of the Closing the Loopholes Bill is known, such as any subsequent determinations by the Fair Work Commission on whether gig workers have 'employee-like' status.

The Government's reasons for adopting this approach are outlined below.

The full impacts and scope of the Closing Loopholes Bill reforms are unknown.

The Commonwealth Government is currently progressing reforms relevant to gig work through the Closing Loopholes Bill. As the Closing Loopholes Bill is yet to be passed by the Commonwealth Parliament, the full nature and extent of these impacts is not currently known. Currently these reforms will not impact the status of gig workers under workers' compensation laws, however they may lead to changes in the legal status and conditions of certain gig workers and the business models adopted by intermediaries which are important to developing workers' compensation policy for gig workers.

It is considered necessary that any extension of the scheme to gig workers should align with the scope of coverage under the Closing Loopholes Bill, including applying to the same cohort of 'employee-like workers' and 'digital labour platform operators'. This would promote national consistency and offer greater certainty for intermediaries and gig workers seeking to understand their legal status under industrial law and the obligations and entitlements that follow. Specifically, federal industrial coverage and workers' compensation coverage should be governed by the same legislative test and minimum standards decisions of the Fair Work Commission. As the Closing Loopholes Bill is yet to be passed and its scope of coverage subject to change, it is not currently possible to align workers' compensation coverage with the Closing Loopholes Bill with any certainty.

The Closing Loopholes Bill also enables the Fair Work Commission to make minimum standards about employee-like workers (i.e. gig workers), including standards about insurances. Although a standard could not prescribe workers' compensation requirements (these are the subject of State and Territory laws), a standard could be used to mandate and enhance private accident insurance coverage for employee-like workers. If so, this might reduce gig workers' exposure to uninsured or underinsured work-related risks. The exercise of the Fair Work Commission's power in this way for couriers was specifically supported by Menulog in its submission to the Closing Loopholes Bill inquiry.⁷² An understanding of how the Fair Work Commission proposes to exercise this standard-making power is critical to determining the coverage of gig workers within the scheme.

The Closing Loopholes Bill may also have broader impacts on intermediaries' business model which may impact the policy development for extending workers' compensation coverage. In response to the Closing Loopholes Bill inquiry, DoorDash submitted regulation

⁷² Menulog, Submission No 136 to the Senate Education and Employment Legislation Committee, *Inquiry into the Fair Work Legislation Amendment (Closing Loopholes) Bill 2023 [Provisions]* (13 October 2023), 25.

of the industrial entitlements of gig workers would result in a fundamental change to the way platforms operate, and may lead platforms to limit the amount of time workers use a digital application and place restrictions on a worker's ability to refuse work.⁷³ Uber also submitted platforms may take measures such as requiring workers to automatically accept work, schedule shifts in advance, work in predetermined locations, and work exclusively for one platform.⁷⁴ If the Closing Loopholes Bill results in changes to the way gig work is performed, this will have practical consequences for how any extension of Queensland's workers' compensation scheme is designed.

Extending coverage before the passage the Closing Loopholes Bill would create uncertainty and complexity for stakeholders.

There are significant complexities in extending coverage which would benefit from a national policy response.

As identified in stakeholder submissions, considerable complexity exists in ensuring the scheme is able to accommodate extended workers' compensation coverage for gig workers. While the WCR Act currently extends to individuals who are not employees, the WCR Act operates most efficiently in relation to traditional employment arrangements. The scheme's ability to meet the following key issues is uncertain and would require significant additional consultation with gig economy participants to resolve.

Issue	Comment
Multi-apping	Many gig workers use multiple platforms and it is foreseeable that a gig worker may be injured while using two platforms simultaneously. For example, a gig worker may undertake food delivery services in between rideshare work. If a gig worker suffers a work-related injury in these circumstances, there would be considerable complexity in determining which intermediary is the 'employer' for workers' compensation purposes.
Setting of wages	The assessment of premium is currently calculated according to the method and rate specified by WorkCover by gazette notice (section 54(1) WCR Act) and is linked to the wages paid or estimated to be paid during the period of insurance (section 54(6) WCR Act). 'Wages' are currently defined to mean the total amount paid, or provided by, an employer to, or on account of, a worker as wages, salary or other earnings by way of money or entitlements having monetary value (section 7, schedule 6 WCR Act). However, as not all gig workers are paid by an intermediary, this definition may not operate for all gig workers.
Coverage of work-related injury	Due to the nature of work performed by a gig worker it may be necessary to include provisions to clarify the circumstances of when and where gig workers may be covered for work-related injuries, particularly for injuries arising at the place of work or on certain journeys (sections 32, 34 and 35 of the WCR Act) which may be particularly challenging to determine. The allocation of work to a gig worker has similarities to casual and on-call workers, in that gig workers may be holding themselves to be available for work without any guarantee that they will be offered work. There is existing case law determining whether a worker is on-call and

⁷³ DoorDash, Submission No 39 to the Senate Education and Employment Legislation Committee, *Inquiry into the Fair Work Legislation Amendment (Closing Loopholes) Bill 2023 [Provisions]* (14 October 2023), 8-9.

⁷⁴ Uber, Submission No 40 to the Senate Education and Employment Legislation Committee, *Inquiry into the Fair Work Legislation Amendment (Closing Loopholes) Bill 2023 [Provisions]* (October 2023), 19-21.

Issue	Comment
	would have an entitlement to workers' compensation. However, it is unclear whether the courts and tribunals would apply these principles to a gig context.
Common law access	The extension of common law access and indemnity for gig workers under the WCR Act is complex as there is no employment relationship with the intermediary and in many instances the intermediary will have no, or only a minor degree of contribution to the injury.

In recognition of these and other issues, Safe Work Australia is undertaking work to develop a national policy response to the workers' compensation coverage of gig workers. This includes participation from all Australian workers' compensation jurisdictions, including Queensland. To ensure these issues are thoroughly considered, and in the interests of promoting a national consistent approach, it is preferable that Queensland continues to participate in this forum to inform the development of a considered policy position for gig workers. If Queensland were to extend workers' compensation coverage at this time, it would risk legislating a position that may ultimately be inconsistent with approaches taken in other Australian jurisdiction.

Stakeholders continue to have diverse views on extending coverage.

Stakeholders expressed diverse views on whether coverage should be extended to gig workers at this time. This reflects the complexity of extending coverage to gig workers at this time, including uncertainty about the Fair Work Commission's proposed minimum standard-making power and the impacts of the Closing Loopholes Bill on the way gig work is performed. While the absence of clear stakeholder support is not a decisive factor in the Government's decision, it underscores the need for government action in this area to be considered and properly informed by national developments.

Part 3: Bailee taxi and limousine drivers

8. Background

8.1. Arrangements for taxi and limousine drivers

The personalised transportation industry delivers personalised transportation services to the Queensland community through ride share, taxi and limousine services.

While all taxi drivers, limousine and ride share drivers are required to hold a driver authorisation issued by the Department of Transport and Main Roads (DTMR), the taxi and limousine industry has different licensing and operates in a different way to ride share intermediaries that participate in the gig economy.

A taxi service is provided in a vehicle of not more than 12 seats (including the driver's position), which can be hailed by members of the public and may ply or stand for hire on a road.⁷⁵ To operate a taxi, an operator must hold a taxi service licence to provide a taxi service in a specific area. Only a taxi can be used to provide a taxi service. However, taxis can also be used to provide booked hire services, being services hired other than on the spot. To operate a limousine, an operator must hold a limousine license, which allow them to provide booked hire services.

Taxis and limousines conduct their business operations in a different manner to intermediaries in the gig economy. Many licence owners (also known as licensees) lease or outsource management of the licence to an operator, with operators responsible for the operation of multiple taxis or limousines. The operator is responsible for how work is allocated, the selection of drivers, the systems of work, and the distribution of earnings from the taxi to the driver.

In the case of taxi services, the relevant licensee or the operator will typically contract with a booking entity (e.g. 13cabs) to facilitate booked work for the vehicle. The booking entity may also fit out the cab with a meter to record fares for rank and hail work, which can also be used for booked work. Taxis also need to be fitted with other equipment mandated by DTMR, such as surveillance recording devices.

Historically, taxi drivers have primarily entered into bailment arrangements, with some limousine drivers also using this type of arrangement. A bailment is a contractual arrangement where a bailor transfers to the bailee property (e.g., a taxi or a limousine) for the bailee to control or temporary use. Where taxi and limousines are engaged under bailment arrangements, there is a transfer of funds between the bailee driver and the bailor taxi or limousine operator for the right to use the taxi or limousine. The bailee driver does not receive payment for their labour from the bailor but instead there may be profit share arrangements (at an agreed percentage of the taxi or limousine's fares), or in some instances receipt of a fixed fee. The bailee driver does not generally have any contract with the booking entity.

⁷⁵ *Transport Operations (Passenger Transport) Act 1994*, s 70.

An example of a bailee taxi arrangement is detailed below.

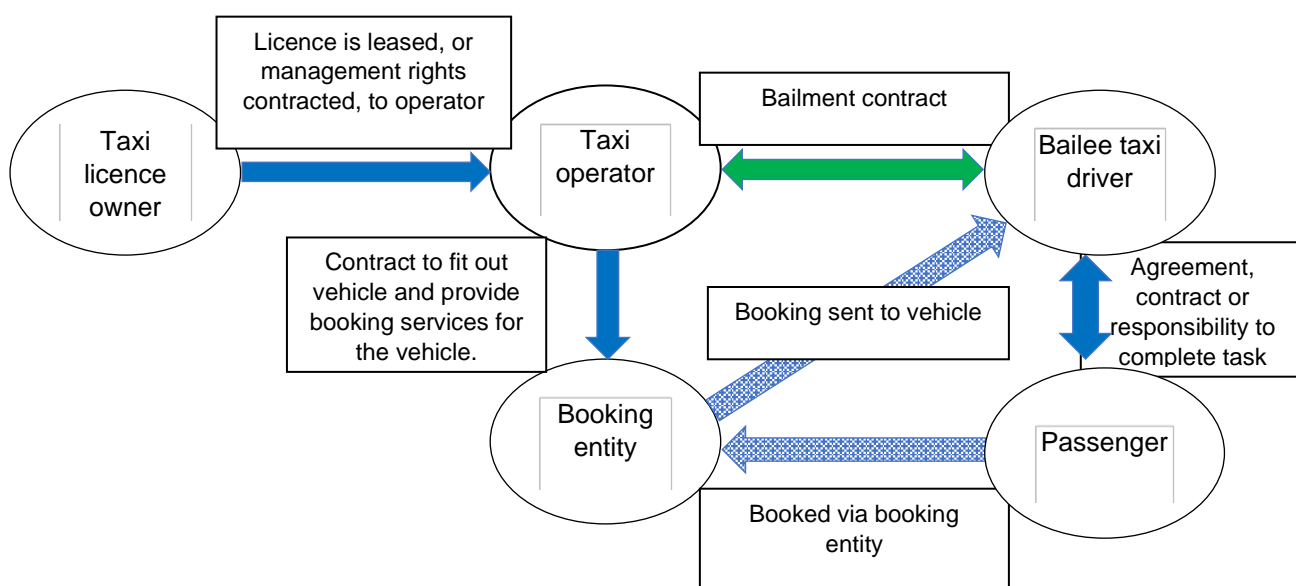


Figure 5: Example of bailee taxi arrangement

DTMR publishes a model bailment agreement that taxi service operators and drivers can use (although DTMR does have oversight of these arrangements). Under the agreement, the operator bails a taxi to the driver under a bailment in exchange for a bailment fee and other contributions for various insurances. The operator must have authority to deal with the taxi and must own, lease or manage a taxi service licence under the *Transport Operations (Passenger Transport) Act 1994* (TOPT Act).

Although some limousine drivers also work under bailment arrangements, it is anecdotally understood that most are employed under a contract of service.

There is no publicly available information on the exact number of taxi and limousine drivers undertaking work in Queensland. However, as at 8 December 2023, there were:

- 30,088 individual booked hire driver accreditations issued by the DTMR (being accreditations to drive a vehicle being used to provide booked hire public passenger service, including taxi, limousine and rideshare services)
- 3,248 taxi service licences and 470 limousine licences authorised and issued by DTMR
- 547 booking entities authorised by DTMR that organise the booking of work for the personalised transport industry, providing services for taxis, limousines and ride share drivers. This includes those larger booking entities including Black and White Cabs, 13Cabs, Uber and Ola.

There is no public information available on the number of taxi and limousine operators conducting a business in Queensland. Additionally, it is not possible to disaggregate the number of booking entities only providing services to taxis and limousine drivers.

According to ABS data, taxi vehicles are generally worked 225 shifts per year.⁷⁶

⁷⁶ Obtained from www.ato.gov.au/businesses-and-organisations/income-deductions-and-concessions/small-business-benchmarks/in-detail/taxi-drivers-and-operators.

9. Identification of the problem

9.1. Drivers are not covered by the workers' compensation scheme

A person must be a 'worker' or specific non-worker to be covered by Queensland's workers' compensation scheme. A bailee is not a worker because although a bailment is a type of contract, it is not a contract under which a person 'works' as required by section 11(1)(a) of the WCR Act. Rather, under a bailment contract, a person delivers property to another person for a particular use and fee on a temporary basis. Additionally, bailees are not specified to be workers under schedule 2 of the WCR.

Further, a bailee is not an employee for PAYG withholding purposes under section 11(1)(b) of the WCR Act. This is expressly recognised in Australian Taxation Office's (ATO) Taxation Ruling TR 2023/4 – *Income tax: pay as you go withholding – who is an employee?*, which outlines the ATO's position on who is an employee for PAYG withholding. Specifically, the ruling cites taxi drivers operating under a bailment arrangement as an example of individuals who are not employees.⁷⁷

The result is that bailees, including bailee taxi and limousine drivers, are excluded from workers' compensation coverage in Queensland.

Illustrating the different character of bailment contracts, the Federal Court judgment in *De Luxe Red & Yellow Cabs Co-Operative (Trading) Society Ltd & Ors v Commissioner of Taxation* [1997] FCA 840 found that the relationship between taxi driver and owner was one of bailment rather than employment. This was upheld on appeal.⁷⁸ Consistent with this, the Queensland Supreme Court in *Suncorp Metway Insurance Ltd v Grant* [2005] QSC 320 found that a chauffeur using a vehicle under a bailment contract was not an employee of the bailor of the vehicle.

Annexure A summarises the current work arrangements for gig bailee taxi and limousine drivers and how these arrangements compare to those for workers covered by the WCR Act.

9.2. Drivers must source and fund their own personal accident insurance or remain uninsured

In the absence of workers' compensation coverage, bailee taxi and limousine drivers can access accident insurance coverage from three sources:

- voluntary accident insurance purchased by the driver from WorkCover as a contractor or self-employed individual⁷⁹
- voluntary accident insurance purchased by the driver on the private insurance market
- voluntary accident insurance purchased by the taxi operator on their behalf.

However, these products are subject to the same limitations identified in relation to gig workers. Specifically, except in the case of a WorkCover policy, private accident insurance policies generally provide inferior coverage to that available under the workers' compensation scheme.

⁷⁷ Australian Taxation Office, *Taxation Ruling TR 2023/4 – Income tax: pay as you go withholding – who is an employee?*, 16.

⁷⁸ *Commissioner of Taxation of the Commonwealth of Australia v De Luxe Red & Yellow Cabs Co-Operative (Trading) Society Ltd & Ors* [1998] FCA 361.

⁷⁹ WCR Act, s 23-24.

9.3. Lack of workers' compensation coverage exposed drivers to risk of uncompensated or undercompensated work-related injury

The key consequence of bailee drivers being excluded from workers' compensation coverage is that many are exposed to a risk of uncompensated or undercompensated work-related injury, and do not have access to the same rehabilitation and return to work support.

There is evidence that workers within the automobile and transport industry are at an increased risk of work-related injury when compared to other occupational groups. Australian Bureau of Statistics (ABS) data for the 2021-22 financial year indicates that machinery operators and drivers had the second highest work-related injury rates nationally at 6.5 per cent.⁸⁰ By comparison, rates for other workers (labourers, technicians and trade workers, sales workers, managers, professionals and clerical and administrative workers) were between 1.9 per cent to 5.7 per cent. Further, the work-related injury rate for machinery operators and drivers has increased since 2017-18, when it was 5 per cent. These rates may be indicative for taxi and limousine drivers generally.

Scheme data for Queensland for the 2021-22 financial year indicated that claim lodgment for 'Transport, Postal and Warehousing' was 5.3 per cent, which made it the eighth biggest industry with claim lodgments in that financial year.⁸¹

Table 6 below shows the number of serious claims, including all claims with one week or more time lost from work, across Australian jurisdictions for passenger transport drivers.

Table 6: Serious claims data for passenger transport drivers by jurisdiction⁸²

Scheme	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23	Grand Total
ACT	9	9	13	113	8	N/A	152
NSW	502	509	520	489	745	523	3288
NT	39	29	19	14	13	7	121
QLD	322	368	406	432	452	224	2204
SA	50	54	62	69	66	29	330
TAS	48	52	42	41	52	26	261
VIC	398	406	388	372	364	178	2106
WA	87	62	52	61	74	40	376
Grand Total	1455	1489	1502	1591	1774	1027	8838

Consistent with these risks, Workplace Health and Safety Queensland has previously issued guidance about the application of work health and safety duties to taxi operators, booking companies and bailee drivers under the WHS Act. The guidance recognises that taxi drivers may be at risk from passenger violence and aggression, sprain and strain injuries, fatigue

⁸⁰ Australian Bureau of Statistics (2023) *Work-related injuries*. Retrieved from www.abs.gov.au/statistics/labour/earnings-and-working-conditions/work-related-injuries/2021-22.

⁸¹ Queensland Government, (2022). Workers Compensation scheme statistics reports. Retrieved from [Statistics | WorkSafe.qld.gov.au](https://www.worksafe.qld.gov.au/statistics).

⁸² Safe Work Australia (2023), National Dataset for Compensation-based Statistics. Retrieved from <https://data.safeworkaustralia.gov.au/interactive-data/industry/road-transport>

and sun damage, and outlines specific steps that duty holders can take to manage these risks.⁸³

Health and safety risks associated with the provision of taxi services and booked hire services are also recognised by the TOPT Act. Specifically, operators, booked hired entities and drivers are subject to duties to:

- ensure, so far as is reasonably practicable, the safety of their activities, including business practices and making decisions, relating to providing such services;⁸⁴ and
- take all reasonable steps to ensure another person does not drive a motor vehicle to provide such services while the person's ability to drive a motor vehicle safely is impaired by fatigue.⁸⁵

9.4. Drivers' arrangements are out of step with other deemed profit share workers

The Queensland's workers' compensation scheme deems some workers engaged in profit share arrangement to be workers for the purpose of the scheme, for example share farmers and salespersons. Persons involved in a bailment agreement are considered to occupy a relationship in the nature of joint adventurers. The Federal Court judgment in *De Luxe Red & Yellow Cabs Co-Operative (Trading) Society Ltd & Ors v Commissioner of Taxation* [1997] FCA 840 noted that drivers pay the operator and not the other way around, and that while a fixed payment method more clearly is marked as a bailment, than the gross percentage of meter method, ultimately a distinction should not be drawn between the two bailment payment methods. As parties to a bailment are joint adventurers engaged in a form of profit share, this results in bailee taxi and limousine drivers being out of step with other deemed profit share workers.

9.5. Injury costs are shifted to bailee drivers and the community

Like workers in the gig economy, the absence of workers' compensation coverage for bailee drivers results in the cost of work-related injury being borne predominantly by drivers and the community.

The total cost of these work-related injuries to the Queensland economy is estimated to be around \$14.3 million. While taxi operators are estimated to bear a higher proportion of direct costs than drivers and the community (\$1.5 million, compared with 1 million and 1.1 million respectively), drivers and the community bear a far greater proportion of indirect costs. Consequently, it is estimated that drivers and the community bear a combined 86 per cent of total injury costs. This is shown in Table 7 below.

Table 7: Economic cost of work-related injuries sustained by bailee drivers

	Direct (\$m)	Indirect (\$m)	Total (\$m)	Per cent of total cost
Operator	1.5	0.5	2.0	14 per cent
Worker	1.0	8.2	9.2	65 per cent
Community	1.1	1.9	3.0	21 per cent

⁸³ Workplace Health and Safety Queensland (2012), *Work health and safety for taxi drivers and operators*. Retrieved from https://wcq-search.squid.cloud/s/redirect?collection=wcq-meta&url=https%3A%2F%2Fwww.worksafe.qld.gov.au%2F_data%2Fassets%2Fpdf_file%2F0027%2F15786%2Fwhs-taxi-drivers.pdf&auth=I6ior6v7cqfVesRCSng2RA&profile=default&rank=1&query=taxi+operators.

⁸⁴ TOPT Act, s 88.

⁸⁵ TOPT Act, s 91B(2).

	Direct (\$m)	Indirect (\$m)	Total (\$m)	Per cent of total cost
Total	3.6	10.6	41.3	100 per cent

9.6. Queensland is out of step with other Australian jurisdictions

All other state and territory workers' compensation jurisdictions, except for Western Australia, have specifically deemed taxi drivers engaged under a bailment to be eligible for workers' compensation.

Most recently in 2016, the Australian Capital Territory introduced legislation extending the application of its workers' compensation arrangements to contracts of bailment to align it with the majority of Australian jurisdictions.⁸⁶

An interjurisdictional comparison of approaches to workers' compensation coverage of bailment arrangements in the taxi and limousine industries is listed below.

Jurisdiction	When covered
Victoria	<p>Coverage commenced in 1985 at the time of enactment of the original legislation, the <i>Accident Compensation Act 1985</i>.</p> <p>Currently covered under the <i>Workplace Injury Rehabilitation and Compensation Act 2013</i>. Schedule 1, Part 1, section 7.</p> <p>7 Drivers carrying passengers for reward</p> <p>(1) A person engaged in driving a motor vehicle is deemed to be a worker if the person ("driver") –</p> <ul style="list-style-type: none"> (a) has the use of a motor vehicle under a contract of bailment entered into with another person (the operator) (other than a bona fide contract for the purchase of the vehicle); and (b) uses the motor vehicle to carry passengers for reward; and (c) is required under the contract to make payments to the operator for the use of the motor vehicle. <p>(2) A reference in subclause (1) to a contract of bailment includes a reference to a driver agreement within the meaning of Division 1 of Part 6 of the <i>Commercial Passenger Vehicle Industry Act 2017</i>.</p> <p>(3) If, under subclause (1), a driver is a worker –</p> <ul style="list-style-type: none"> (a) the operator is deemed to be the employer of the driver; and (b) the amount received by the driver for carrying passengers, less the amount paid or payable to the operator for the use of the motor vehicle, is deemed to be remuneration.

⁸⁶ The *Road Transport (Taxi Industry Innovation) Legislation Amendment Regulation 2016 (No 1)* (ACT) introduced changes to the *Workers Compensation Regulation 2002* (ACT) with effect from 1 November 2016.

Jurisdiction	When covered
NSW	<p>Coverage commenced in 1987 at the time of enactment of the original legislation, the <i>Workers Compensation Act 1987</i>.</p> <p>Currently covered under the <i>Workplace Injury Management and Workers Compensation Act 1998</i> Schedule 1, section 10.</p> <p>10 Drivers of hire vehicles or hire vessels – contract of bailment</p> <p><i>A person engaged in plying for hire with any vehicle or vessel, the use of which is obtained by that person under a contract of bailment (other than a hire purchase agreement), in consideration of the payment of a fixed sum, or a share in the earnings or otherwise, is, for the purposes of this Act, taken to be a worker employed by the person from whom the use of the vehicle or vessel is so obtained.</i></p>
Tasmania	<p>In 2007, the Tasmanian Parliament passed the <i>Workers Rehabilitation and Compensation Amendment Act 2007</i>, which included clarification of coverage of luxury hire car drivers and consolidation of provisions relating to taxi drivers.</p> <p>Currently covered under the <i>Workers Rehabilitation and Compensation Act 1988</i>. Section 4DB.</p> <p>4DB Taxi drivers</p> <p><i>(1) A person who operates a vehicle as a taxi with the consent or authority of the responsible operator of a taxi service provided under the authority of a taxi licence is, while driving the taxi or performing any associated activity, taken to be a worker employed by the responsible operator.</i></p> <p><i>(2) Subsection (1) does not apply if the driver of the taxi is also the responsible operator.</i></p> <p><i>(3) In this section –</i> responsible operator means – <i>(a) in respect of a perpetual taxi licence within the meaning of the Taxi and Hire Vehicle Industries Act 2008 –</i> <i>(i) if an assignment or leasing arrangement is in force under section 11 of that Act, the person who, by virtue of that section, is the responsible operator; or</i> <i>(ii) if no such assignment or leasing arrangement is in force, the owner of the perpetual taxi licence; or</i> <i>(b) in respect of an owner-operator taxi licence, wheelchair-accessible taxi licence or temporary taxi licence within the meaning of the Taxi and Hire Vehicle Industries Act 2008, the holder of that licence;</i> taxi has the same meaning as in the <i>Taxi and Hire Vehicle Industries Act 2008</i>; taxi licence means a licence in force under Part 3 of the <i>Taxi and Hire Vehicle Industries Act 2008</i>.</p>
South Australia	<p>Coverage introduced in 1987 under the <i>Workers Rehabilitation and Compensation (Claims Registration) Regulations 1987</i>.</p>

Jurisdiction	When covered
	<p>Currently covered under the <i>Return to Work Regulations 2015</i>. Part 2, section 5.</p> <p>5 Contract of service and other terms</p> <p>(1) For the purposes of the definition of “contract of service” in section 4(1) of the Act (but subject to this regulation and regulation 6), the following classes of work under a contract, arrangement or understanding are prescribed classes of work:</p> <p>(d) driving a taxi-cab or similar motor vehicle used for the purpose of transporting members of the public where the <u>driver</u> does not hold or lease a licence issued in relation to the vehicle and where—</p> <p>(i) the work is performed by 1 person to the contract, arrangement or understanding (the “worker”) in the course of or for the purposes of a trade or business carried on by another person to the contract, arrangement or understanding (the “employer”); and</p> <p>(ii) the work is performed personally by the <u>worker</u> (whether or not the <u>worker</u> supplies any tools, <u>plant</u> or equipment); and</p> <p>(iii) the <u>worker</u> does not employ any other person to carry out any part of the work; and</p> <p>(iv) the value of any materials supplied, or reasonably expected to be supplied, by the <u>worker</u> does not exceed \$120 (indexed).</p>
Northern Territory	<p>Coverage commenced in 1987.</p> <p>Currently covered under the <i>Return to Work Regulations 1986</i>. Section 3A. This cover is optional for taxi operators to register for as Northern Territory has a privatised workers’ compensation scheme.</p> <p>Definition of a worker</p> <p>(1) For section 3B(17)(a) of the Act:</p> <p>(c) a natural person who is engaged to drive a taxi, private hire car, limousine or motor omnibus, within the meaning of the <u>Commercial Passenger (Road) Transport Act 1991</u> , by a person who, or by a director of a body corporate that:</p> <p>(i) is accredited within the meaning of that Act or is exempted under <u>section 15</u> of that Act; and</p> <p>(ii) is approved by the Authority for this regulation,</p> <p>while the person is so engaged, are persons prescribed as workers for the Act.</p>
Australian Capital Territory	<p>The <i>Road Transport (Taxi Industry Innovation) Legislation Amendment Regulation 2016 (No 1)</i> introduced changes to the <i>Workers Compensation Regulation 2002</i> with effect from 1 November 2016.</p>

Jurisdiction	When covered
	<p>Currently covered under the Workers Compensation Regulation 2002. Section 4A</p> <p>4A Regular contractors and casuals – Act, s 11(2)(c)</p> <p>(1) For the Act, section 11(2)(c), the following contracts are prescribed:</p> <ul style="list-style-type: none"> (a) a contract between the individual who is a bookable vehicle driver and the principal that prevents the individual from having an affiliated driver agreement with more than 1 transport booking service; (b) if the individual is a bookable vehicle driver and does not have a contract mentioned in paragraph (a)—a contract of bailment between the individual and the principal under which the individual has the use of a bookable vehicle. <p>(2) In this section:</p> <p>affiliated driver agreement—see the Road Transport (Public Passenger Services) Act 2001, section 36.</p> <p>bookable vehicle—see the Road Transport (Public Passenger Services) Act 2001, section 29.</p> <p>bookable vehicle driver—see the Road Transport (Public Passenger Services) Act 2001, section 29.</p> <p>transport booking service—see the Road Transport (Public Passenger Services) Act 2001, section 28.</p>
Western Australia	Not covered.

The lack of workers' compensation coverage for bailee drivers under the WCR Act leaves Queensland out of step with a majority of other Australian workers' compensation schemes.

9.7. Reform has been recommended

The 2023 Five-Year Review noted that while most bailee drivers have private insurance coverage, such insurance “has fewer benefits, has proportionately higher costs, lacks the emphasis on RRTW, and is unable to cover medical expenses”. Noting these matters, the review recommended:

Recommendation 53: That, in light of the likely outcomes from developments in the federal sphere, the Minister...amend the Act to either: extend Queensland's workers' compensation scheme to include taxi and limousine drivers engaged under a bailment arrangement; or enhance and mandate private personal accident insurance for taxi and limousine licence holders.

10. Objectives of government action

The objectives of government action are to investigate whether it is necessary and appropriate to extend workers' compensation coverage to bailee drivers taking account of:

- the unique and longstanding licensing and bailment arrangements of this industry
- the impacts of extending coverage on bailee drivers, licence holders and service operators, the Queensland community and other affected parties
- consistency of policy approach in the personalised transport industry
- the need to ensure Queensland's workers' compensation scheme remains viable.

11. Consideration of options

The options proposed in the Consultation RIS to address the identified problem for bailee drivers were:

Option 1: Status-quo—Taxi and limousine drivers rely on voluntary private personal accident insurance and are not covered by Queensland’s workers’ compensation scheme.

This option maintains the status quo with bailee taxi and limousine drivers continuing to be excluded from entitlements to workers’ compensation.

This option retains the current arrangements within the taxi and limousine industry where drivers source their own private insurance arrangements to have access to benefits and support following a work-related injury. In addition, this option provides no regulation of or requirements on the level of coverage offered by personal accident insurance products.

Option 2: Enhance existing private personal accident insurance under existing industry arrangements and mandate this insurance via a condition on taxi and limousine licences issued by DTMR.

This option extends this coverage to ensure there is mandatory consistent personal accident insurance coverage for bailee taxi and limousine drivers. Under this option, personal accident insurance is able to be sourced through the private insurance market under existing industry arrangements.

To support and administer this option, it is possible the requirement to obtain insurance could be made a condition of taxi and limousine licences issued by the Department of Transport and Main Roads. This would mean that licensees or operators (where licences have been leased or outsourced) would be required to ensure that an insurance policy covers the bailee taxi or limousine drivers driving their vehicles in order to hold a taxi and limousine licence.

This option would require an amendment to the TOPT Act to make mandatory insurance a specific condition of a taxi and limousine licence.

Under this option, the insurance required to be held would be set at a comparable or similar level to a workers’ compensation policy. However, it would not include coverage for medical expenses as general insurers are prevented from insuring any Medicare medical expenses under Commonwealth legislation. It would also not indemnify taxi operators for common law damages resulting from a work-related injury or cover lifetime treatment care and support which is available under the workers’ compensation scheme. Further, such insurance would not provide the level of RRTW available in the scheme.

As there is no corresponding licence type applicable within the ride share sector of the personalised transport service industry, this option is not possible for consideration for the ride share sector, which may lead to inconsistency in arrangements across the personalised transport industry. However, it is noted that if the options for extending the coverage of the workers’ compensation scheme to gig workers are adopted they would mandate workers’ compensation coverage for intermediaries operating in the personalised transport industry.

Option 3: Amend the Act to extend Queensland’s workers’ compensation scheme to include taxi and limousine drivers engaged under a bailment arrangement.

This option would require amendments to the WCR Act to prescribe that a person who drives a taxi or limousine who is a bailee, is a ‘worker’ under the WCR Act.

As a worker, a bailee driver would have all of the no-fault statutory workers' compensation entitlements, as well as access to common law damages. Drivers would also be covered for all types of work (including booked hire work and 'rank and hail' work) including journeys to and from their home to their workplace as well as during recess breaks.

The obligation to insure and pay premium would be placed on the person who bails the taxi or limousine to the driver (usually the licensee or operator). The bailor would also have obligations for the payment of premium, obligations for rehabilitation and return to work (which may include a rehabilitation and return to work coordinator). They would likewise be indemnified for compensation and common law damages under the WCR Act by WorkCover. They would also have the option of seeking a licence to become a self-insurer where they meet the criteria for doing so and indemnify themselves against any workers' compensation liabilities.

12. Consultation

12.1. Consultation process

Public submissions were invited through the Consultation RIS process as outlined in Part 5 above. Stakeholder views were divergent:

Options	For	Against	Alternative options presented
Option 1: status quo (i.e. voluntary adoption of private accident insurance)	6	None	6
Option 2: mandatory private accident insurance	2	1	
Option 3: extend the workers' compensation scheme to cover taxi and limousine drivers	4	None	

Submissions indicating support for retaining the status quo (Option 1) were largely driven by concerns about the financial and social costs of adopting this option for the taxi industry. Other concerns centered on unintended consequences of extending workers' compensation coverage, including in the federal industrial relations jurisdiction.

There was some support for mandatory private accident insurance (Option 2), provided it does not result in significant change to existing private accident insurance requirements or increased costs.

Several stakeholders did not consider that drivers are disadvantaged under existing private insurance arrangements.

A number of submissions advocated for expanded versions of Option 3, proposing coverage across the entire industry regardless of affiliation or ownership status, and recommending the imposition of a fare levy across the industry.

In addition to the Consultation RIS process, scheme stakeholders were consulted on the proposed options as part of the SRG convened in relation to the outcomes of the 2023 Five-Year Review. Feedback received during this process did not raise any issues not already raised in submissions to the Consultation RIS.

12.2. Results of consultation

Support for Option 1 – No legislative change (taxi and limousine drivers rely on voluntary personal accident insurance)

Six submissions supported Option 1. These submissions were largely driven by concerns about the financial and social costs of adopting this option for the taxi industry. Stakeholders noted the value of taxi licences has significantly diminished and submitted Option 1 has the potential to create an unlevel playing field across the personalised transport industry. The unintended consequences of extending workers' compensation coverage to bailee taxi and limousine drivers was also a key concern.

Submissions who expressly and implied supported option 1 raised the following specific issues:

Stakeholder	Submission
Queensland Law Society (QLS)	<p>The QLS raised significant concerns about the unintended consequences of extending workers' compensation to bailee taxi and limousine drivers (Option 3), recommending these consequences be carefully considered.</p> <p>QLS submitted the following issues required further consideration:</p> <ul style="list-style-type: none"> • the varying nature of taxi and limousine relationships creating uncertainty in determining who has the obligation to insure • uncertainty regarding premium setting due to the variability and nature of hours worked • a potential conflict with the <i>Motor Accident Insurance Act 1994</i> regarding coverage resulting in third party contribution claims against the CTP insurer • the overall impact, if any, on the viability of the Queensland scheme • the impact on the cost of point to point transportation services to Queensland consumers • maintaining a level playing field between the taxi and ride share industries.
Master Electricians Australia (MEA)	No specific comment was provided by MEA in relation to bailee taxi and limousine drivers beyond opposition to any change.
Phil Shield	<p>Mr Shield stated that as an owner of two cabs, he already has an insurance policy covering his one driver for personal accident and injury, \$30 million public liability insurance and insurance for the vehicle. Mr Shield questioned why workers' compensation is needed when his driver is already covered under this policy.</p> <p>Mr Shield raised concerns about the viability of the taxi industry after the introduction of ridesharing. He submitted that extending workers' compensation entitlements would result in owners being unable to afford to hire drivers. Mr Shield indicated that he would not be employing anyone if Option 3 is introduced for bailee taxi drivers.</p> <p>Mr Shield submitted that if the scheme is extended (Option 3) and it 'goes wrong', this may result in the taxi industry be required to pay drivers' wages which would shut down the whole taxi industry.</p>
Elaine Herold	<p>Ms Herold submitted licence holders will be unable to afford the extra costs of workers' compensation due to:</p> <ul style="list-style-type: none"> • the value of licences being driven down by lack of level playing field. The decline of income due to rideshare operations leaves little to be earned by a taxi • taxis having higher operating costs than rideshare vehicles associated with registration, compulsory third party insurance, fit-out with security cameras, hail lights, and duress buttons • current arrangements whereby licence holders provide the vehicle, pay all expenses, comply with Government requirements and ensure the driver receives 50 per cent of the gross income they earn. <p>Ms Herold's submission refers to suicides and impacts of financial stress on licence holders due to declining lease values.</p>

Stakeholder	Submission
	Ms Herold submits that drivers within the taxi industry already have insurance coverage and booking companies have not been impacted to the same extent as licence owners/operators.
Confidential submitter	This submitter did not make any specific comment in relation to the proposals. Support for Option 1 was implied.
Confidential submitter	This submitter preferred Option 1 on the basis that there is no evidence that limousine drivers are disadvantaged under current arrangements. However, the submitter was not averse to Option 2.

No submissions explicitly rejected Option 1.

Support for Option 2 – Enhance existing private personal accident insurance and mandate insurance via condition on taxi and limousine licences issued by the Department of Transport and Main Roads

Two confidential submissions expressly supported Option 2 provided it does not result in significant change to existing private accident insurance requirements. Specifically:

Stakeholder	Submission
Confidential submitter	<p>This submitter supported Option 2 for bailee taxi drivers provided:</p> <ul style="list-style-type: none"> • implementation occurs efficiently and without imposing extra regulatory burden and costs on taxis that already hold taxi private accident insurance • benefit levels for taxi private accident insurance continue to be determined by market forces. <p>The submitter did not accept there were deficiencies in the existing available accident insurance products or that there are preferable benefits available under the workers' compensation scheme.</p>
Confidential submitter	<p>This submitter supported Options 2 and 3 but submitted that changes should not have implications for employment law in the taxi space.</p> <p>It was submitted that the taxi industry should receive the Government's assistance to seek a fare increase to allow recovery of additional costs for any new insurance requirements as the sector is already struggling financially.</p>

The Australian Lawyers' Alliance (ALA) expressly rejected mandating and enhancing private accident insurance (Option 2) as an appropriate response given the poor coverage and reach of private insurance, which does not adequately cover medical expenses related to return to work and rehabilitation. The ALA also contended that it would also be difficult for the Government to legislate contractual terms for private insurance benefits.

Support for Option 3 – Extend Queensland's workers' compensation scheme to include taxi and limousine drivers engaged under bailment arrangements

Four submissions expressly supported Option 3.

Stakeholder	Submission
Australian Lawyers' Alliance (ALA)	The ALA submitted road transport is a dangerous industry, and that it is unacceptable that there is a difference in the workers' compensation and rehabilitation coverage of drivers, which is determined solely by their employment status.
TWU	The TWU supported the ALA's submission. The TWU advocated that these workers should have same entitlements as employees and there is little or no incentive for intermediaries to deal with health and safety issues under current arrangements.
Confidential submitter	This submitter submitted that Options 2 and 3 are acceptable but changes should not have implications for employment law in the taxi space. It was submitted that the taxi industry should receive the Government's assistance to seek a fare increase to allow recovery of additional costs for any new insurance requirements as the sector is already struggling financially.
Confidential submitter	This submitter submitted that Option 3 (extending the workers' compensation scheme to bailee taxi and limousine drivers) would provide the most protection.

Alternative options proposed

The Queensland Taxi Licence Owners' Association, XLNT , Stephen Lacaze, Lucy and David Hooke and a confidential submitter supported a more extensive version of Option 3.

The Queensland Taxi Licence Owners' Association Incorporated's submission supported extension of current workers' compensation coverage to ride share and taxi drivers, provided:

- 'workers of all types' have equal entitlements, specifically, that ride share and all taxi drivers, including owner/drivers, set pay and bailee drivers receive the same level of cover
- those who bear the cost of the cover do not end up being any person other than the end user of services, or at the very least, those who profit most from the services being offered.

XLNT Chauffeurs advocated for an extension of workers' compensation coverage for all taxi and limousine drivers.

David Miles proposed an affordable workers' compensation policy for self-employed drivers and other workers in similar situations. Stephen Lacaze (supported by one confidential submitter and Lucy and David Hooke) supported extending workers' compensation coverage to the entire industry regardless of affiliation or ownership status and the potential for the Government to impose a fare levee across the industry.

13. Impact analysis of the options

A summary of the impacts, costs and benefits of each option is set out below with anticipated cost impacts based on independent actuarial analysis. The methodology of these costings, including assumptions and limitations, is set out in **Attachment C**.

13.1. Option 1 (Status quo)

Option 1: Status quo – Taxi and limousine drivers rely on voluntary private personal accident insurance and are not covered by Queensland’s workers’ compensation scheme			
Stakeholder	Benefits	Impacts	Costs
Bailee taxi and limousine drivers	<ul style="list-style-type: none"> Most drivers have a level of voluntary private personal accident insurance coverage already. <p>Note: it is understood that many limousine drivers are employees and so would already be covered by the workers’ compensation scheme.</p>	<ul style="list-style-type: none"> No impact on existing workers’ compensation or other rights, obligations or entitlements. Lower personal accident insurance coverage compared to injured workers covered by the scheme. Low level of work-related compensation entitlements compared to workers. Higher risk of delayed medical intervention for work-related injuries. Likely to experience greater medical needs over longer periods of time. Greater risk of injury and not being able to achieve a durable return to work. 	<ul style="list-style-type: none"> No additional costs. Some bailee taxi and limousine drivers must fund (and some may be required to source) their own personal accident insurance. Bailee drivers bear an estimated \$1 million in the direct costs of injury in the 2023/24 financial year. Bailee drivers bear an estimated 65 per cent of the total cost of a work-related injury (\$9.2 million in the 2023/24 financial year).

Option 1: Status quo – Taxi and limousine drivers rely on voluntary private personal accident insurance and are not covered by Queensland’s workers’ compensation scheme			
Stakeholder	Benefits	Impacts	Costs
		<ul style="list-style-type: none"> Adoption of this option would result in Queensland having a nationally inconsistent approach to workers’ compensation arrangements for bailee taxi and limousine drivers. 	
Bailor taxi and limousine operators	<ul style="list-style-type: none"> Uninsured operators have a competitive cost advantage compared to operators who voluntarily insure. Competitive cost advantage compared to operators in the personalised transportation industry that are employers. Bailor licensees and operators can recover contributions from bailee drivers toward the cost of maintaining any insurances, including personal injury insurance, under the terms of their bailment agreement. 	<ul style="list-style-type: none"> No impact on existing workers’ compensation rights or obligations. Lack of involvement in RRTW outcomes for bailee drivers is likely to increase disruption to the business, decrease productivity, increase driver turnover and impact driver morale. Bailor licensees and operators electing not to insure bailee drivers may not be as incentivised to improve work health and safety performance. 	<ul style="list-style-type: none"> Bailor licensees and operators bear an estimated \$1.5 million in the direct costs of injury in the 2023/24 financial year. Bailor licensees and operators bear an estimated 14 per cent of the total cost of a work-related injury (\$2 million in the 2023/24 financial year).
Other operators in the personalised transportation industry	<ul style="list-style-type: none"> Nil. 	<ul style="list-style-type: none"> No impact on existing workers’ compensation rights and obligations. 	<ul style="list-style-type: none"> No additional costs. Employers in the personalised transportation industry continue to pay premiums under the WCR Act

Option 1: Status quo – Taxi and limousine drivers rely on voluntary private personal accident insurance and are not covered by Queensland’s workers’ compensation scheme			
Stakeholder	Benefits	Impacts	Costs
			and associated administration costs.
WorkCover	<ul style="list-style-type: none"> Nil. 	<ul style="list-style-type: none"> No change to existing scope of the scheme. 	<ul style="list-style-type: none"> No additional costs.
Accident and personal injury insurance providers	<ul style="list-style-type: none"> Providing personal accident insurance products to taxi and limousine operators will be maintained. 	<ul style="list-style-type: none"> Nil. 	<ul style="list-style-type: none"> Nil.
Community	<ul style="list-style-type: none"> Costs efficiencies in using the services of operators. 	<ul style="list-style-type: none"> Increased use and costs of public health system and personal health insurance. Increased usage and cost of the public welfare system. 	<ul style="list-style-type: none"> The community bears an estimated \$1.1 million in direct costs of work-related injuries in the 2023/24 financial year. The community bears 21 per cent of the total cost of a work-related injury (\$3 million in the 2023/24 financial year).
<p>Economic cost of work-related injury</p> <p>The total economic cost of these work-related injuries to the Queensland economy is around \$14.3 million.</p> <p>Based on the current distribution of gross statutory claims costs, Table 8 shows the cost distribution for gig workers under current arrangements.</p>			

Option 1: Status quo – Taxi and limousine drivers rely on voluntary private personal accident insurance and are not covered by Queensland’s workers’ compensation scheme

Stakeholder	Benefits		Impacts	Costs
Table 8 cost distribution for bailee drivers under current arrangement				
	Direct (\$m)	Indirect (\$m)	Total (\$m)	Per cent of total cost
Operator	\$1.5	\$0.5	\$2.0	14 per cent
Bailee driver	\$1.0	\$8.2	\$9.2	65 per cent
Community	\$1.1	\$1.9	\$3.0	21 per cent
TOTAL	\$3.6	\$10.6	\$14.3	100 per cent

Table 8: cost distribution for bailee drivers under current arrangements

13.2. Option 2 (Enhance and mandate private accident insurance)

Option 2: Enhance existing private personal accident insurance under existing industry arrangements and mandate this insurance via a condition on taxi and limousine licences issued by DTMR			
Stakeholder	Benefits	Impacts	Costs
Bailee taxi and limousine drivers	<ul style="list-style-type: none"> Consistent and equal coverage for bailee taxi and limousine drivers under personal accident insurance. Improved compensation following a work-related injury compared to Option 1. 	<ul style="list-style-type: none"> Taxi and limousine drivers not currently covered for personal accident insurance (or with inadequate coverage) will be afforded workers’ compensation coverage. Improved compensation for work-related injuries compared to 	<ul style="list-style-type: none"> Bailee drivers would bear an estimated \$0.9 million of the direct costs of a work-related injury (a marginal improvement compared to Option 1) in the 2023/24 financial year. Bailee drivers would bear an estimated 64 per cent of the total

Option 2: Enhance existing private personal accident insurance under existing industry arrangements and mandate this insurance via a condition on taxi and limousine licences issued by DTMR

Stakeholder	Benefits	Impacts	Costs
	<ul style="list-style-type: none"> Some improvement in achieving a durable return to work. Some improvement in the safety of work environments. 	<p>Option 1, however, there will still be a disparate and lower level of work-related compensation entitlements compared to workers.</p> <ul style="list-style-type: none"> As this option involves a condition being placed on those responsible for taxi and limousine licences to obtain insurance for the vehicle, drivers will not have to source their own insurance product for personal accident insurance. Regulation of mandated insurance requirements is likely to require engagement with DTMR. Adoption of this option would result in Queensland having a nationally inconsistent approach to workers' compensation arrangements for bailee taxi and limousine drivers. Entitlements afforded under mandated private accident insurance may become out of step with workers' compensation coverage into the future. 	<p>costs of work-related injury (a marginal improvement compared to Option 1) in the 2023/24 financial year.</p>

Option 2: Enhance existing private personal accident insurance under existing industry arrangements and mandate this insurance via a condition on taxi and limousine licences issued by DTMR			
Stakeholder	Benefits	Impacts	Costs
Bailor taxi and limousine operators	<ul style="list-style-type: none"> Bailor licensees and operators will be required to pay for personal accident insurance, removing the competitive advantage of those who currently elect not to insure their drivers. 	<ul style="list-style-type: none"> Bailor licensees operators will continue to be able to obtain insurance through existing private personal accident insurers and providers. Does not limit or restrict how licensees and operators conduct their business, how they engage persons or introduce any new industrial relations rights or obligations. While this option involves a condition being placed on a taxi or limousine licence, it will be up to those responsible for the licence to determine how the insurance is obtained and maintained. 	<ul style="list-style-type: none"> Bailor licensees and operators would bear an estimated \$1.8 million per year of the direct costs of work-related injury (an increase compared to Option 1) in the 2023/24 financial year. Bailor licensees and operators would bear an estimated 16 per cent of the total costs of work-related injury (2.4 million) (an increase compared to Option 1) in the 2023/24 financial year. Administrative cost of reporting private accident insurance arrangements as part of the existing taxi and limousine licensing process. Depending form of the mandate, bailor licensees and operators may not be able to recover contributions of insurance costs from drivers (as is currently the case under some bailment agreements).
Other operators in the personalised	<ul style="list-style-type: none"> Employers in the personalised transportation industry will no longer be at a competitive disadvantage to bailor 	<ul style="list-style-type: none"> If option 2 for gig workers is adopted, this option will create an inconsistent regulatory approach to compensation coverage for 	<ul style="list-style-type: none"> Nil additional costs. Employers in the personalised transportation industry continue to

Option 2: Enhance existing private personal accident insurance under existing industry arrangements and mandate this insurance via a condition on taxi and limousine licences issued by DTMR			
Stakeholder	Benefits	Impacts	Costs
transportation industry	<p>licensees and operators who will also be required to factor the cost of workers' compensation insurance into business costs.</p> <ul style="list-style-type: none"> If Option 2 for gig workers is not adopted, intermediaries in the personalised transportation industry who do not have personal accident insurance will have a competitive advantage. 	intermediaries and operators in the personalised transportation industry.	pay premiums under the WCR Act and associated administration costs.
WorkCover	<ul style="list-style-type: none"> Nil. 	<ul style="list-style-type: none"> No change to existing scope of the scheme. 	<ul style="list-style-type: none"> No additional costs.
Accident and personal injury insurance providers	<ul style="list-style-type: none"> Provision of personal accident insurance products to an increased number of taxi and limousine operators. 	<ul style="list-style-type: none"> Nil. 	<ul style="list-style-type: none"> Nil additional cost because the increased cost of additional entitlements is likely to be recovered in increases in operator premiums.
Community	<ul style="list-style-type: none"> Nil. 	<ul style="list-style-type: none"> Any increase in service costs could be passed into consumers of taxi and limousine services (subject to maximum fares determined under the TOPT Act). Increased usage and costs of public health system and personal health insurance. 	<ul style="list-style-type: none"> The community would bear an estimated 0.9 million per year in the direct costs of work-related injuries in the 2023/24 financial year. This is a reduction from the estimated direct costs under Option 1 (\$1.1 million). The community would bear an estimated 19 per cent of the total cost

Option 2: Enhance existing private personal accident insurance under existing industry arrangements and mandate this insurance via a condition on taxi and limousine licences issued by DTMR

Stakeholder	Benefits	Impacts	Costs
		<ul style="list-style-type: none"> Increased usage and cost of the public welfare system. Administrative complexity for government in regulating a new licensing requirement. 	of work-related injury (\$2.8 million) in the 2023/24 financial year. This is a reduction from the estimated total costs under Option 1 (21 per cent or \$3 million).

Economic cost of work-related injury

The total economic cost of these work-related injuries to the Queensland economy is around \$14.3 million.

Based on the current distribution of gross statutory claims costs, Table 9 shows the cost distribution for bailee drivers if existing private accident insurance arrangements were enhanced and mandated.

Table 9: Cost distribution for gig workers if existing private accident insurance arrangements were enhanced and mandated

	Direct (\$m)	Indirect (\$m)	Total (\$m)	Per cent of total cost
Operator	\$1.8	\$0.5	\$2.4	16 per cent
Bailee driver	\$0.9	\$8.2	\$9.1	64 per cent
Community	\$0.9	\$1.9	\$2.8	19 per cent
TOTAL	\$3.6	\$10.6	\$14.3	100 per cent

13.3. Option 3 (Extend workers' compensation coverage)

Option 3: Amend the Act to extend Queensland's workers' compensation scheme to include taxi and limousine drivers engaged in bailment arrangements			
Stakeholder	Benefits	Impacts	Costs
Bailee taxi and limousine drivers	<ul style="list-style-type: none"> Fair and equal access to same level of compensation and access to common law damages for work-related injuries as workers. Improved benefits and entitlements under the workers' compensation scheme. Improved timeliness of medical intervention for work-related injuries. Improved durable return to work outcomes. Potentially improved work health and safety outcomes. Consistency with workers' compensation status in most other jurisdictions. 	<ul style="list-style-type: none"> No impact on industrial relations rights or entitlements. 	<ul style="list-style-type: none"> No direct cost of work-related injury on bailee drivers. Bailee drivers would bear an estimated 58 per cent of the total cost of work-related injury (\$8.2 million per year) in the 2023/24 financial year. This is a reduction in the total costs under Option 1 (65 per cent or 9.2 million) and Option 2 (64 per cent or 9.1 million).
Bailor taxi and limousine operators	<ul style="list-style-type: none"> Potentially improved work health and safety outcomes due to premium incentivisation. 	<ul style="list-style-type: none"> Bailor licensees and operators would be required to have a workers' compensation insurance policy with WorkCover or self-insure (if eligible). This insurance 	<ul style="list-style-type: none"> Bailor licensees and operators would bear an estimated \$3.6 million per year of the direct costs of work-related injury. This is an increase in the direct costs under Option 1 (\$1.5

Option 3: Amend the Act to extend Queensland's workers' compensation scheme to include taxi and limousine drivers engaged in bailment arrangements

Stakeholder	Benefits	Impacts	Costs
	<ul style="list-style-type: none"> RRTW obligations are likely to reduce disruption to the workplace, increase productivity, reduce driver turnover and improve driver morale. 	<ul style="list-style-type: none"> would only cover the bailee driver, and other insurance would be required to cover another type of driver. Bailor licensees and operators would be subject to employer obligations under the WCR Act, including in relation to providing or assisting RRTW where practicable. Does not limit or restrict how bailor licensees and operators conduct their business or how they engage persons. Bailor licensees and operators would no longer be able to recover contributions of insurance costs from drivers (as is currently the case under some bailment agreements), as this would likely be prohibited by section 52 of the WCR Act. If maximum fares are not reviewed and amended by DTMR to take into account any increased costs associated with workers' 	<p>million) or Option 2 (\$1.8 million) in the 2023/24 financial year.</p> <ul style="list-style-type: none"> Bailor licensees and operators would bear an estimated to bear 29 per cent of the total costs of work-related injury (\$4.2 million per year) in the 2023/24 financial year. This is an increase in the total costs under Option 1 (14 per cent or \$2 million) and Option 2 (16 per cent or \$2.4 million). However: <ul style="list-style-type: none"> premium costs may be offset against the cost of any personal accident insurance the business is currently purchasing; and most bailor licensees and operators also purchase public liability insurance which includes indemnity for common law damages costs. As the WorkCover policy will also indemnify for this cost, there could be a further cost offset reduction.

Option 3: Amend the Act to extend Queensland's workers' compensation scheme to include taxi and limousine drivers engaged in bailment arrangements			
Stakeholder	Benefits	Impacts	Costs
		compensation insurance, these costs will not be able to be passed on to the consumer. This would create a disparity with arrangements for rideshare intermediaries, who are not subject to maximum fare limits.	<ul style="list-style-type: none"> Administrative costs of declaring remuneration and maintaining a workers' compensation policy.
Other operators in the personalised transportation industry	<ul style="list-style-type: none"> Bailor licensees and operators would be required to pay workers' compensation premiums and factor these costs into their business, removing any competitive advantage currently able to be gained by these operators where they elect not to obtain private accident insurance for bailee drivers. If Option 2 for gig workers is not adopted, intermediaries in the personalised transportation industry would have a competitive advantage because they would not be required to pay workers' compensation premiums. 	<ul style="list-style-type: none"> If Option 2 for gig workers is not adopted, there would be an inconsistent regulatory approach to compensation coverage for intermediaries and taxi and limousine operators in the personalised transportation industry. If Option 2 for gig workers is adopted, intermediaries in the personalised transportation industry would similarly not have a competitive advantage compared to bailor licensees and operators as all would be required to factor mandatory premium costs into their business costs. 	<ul style="list-style-type: none"> No additional costs. Employers in the personalised transportation industry continue to pay premiums under the WCR Act and associated administration costs.

Option 3: Amend the Act to extend Queensland's workers' compensation scheme to include taxi and limousine drivers engaged in bailment arrangements			
Stakeholder	Benefits	Impacts	Costs
Accident and personal injury insurance providers	<ul style="list-style-type: none"> Nil. 	<ul style="list-style-type: none"> Loss of current bailee taxi and limousine driver accident and personal insurance market. However, most private insurers providing this product to the taxi and limousine sector provide the insurance as an optional add-on to vehicle and public liability insurance and could provide personal accident insurance to operators. 	<ul style="list-style-type: none"> Loss of premium income (and associated benefit costs) for bailee taxi and limousine drivers.
WorkCover	<ul style="list-style-type: none"> Nil. 	<ul style="list-style-type: none"> Increase in the number of workers covered by the scheme, impacting scheme costs and potentially impacting decision-making timeframes and claims management processes. 	<ul style="list-style-type: none"> Scheme costs (statutory compensation and potentially, common law payments) are estimated at \$3.6 million in the 2023/24 financial year. However: <ul style="list-style-type: none"> – scheme costs would be largely offset by the collection of premium from bailors. Actuarial analysis indicates that there would not be a material impact on the headline premium rate if workers' compensation coverage was extended to bailee drivers; and – additionally, there may be some offset where a worker makes both a workers' compensation claim

Option 3: Amend the Act to extend Queensland's workers' compensation scheme to include taxi and limousine drivers engaged in bailment arrangements			
Stakeholder	Benefits	Impacts	Costs
			<p>and a CTP claim under the <i>Motor Accident Insurance Act 1994</i>, as WorkCover recovers amounts paid under the CTP scheme. In 2022-23, WorkCover recovered \$57 million in relation to 1,481 individual workers' compensation claims.</p> <ul style="list-style-type: none"> Administrative costs of managing claims for a new cohort of workers, including potential resourcing costs to maintain current claims management performance (for example, decision-making timeframes).
Community	<ul style="list-style-type: none"> Reduction in the impact of work-related injury on families and the community. 	<ul style="list-style-type: none"> The cost of taxi and limousine services may increase to accommodate insurance premiums and increased business costs (subject to maximum fares determined under the TOPT Act). The total cost of work-related injuries on the public health and private insurance schemes, and the public welfare system, will be reduced. 	<ul style="list-style-type: none"> No direct cost of work-related injury. The community would bear an estimated 13 per cent of the total costs of work-related injury (\$1.9 million p) in the 2023/24 financial year. This is a reduction in the total costs under Option 1 (21 per cent or \$3 million) and Option 2 (19 per cent or \$2.8 million).
Economic cost of work-related injury The total economic cost of these work-related injuries to the Queensland economy is around \$14.3 million.			

Option 3: Amend the Act to extend Queensland's workers' compensation scheme to include taxi and limousine drivers engaged in bailment arrangements

Stakeholder	Benefits	Impacts	Costs
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Based on the current distribution of gross statutory claims costs, table 9 shows the cost distribution for bailee drivers if workers' compensation coverage were extended to these individuals.

Table 10: Cost distribution for bailee drivers if they were entitled to workers' compensation

	<i>Direct (\$m)</i>	<i>Indirect (\$m)</i>	<i>Total (\$m)</i>	<i>Per cent of total cost</i>
Operator	\$3.6	\$0.5	\$4.2	29 per cent
Bailee driver	\$0.0	\$8.2	\$8.2	58 per cent
Community	\$0.0	\$1.9	\$1.9	13 per cent
TOTAL	\$3.6	\$10.6	\$14.3	100 per cent

14. Conclusion and recommended option

Taking into account the benefits, impacts and costs of the three options, including the results of consultation, a decision has been made to adopt **Option 1** (maintain status quo). Consequently, no changes to the WCR Act are required.

Reasons for the Government's decision are outlined below.

Well-established safety and insurance arrangements already exist for the taxi and limousine industries

Bailee drivers have been excluded from Queensland's workers' compensation scheme since the Federal Court judgment in *De Luxe Red & Yellow Cabs Co-Operative (Trading) Society Ltd & Ors v Commissioner of Taxation* [1997] FCA 840. This is because the relationship between the bailee driver and the vehicle bailor is one of bailment rather than employment. This position is continued by the current definition of 'worker' in section 11 of the WCR Act.

Consistent with this, taxi and limousine industries have developed long-standing accident insurance arrangements that cover bailee drivers for work-related injury. Various personal accident insurance arrangements are available in the taxi industry that provide income replacement and cover certain medical and rehabilitation costs for injured taxi drivers. In the limousine industry, most limousine drivers are employees who are already covered by the workers' compensation scheme.

Taxi and limousine service operators, drivers and others are also subject to industry-specific safety frameworks in the TOPT Act, as well as general safety duties under the WHS Act. There is no evidence that these frameworks do not drive safety performance within the taxi industry.

While workers' compensation premiums are designed to encourage policyholders to improve safety performance, and may seem to support an extension of workers' compensation coverage, this incentivise may be less effective in taxi industry. Taxi operations can involve numerous parties (including a licence holder, taxi service operator, booking entity and driver), each of whom have an impact on the health and safety of the driver. If workers' compensation coverage were extended to bailee taxi drivers, only one of these parties would be the policyholder and incentivised to improve safety performance. Accordingly, workers' compensation coverage may not be the strongest driver for driving safety performance in this industry.

The full impacts of extending coverage are unable be accurately quantified

Although DTMR holds data about driver authorisations and taxi and limousine service licences, the number of bailee drivers in Queensland is not recorded or oversighted. This makes it difficult to accurately quantify the scheme impacts of extending workers' compensation coverage. While actuarial analysis has provided a best estimate of the cohort, without more precise data to inform these estimates, it is not possible to confidently appraise the impacts of extending coverage on the viability of the scheme. Similar issues exist when attempting to assess the cost impacts of mandating and enhancing private accident insurance (option 2).

Stakeholders continue to have diverse views on extending coverage

Stakeholders expressed diverse views on extending workers' compensation coverage to bailee drivers. This reflects the fact there are already established insurance arrangements for this industry, as well as concerns about the impact of workers' compensation costs on the viability of the taxi industry. While the absence of clear stakeholder support is not a decisive

factor in the Government's decision, it underscores the need for government action in this area to be considered. Given the historical treatment of the taxi and limousine industries, and the current arrangements that exist, the Government is not satisfied regulatory intervention is justified at this time.

It is noted the WCR Act requires a review of the operation of Queensland's workers' compensation scheme to be completed every five years. These matters may be revisited as part of future scheme reviews.

Part 4: Implementation, compliance support and evaluation strategy

15. Implementation

Implementation of the preferred approach for gig workers will require an amendment to the WCR Act. The preferred form of these amendments is discussed at **section 7**. Subject to further Government consideration, these amendments could be in place by 1 July 2024.

OIR will have operational responsibility for implementing this work. In doing so, OIR will consult with stakeholders in industry, the community and government to develop the legislative scheme.

No further action is required to implement Option 1 (maintain status quo) for bailee taxi and limousine drivers.

16. Monitoring, evaluation and review

Under section 584A of the WCR Act, the Minister must ensure a review of the operation of the workers' compensation scheme is completed at least once in every five-year period. The next review is due to be completed by 30 June 2028. It is open for these matters to be revisited as part of that process.

Part 5: Consistency with other policies and legislation

The Queensland Government Better Regulation Policy requires agencies to provide a brief assessment of the consistency of proposed regulation with clause 5 of the *Competition Principles Agreement* (CPA) and where relevant, to identify and assess any implications for the state's mutual recognition obligations under the *Mutual Recognition Act* and *Trans-Tasman Mutual Recognition Act*.

17. Competition Principles Agreement

Clause 5 of the CPA requires that legislation should not restrict competition unless it can be demonstrated that:

- the benefits of the restriction to the community as a whole outweigh the costs; and
- the objectives of the legislation can only be achieved by restricting competition.

Proposed amendments to the WCR Act to give effect to the preferred approach for gig workers will not restrict competition as they will be limited to a regulation-making power.

18. Mutual recognition legislation

Mutual recognition legislation is not engaged by this Decision IAS.

Annexure A – Summary of the workers' compensation scheme

	Worker	Gig worker via an intermediary	Taxi / limousine driver under a bailment arrangement	Other independent contractors
Currently covered by Queensland workers' compensation scheme?	Yes	No	No	No
Within scope of RIS?	No	Yes	Yes	No
Nature of contract:				
• Contract of Service	Yes	No	No	No
• Contract for service	Yes (if deemed)	Yes	No	Yes
• Bailment	No	No	Yes	No
Who do they contract with for the performance of work?	Employer	<ul style="list-style-type: none"> Intermediary May also have a contract with customer 	<ul style="list-style-type: none"> Bailor Recipient of the work being performed 	Customer
Duration of engagement	Variable	Variable	Variable	Variable
Work for multiple parties	Yes (depending on contract)	Yes (depending on contract)	Yes (depending on contract)	Yes (depending on contract)
Who is the work sourced by?	Employer	Intermediary	<ul style="list-style-type: none"> Bailee Booking entity 	Independent contractor
Control over work	Medium to High	Medium to High	Medium to High	Low to High
Who must perform the work?	Worker	Gig worker	Bailee	Independent contractor and/or delegate
Who influences the rate of payment?	Employer	Intermediary	<ul style="list-style-type: none"> DTMR Bailee Bailor Booking entity 	Independent Contractor
Flow of payment	Employer to worker	<ul style="list-style-type: none"> Intermediary to gig worker OR Customer to gig worker 	<ul style="list-style-type: none"> Customer to bailee Bailee to bailor 	Customer to independent contractor

Annexure B – Summary of the workers' compensation scheme

Queensland's workers' compensation scheme is a short-tail, no-fault, centrally funded scheme that covers more than 177,000 employers and an estimated 2.8 million workers (as at June 2023). The scheme is established by the WCR Act.

A key objective of scheme is to provide benefits for workers who sustain an injury in their employment, for dependents of deceased workers, and for other specified non-workers. The scheme is intended to maintain a balance between providing fair and appropriate benefits for these individuals and ensuring reasonable cost levels for employers.

The WCR Act also contains an injury management framework that emphasises the rehabilitation of injured workers for return to work. This includes responsibilities on insurers and employers in relation to the rehabilitation and early return to suitable duties of injured workers.

The scheme is administered by the Workers' Compensation Regulator (Regulator), WorkCover Queensland (WorkCover) and self-insurers.

Administration of the scheme

Administration of the scheme is undertaken by:

- the Workers' Compensation Regulator (Regulator)
- WorkCover Queensland (WorkCover)
- 282 self-insurers.

The Regulator has various statutory functions including to regulate the scheme, monitor the compliance and performance of WorkCover and self-insurers, review certain workers' compensation decisions, support and oversee the administration of medical assessment tribunals, and conduct and defend proceedings under the WCR Act.⁸⁷ In practice, most of the Regulator's functions are undertaken by Workers' Compensation Regulatory Services within the Office of Industrial Relations (OIR) under delegation from the Regulator.

WorkCover is a statutory body established by the WCR Act. It is the default provider of public accident insurance to Queensland employers, providing coverage to approximately 94 per cent of Queensland workers. WorkCover operates as a commercial enterprise and is fully funded by premiums paid by employers. Each WorkCover policy is guaranteed by the State of Queensland.⁸⁸

Self-insurers are employers licensed by the Regulator to provide their own accident insurance for their workers instead of insuring with WorkCover.⁸⁹ To be eligible for a self-insurance licence, an employer must, among other things, employ at least 2,000 full-time workers in Queensland, have satisfactory occupational health and safety performance, and meet certain security and reinsurance requirements.⁹⁰ Licensing and oversight of self-insurer performance is undertaken by the Regulator.

There are currently 28 licences for self-insurance in the scheme. These licences cover appropriately 250 employers and approximately 160,000 workers in Queensland, which is approximately six per cent of the total number of employees in Queensland. Sixteen of

⁸⁷ WCR Act s 327(1).

⁸⁸ WCR Act s 382(2).

⁸⁹ WCR Act s 68(1).

⁹⁰ WCR Act ss 71, 72.

Queensland's self-insurance licence holders are also self-insured in at least one other jurisdiction, and eleven of these insure in three or more jurisdictions.

Workers' compensation coverage

Under the WCR Act, an employer is required to insure or self-insure⁹¹ against work-related injury sustained by a worker of the employer where work is a significant contributing factor to the injury.

Generally, an employer is a person who engages a worker to perform work.⁹² The WCR Act also contains provisions for determining an employer in particular circumstances, such as labour hire agency or group training arrangements.

A worker is an individual who:

- works under a contract and, in relation to the work, is an employee for the purpose of assessment for Pay As You Go (PAYG) withholding under the *Taxation Administration Act 1953* (Cth), schedule 1, part 2-5
- is specified to be a worker in schedule 2 of the WCR Act.⁹³

Examples of individuals specified in schedule 2 include some sharefarmers, salespersons paid on commission and persons engaged by a labour hire agency or group training organisation. The WCR Act also specifies examples of who is *not* a worker, including directors of companies, trustees or trusts, partners in a partnership, professional sportspersons and those participating in certain Commonwealth work initiatives.

A WorkCover insurance policy indemnifies an employer for all compensation, medical expenses and damages claimed by injured workers for injuries that arise out of, or in the course of, employment where employment is a significant contributing factor to the injury.

The WCR Act also:

- enables WorkCover to enter into an accident insurance policy for specified categories of non-workers, including contractors, self-employed persons, volunteers, persons performing community service, students and others⁹⁴
- provides for the payment of compensation and other entitlements to dependants and other family members of workers who suffer a fatal work-related injury⁹⁵
- provides for lifetime treatment, care and support to be given to workers who suffer a serious injury.

Characteristics of the scheme

As noted above, Queensland's workers' compensation scheme is *short-tailed*, *no-fault*, and *centrally funded*. These characteristics are discussed below.

Short-tailed

Unlike some other Australian jurisdictions, Queensland has a 'short tail' workers' compensation scheme, meaning that the entitlement of a worker to weekly compensation stops when the first of the following happens:

- the incapacity because of the work-related injury stops
- the worker's injury is considered stable and stationary and a lump sum payment has been accepted which is based on their permanent impairment;

⁹¹ WCR Act s 48.

⁹² WCR Act s 30.

⁹³ WCR Act s 11(1), (2).

⁹⁴ WCR Act chapter 1, part 4, division 3.

⁹⁵ WCR Act chapter 3 part 11.

- the worker has received weekly payments for the incapacity for five years; or
- the weekly benefits received reach the maximum amount (\$380,580 as at 1 July 2023).

The short tail nature of the scheme is offset by the ability of injured workers to seek common law damages for negligently caused injuries (discussed below).

No-fault

Like all Australian schemes, Queensland's statutory workers' compensation scheme is a no-fault scheme. An injured worker who meets the WCR Act's criteria is entitled to statutory compensation regardless of whether it is the worker's or the employer's fault that the injury occurred. Issues of fault and negligence (including contributory negligence by a worker) may be considered if a worker elects to pursue a common law action for damages.

Centrally funded

Queensland's workers' compensation scheme is a centrally funded scheme, meaning the public insurer (WorkCover) performs most, if not all, of a workers' compensation insurer's functions and is responsible for underwriting the scheme. Other Australian jurisdictions adopt different funding models. For example, Western Australia, Tasmania, Australian Capital Territory and the Northern Territory provide privately underwritten schemes and New South Wales has a managed scheme.

The economies of scale afforded to centrally funded schemes contribute to Queensland's efficiency. Of the central and managed schemes, the Queensland scheme has the highest proportion of total expenditure directed to claimants and the lowest proportion expended on insurance operations.⁹⁶

Eligibility for compensation under the Queensland workers' compensation scheme

A worker is entitled to receive compensation for a work-related injury if the injury meets the definition of 'injury' as defined in the WCR Act.⁹⁷ Under this definition, the worker's injury must have arisen out of, or in the course of, the worker's employment and the employment must have been a significant contributing factor to the injury⁹⁸. A worker is also entitled to compensation for injuries sustained while on a journey between work and home,⁹⁹ as well as on recess breaks.¹⁰⁰

Workers cannot receive compensation for a psychological and psychiatric injury (also known as a mental injury) if the injury arose out of, or in the course of:

- reasonable management action¹⁰¹ taken by their employer in a reasonable way
- the worker's expectation or perception of reasonable management action taken against them
- action by the Regulator or an insurer in connection with the worker's application for compensation.¹⁰²

⁹⁶ Safe Work Australia. (2020). *Comparative Performance Monitoring report 24th Edition – Workers' Compensation Funding*, pg 12.

⁹⁷ WCR Act s 9.

⁹⁸ WCR Act s 32.

⁹⁹ WCR Act s 35.

¹⁰⁰ WCR Act s 34(c).

¹⁰¹ Reasonable management action can include action taken to transfer, demote, discipline, redeploy, retrench or dismiss the worker; or a decision not to award or provide promotion, reclassification or transfer of, or leave of absence or benefit in connection with, the worker's employment – see WCR Act s 32(5).

¹⁰² WCR Act s 32(5).

Workers are also ineligible to receive compensation for an injury that is self-inflicted¹⁰³ or caused by the worker's misconduct.¹⁰⁴

Entitlements available under the Queensland scheme

Workers who are eligible for compensation in the Queensland scheme are entitled to statutory benefits including:

- weekly compensation for lost wages
- all reasonable medical, surgical and hospital expenses and other supplies
- rehabilitation treatment and equipment or services
- necessary and reasonable travelling expenses to obtain medical treatment or rehabilitation
- lump sum compensation for permanent impairment
- lifetime treatment, care and support for serious personal injuries through the National Injury Insurance Scheme (NIIS).

Partially and totally dependent family members, and certain other family members, are also entitled to compensation for a worker's work-related death.

Weekly compensation for lost wages

The amount of weekly compensation workers receive may depend on whether or not they are paid under an industrial instrument (i.e., an industrial award or agreement). The amount will also depend on a comparison between the worker's normal weekly earnings (NWE) and the current value of Queensland Ordinary Time Earnings (QOTE).

NWE are a worker's weekly earnings from continuous or intermittent employment during the 12 months prior to an injury. NWE takes into account only regular payments made to the worker, which would have continued if not for the injury. It is noted that if the worker has not been with an employer for 12 months, the insurer can look at the remuneration of a person who has been employed by the same employer under the same industrial agreement for at least 12 months. In addition, if a worker had more than one employer during those 12 months, all earnings will be taken into account.

QOTE is the amount of Queensland full-time adult persons ordinary time earnings declared by the Australian Statistician in the original series of the statistician's average weekly earnings publication most recently published before the start of the financial year. The amount of QOTE is published by the Workers' Compensation Regulator before the start of each financial year. The current value of QOTE is \$1,760.70 (as at 1 July 2023).

Step downs are reductions in weekly compensation designed to encourage workers to return to work sooner, which generally results in better outcomes for the injured worker,¹⁰⁵ and reduces costs for the scheme and the employer.

¹⁰³ WCR Act s 129.

¹⁰⁴ WCR Act s 130.

¹⁰⁵ Australasian Faculty of Occupational and Environmental Medicine. (2017). *Position Statement on the Health Benefits of Good Work*. Retrieved from www.racp.edu.au/advocacy/division-faculty-and-chapter-priorities/faculty-of-occupational-environmental-medicine/health-benefits-of-good-work.

Length of claim	Weekly compensation entitlement	
	Worker paid under an industrial instrument	Worker does not have an industrial instrument
Up to 26 weeks	The greater of: – 85 per cent NWE; or – 100 per cent of award or agreement amount	The greater of: – 85 per cent NWE; or – 80 per cent QOTE
26-104 weeks	The greater of: – 75 per cent NWE; or – 70 per cent QOTE	The greater of: – 75 per cent NWE; or – 70 per cent QOTE
104 weeks until the end of the first 5 years	A worker can continue to receive compensation at the same rate if they can demonstrate a likely degree of permanent impairment from the work-related injury of 15 per cent or more. If the impairment is less than 15 per cent, the single pension rate applies.	

Reasonable medical, surgical and hospital expenses and other supplies

An injured worker is entitled to insurer-funded medical treatment and hospitalisation that their insurer considers reasonable, having regard to the worker's injury.¹⁰⁶ In practice, this is funded in accordance with WorkCover's published tables of costs.¹⁰⁷ An insurer must also pay the costs of nursing, medicines and surgical supplies the insurer accepts as reasonable.¹⁰⁸

Rehabilitation treatment and equipment or services

An injured worker is entitled to insurer-funded rehabilitation that their insurer accepts as reasonable, having regard to the worker's injury.¹⁰⁹ Similar to medical treatment and hospitalisation costs, these are generally funded in accordance with WorkCover's tables of costs. Rehabilitation includes, but is not limited to, necessary and reasonable suitable duties programs, services provided by rehabilitation provider, and reasonable aids and equipment.¹¹⁰

Necessary and reasonable travelling expenses

An injured worker is entitled to insurer-funded travel that their insurer considers necessary and reasonable for the purpose of:

- obtaining medical treatment
- undertaking rehabilitation
- attending a medical assessment tribunal

¹⁰⁶ WCR Act s 210(1).

¹⁰⁷ Available at www.worksafe.qld.gov.au/service-providers/fees.

¹⁰⁸ WCR Act s 211(1)(b).

¹⁰⁹ WCR Act s 222(1).

¹¹⁰ WCR Act s 40(2).

- undertaking examination by a registered person.¹¹¹

Insurers must also pay certain costs associated with a worker's transport by the Queensland Ambulance Service and other ambulance services in particular circumstances.¹¹²

Lump sum compensation

If an injured worker's injury has been assessed as stable and stationary, and not likely to improve with further medical or surgical treatment, the worker is entitled to lump sum compensation according to the degree of permanent impairment they have sustained.

The maximum amount of lump sum compensation payable is \$380,575. However, additional lump sum compensation is available where the worker's injury:

- results in a degree of permanent impairment of 30 per cent or more (in which case additional lump sum compensation of up to \$380,575 is available)¹¹³
- results in a degree of permanent impairment of 15 per cent or more and a moderate to total level of dependency of day-to-day care for the fundamental activities of daily living (in which case additional lump sum compensation of up to \$431,125 may be available for gratuitous care)¹¹⁴
- is pneumoconiosis (in which case additional lump sum compensation of up to \$142,564 is available).¹¹⁵

Lifetime care and support

An injured worker is eligible for lifetime treatment, care and support payments if they sustain a serious personal injury. Serious personal injuries include serious permanent spinal injury, a traumatic brain injury, high level or multiple amputations, severe burns or permanent traumatic blindness.¹¹⁶

Treatment, care and support payments for eligible workers are designed to meet their necessary and reasonable treatment, care and support needs, including for medical treatment, hospitalisation, dental treatment, rehabilitation, ambulance transportation, respite care, attendant care and support services, aids and appliances, prostheses, education or vocational training, and home, transport or workplace modification.

Workers may be assessed as being entitled to treatment, care and support payments for an interim period of up to two years initially, or for their lifetime. In contrast with the Queensland workers' compensation scheme's short-tail design, workers with lifetime entitlement will have treatment, care and support provided for their lifetime unless they opt out of these payments and receive common law damages.

Death entitlements

Where a worker dies from a work-related injury, compensation may also be payable to the worker's dependants and certain other family members.¹¹⁷ Types of compensation include:

- lump sum compensation of up to \$712,855 for a dependant depending on the level of dependency
- additional lump sum compensation of up to \$19,768 for a totally dependent spouse or \$38,105 for dependents who are under 16 or students

¹¹¹ WCR Act s 219(1).

¹¹² WCR Act s 219(2), (3), (4), (5).

¹¹³ WCR Act s 192(2).

¹¹⁴ WCR Act s 193(6).

¹¹⁵ WCR Act s 128G(1).

¹¹⁶ WCR Act Chapter 4A.

¹¹⁷ WCR Act chapter 3 part 11.

- lump sum compensation of up to \$71,290 for a non-dependent spouse, issue or next of kin
- lump sum compensation of up to \$42,860 for Australian-resident parents where the deceased worker is under 21 and has no dependants
- reasonable medical and funeral expenses for the deceased worker
- weekly benefits for dependent children who are under 16 or a student.

Additional lump sum compensation is also available for workers with terminal, latent onset injuries which ranges between \$38,060 to \$380,580 depending on the worker's age.¹¹⁸

Common law

The short tail of the Queensland scheme is offset by the ability of injured workers to elect to pursue a common law damages claim.

An injured worker may elect to make a common law damages claim for negligence. If the worker is able to prove negligence, a lump sum payment of damages may be awarded to the worker taking into account their future economic loss (loss of wages) and pain and suffering. In such a case, compensation paid to the worker throughout the course of their statutory claim will be deducted from the damages award to avoid double-compensation.

Conversely, most Australian jurisdictions have either restricted or no access to common law.

Rehabilitation and return to work

Returning an injured worker to the same job with the same employer is the best outcome which can be achieved on a claim. The return to work rate for 2022-23 was 91.9 per cent.

A positive return to work outcome is a key focus area of the workers' compensation scheme. Effective participation by employers in a worker's rehabilitation and early return to work minimises the costs of workplace injury on business, with more evidence on cost-benefits of vocational rehabilitation than for many health and social policy areas.¹¹⁹

Evidence supports that a multidisciplinary approach leads to early and sustainable return to work outcomes, having compared medicalised approaches taken within a work injury setting. Vocational rehabilitation approaches primarily assist in improving capability for work or to stay at work and secondarily lead to improved symptoms.¹²⁰

The Australasian Faculty of Occupational & Environmental Medicine's '*Realising the Health Benefits of Work*' Position Statement¹²¹ identifies that if a person is off work for:

- 20 days, the chance of ever getting back to work is 70 per cent
- 45 days, the chance of ever getting back to work is 50 per cent
- 70 days, the chance of ever getting back to work is 35 per cent.

Under the scheme, employers in Queensland with wages of \$7.945 million for the preceding financial year, or which are in a high-risk industry (as defined in the Regulation) with wages of \$3.972 million for the preceding financial year, must have workplace rehabilitation policies

¹¹⁸ WCR Act s 128B.

¹¹⁹ Waddell, G., Burton, A., and Kendall N. (2008). *Vocational Rehabilitation: What Works, for Whom and When?* The Stationary Office; London, UK.

¹²⁰ Ibid.

¹²¹ Australasian Faculty of Occupational and Environmental Medicine. (2017). *Position Statement on the Health Benefits of Good Work*. Retrieved from <https://www.racp.edu.au/docs/default-source/default-document-library/afoem-pos-aus-nz-con-advocacy/division-faculty-and-chapter-priorities/faculty-of-occupational-environmental-medicine/health-benefits-of-good-work-pack>.

and procedures and must appoint a rehabilitation and return to work coordinator,¹²² defined as someone who is ‘appropriately qualified’ to perform the functions of this role.¹²³

An employer of a worker who has sustained an injury must take all reasonable steps to assist or provide the worker with rehabilitation for the period for which the worker is entitled to compensation. The *Guidelines for Standard for Rehabilitation* prescribes the key principles to assist employers in meeting their obligations under the WCR Act.¹²⁴

Rehabilitation and return to work obligations also attach to workers and insurers under the scheme as follows:

- An *injured worker* must satisfactorily participate in rehabilitation as soon as practicable after the injury is sustained and for the period for which the worker is entitled to compensation. If the worker fails or refuses to participate in rehabilitation without reasonable excuse, the insurer may, by written notice given to the worker, suspend the worker’s entitlement to compensation until the worker satisfactorily participates in rehabilitation.¹²⁵
- An *insurer* must take the steps it considers practicable to secure the rehabilitation and early return to suitable duties of workers who have an entitlement to compensation. An insurer is responsible for coordinating the development and maintenance of a rehabilitation and return to work plan in consultation with the injured worker, the worker’s employer, and treating registered persons.¹²⁶

Returning an injured worker to the same job with the same employer is the best outcome which can be achieved on a claim.¹²⁷

A key factor which influences the return to work outcome is the existence of a psychological or psychiatric injury. Human-centered and specialised claims management approaches are considered to be best practice for the management of psychological and psychiatric injuries and are unique to the workers’ compensation scheme.¹²⁸

Queensland workers’ compensation scheme expenditure and premiums

Queensland’s workers’ compensation scheme aims to maintain a balance between providing fair and appropriate benefits for injured workers and ensuring reasonable cost levels for employers.¹²⁹ Queensland is the most efficient scheme of all centrally funded and managed schemes, with 64.3 per cent of all expenditure spent directly on the claimant. A further 23 per cent is spent on services for the claimant. The operational cost of insurance is also the lowest of all Australian state jurisdictions, at seven per cent of total scheme expenditure.¹³⁰

As at 30 June 2023, WorkCover’s equity position is \$1.89 billion, with a funding ratio of assets to liabilities of 138.9 per cent, meaning WorkCover remains fully funded in accordance with the requirements of the WCR Act.¹³¹

¹²² WCR Act s 226.

¹²³ WCR Act s 41.

¹²⁴ *Workers’ Compensation and Rehabilitation Act 2003* s 228. A copy of the *Guidelines for Standard of Rehabilitation* (2nd edition) can be retrieved from www.worksafe.qld.gov.au/__data/assets/pdf_file/0009/76806/Guidelines-for-standard-for-rehabilitation-second-edition.pdf.

¹²⁵ *Workers’ Compensation and Rehabilitation Act 2003* s 232.

¹²⁶ *Workers’ Compensation and Rehabilitation Act 2003* s 220.

¹²⁷ *Guidelines for Standard of Rehabilitation* (2nd edition) can be retrieved from www.worksafe.qld.gov.au/__data/assets/pdf_file/0009/76806/Guidelines-for-standard-for-rehabilitation-second-edition.pdf.

¹²⁸ Safe Work Australia. (2017) *Return to work: A comparison of psychological and physical injury claims, analysis of the Return to Work Survey results*, and Safe Work Australia. Taking Action (2018): *A best practice framework for the management of psychological claims in the Australian workers’ compensation sector*.

¹²⁹ *Workers’ Compensation and Rehabilitation Act 2003* s 5(4)(a).

¹³⁰ Safe Work Australia. (2020). *Comparative Performance Monitoring report 24th Edition – Workers’ Compensation Funding*.

¹³¹ *Workers’ Compensation and Rehabilitation Act 2003* s 453.

WorkCover is required to maintain capital adequacy (being that its total assets are at least equivalent to its total liabilities).¹³² Should WorkCover fail to meet its capital adequacy obligations and be unable to pay an amount payable under a policy or other insurance contract, the consolidated fund is to be appropriated for the amount and the amount paid to WorkCover.

In March 2023, the Board of WorkCover recommended a 4.88% increase in the average premium rate for 2023–24, from \$1.23 to \$1.29 per \$100 of wages. This increase is offset by maintaining the 3% early payment discount and the exemption of apprentice wages from premium calculations, which have saved Queensland employers more than \$465 million since 2017–18. Queensland currently has the lowest average premium rate of any state or territory.

Employers insured with WorkCover pay a premium to meet the cost of this insurance. This premium is used to administer the insurance business, make payments to injured workers for income replacement and medical treatment, rehabilitation and return to work support, injury prevention activities and scheme administration.

Every accident insurance policy with WorkCover is given a WorkCover industry classification (WIC). A WIC is determined by what the business does to generate revenue (for example, road transport, retail services, construction, professional services). WorkCover uses WICs to classify a business and calculate an appropriate premium.¹³³

The actual premium paid by an employer in Queensland varies according to the size, claims experience and industry of the employer. Premium collected in a year is to pay for all injuries that occur in that year, which will be paid out in that year and over future years.

Premium is calculated using the Experience Based Rating (EBR) system which multiplies an employer's *wages* by their *premium rate*. It is designed to reward employers with good injury prevention and management and is the predominant incentive used in other jurisdictions.

A premium rate is determined by an employer's:

- *Size* – the smaller the employer the more their premium is based on their industry rate; the larger the employer the more their premium is based on their own experience;
- *Industry's claims experience* – the claims costs of the industry the employer is in; and
- *Claims experience* - includes the past three years of statutory claim costs, followed by the preceding one year of common law claim costs (going back four years in total, providing for the three year lag period in which a common law claim may be initiated) up to a maximum of \$175,000 for each claim.

In 2014–15, WorkCover introduced a simplified premium model for small business.

Policyholders who pay \$1.5 million or less in wages are assigned a policy rating (from 1 to 5) based on claims experience (i.e. the cost of claims) for the previous financial year, relative to the claims experience of their industry. Under this model, an employer's premium is calculated by multiplying their wages by their industry rate (as listed in the [Queensland Government Gazette](#)). An employer's policy rating determines the percentage of the industry rate they pay in this calculation. This can range from 80 per cent of their industry rate (the highest policy rating) to 120 per cent of the industry rate.

To help protect small businesses from large variances in their premium, if an employer's policy rating changes, it can only increase (or decrease) by one policy rating per year, which caps movement at 10 per cent. To help prevent a minor claim from affecting an employer's

¹³² Ibid, s 453(b); *Workers' Compensation and Rehabilitation Regulation 2014*, s 4.

¹³³ Queensland Government. (2018). *Queensland Government Gazette No. 36—WorkCover Queensland Notice (No. 1) of 2018 (excerpt)*. Retrieved from www.worksafe.qld.gov.au/__data/assets/pdf_file/0020/8057/Queensland-Government-Gazette.pdf.

policy rating, the first \$500 of claim costs on a policy will not count towards their claims experience. There is also a no claims discount for employers with a policy rating of 2, 3, 4, or 5. These employers automatically move down one policy rating if they have a claim-free year, guaranteeing a 10 per cent reduction to the amount of the industry rate they pay.

This simplified model removes the volatility of premium increases for small businesses and provides greater incentives for employers to improve their policy rating.

Employer's injury rates influence premiums charged, as it affects not only their own EBR, but also their industry's rate and the scheme's average premium rate.

An employer's premium can be reduced if the number and severity of injuries, claims and consequent costs are able to be reduced. As a result, an employer's premium plays a key role in encouraging a greater focus on injury prevention and participation in rehabilitation and return to work.

Dispute resolution

Under Queensland's workers' compensation scheme, workers and employers aggrieved by an insurer's decision can apply to the Regulator for a review of the decision¹³⁴. Queensland has the second lowest dispute rate and the highest number (81.2 per cent) of disputes resolved within three months of all jurisdictions.¹³⁵

The Regulator has 25 business days to make a review decision. The review process is an administrative process, or 'a review on the papers', rather than an adversarial or judicial process. The review process in most instances removes the need for a longer and more expensive adversarial court process. The review process has resulted in 6.8 per cent of disputes proceeding to an appeal to the Queensland Industrial Relations Commission (QIRC) or Industrial Magistrate. Approximately 60 per cent of review decisions are made in favour of the aggrieved party.

Workers and employers who are aggrieved by the Regulator's review decision can appeal to the QIRC, unless the decision relates to an employer's premium, in which case the Industrial Magistrate is the appeal body.¹³⁶ The Commissioner or Magistrate will hear both sides of the appeal and decide the matter based on the facts and evidence presented during the hearing.

Medical assessment tribunals are independent panels of specialist doctors who, on referral from insurers, provide independent, expert medical decisions about injury, capacity for work and a worker's degree of permanent impairment. Decisions of tribunals are final and binding unless fresh medical evidence, not known about the worker at the time of the tribunal's decision, can be produced within 12 months of the decision.

¹³⁴ WCR Act s 541.

¹³⁵ Safe Work Australia. (2022). *Comparative Performance Monitoring Report 24th Edition – Workers' Compensation Disputes*. Retrieved from www.safeworkaustralia.gov.au/system/files/documents/1905/comparative-performance-monitoring-report-20th-edition-part-3.pdf.

¹³⁶ *Workers' Compensation and Rehabilitation Act 2003* s 548A.

Annexure C – Comparison of deidentified private accident insurance policies against workers’ compensation entitlements

Benefit	Personal accident and Illness Insurance (general insurance)	Intermediary-provided personal accident insurance (personalised transport and food delivery)	Intermediary-provided personal accident insurance (care and support industry)	WorkCover Queensland Policy
Scope	For an individual who sustains an injury or a sickness (“insured event”) which prevents them from attending a place of work. Must result in an “insured event” within 12 calendar months.	Cover under the policy: a. Starts at the time a Delivery partner or delegate accepts a request for delivery services from a third party through the uber app and ends fifteen minutes after the completion of the delivery service (being when the third party’s order is delivered), or when the request of the delivery service is cancelled, whichever is earlier; or b. Starts at the time a driver partner accepts a request for transportation services from a third party through the App, and ends fifteen minutes after the completion of the Transportation Service (being when the last passenger leaves the Driver Partner’s car), or when the request for	The cover provides benefits to workers (insured person) using the platform whilst they are engaged in: <ul style="list-style-type: none"> • approved care work; • direct and uninterrupted travel between the Insured Person’s normal place of residence and an approved care workplace; • direct and uninterrupted travel between the Insured Person’s last place of paid work and an approved care workplace; • direct and uninterrupted travel between one approved care workplace and another approved care workplace; and • activities undertaken during lunchtimes and meal 	Personal injury arising out of, or in the course of, employment where the employment is a significant contributing factor to the injury. Includes journey and recess break.

Benefit	Personal accident and Illness Insurance (general insurance)	Intermediary-provided personal accident insurance (personalised transport and food delivery)	Intermediary-provided personal accident insurance (care and support industry)	WorkCover Queensland Policy
		<p>the transportation service is cancelled, whichever is earlier.</p> <p>There is no cover provided at any other time, including between the delivery services or transportation services.</p> <p>There is no cover provided should they accept a request to provide services through an application or dispatcher other than the App during the 15 minute period referred to above.</p>	breaks while at an approved care workplace.	
Types of injuries covered	<p>Bodily injuries.</p> <p>Excludes any pre-existing conditions, war and terrorism, nuclear/chemical/ biological terrorism, certain hazardous and excluded activities, air travel (other than as a passenger), professional sport, suicide and intentional self-injury, exposure to exceptional danger, criminal acts, alcohol or drugs, pregnancy and childbirth.</p>	<p>Bodily injuries.</p> <p>Excludes:</p> <ul style="list-style-type: none"> - a pre-existing medical condition - any intentional self-injury or suicide committed by a covered person - dishonest, fraudulent, criminal, illegal, malicious or intentional act, reckless misconduct, error or omission, or any intentional or knowing 	<p>Bodily injuries including:</p> <ul style="list-style-type: none"> • sickness directly resulting from medical or surgical treatment rendered necessary by the Accident; and • may include an injury caused by the worker being directly and unavoidably exposed to the elements as a result of an Accident. <p>Excludes:</p>	<p>An <i>injury</i> is personal injury including a psychiatric or psychological disorder, a disease, loss of hearing, and an aggravation of a pre-existing injury.</p> <p>Injury must arise out of, or in the course of, employment; and employment is a significant contributing factor to the injury.</p>

Benefit	Personal accident and Illness Insurance (general insurance)	Intermediary-provided personal accident insurance (personalised transport and food delivery)	Intermediary-provided personal accident insurance (care and support industry)	WorkCover Queensland Policy
	Where an insured person suffers an injury or sickness that results in a disablement for a mental health condition that occurs whilst cover is in force, benefits are only payable if the insured person is being treated by or has been referred to a psychiatrist, psychologist or something similar.	<p>violation of the law by the intermediary or the Covered person</p> <ul style="list-style-type: none"> - war, invasion, act of foreign enemy hostilities, civil war, terrorism, rebellion, revolution etc. 	<ul style="list-style-type: none"> • a sickness or a condition ordinarily described as a sickness, illness or disease • an aggravation of a pre-existing injury, existing before the start of the period during which cover is provided under the policy • any degenerative or congenital condition or other condition, which does not result solely and directly from an Accident. 	Includes injury sustained during journey and recess.
Income replacement	<p>Weekly benefits are available for temporary total or partial disablement by accident or sickness.</p> <p>In the case of a self-employed person, their weekly pre-tax income derived from personal exertion, after deduction of all expenses incurred in connection with the derivation of that income, averaged over the period of 12 months immediately proceeding the</p>	\$150 per day, for a maximum benefit period of 30 days and a maximum benefit of \$4500.	85% of weekly income to a maximum of \$1,000.	<p>For the first 26 weeks of the incapacity, the greater of 85% of the workers normal weekly earnings (NWE), 100% of industrial instrument amount or the Queensland Ordinary Times Earnings (QOTE).</p> <p>From the end of the first 26 weeks of the incapacity until the end of the first 2 years of the incapacity, the greater of 75% of NWE or 70% of Queensland Ordinary Times Earnings (QOTE) [for the</p>

Benefit	Personal accident and Illness Insurance (general insurance)	Intermediary-provided personal accident insurance (personalised transport and food delivery)	Intermediary-provided personal accident insurance (care and support industry)	WorkCover Queensland Policy
	commencement of the disability or over such shorter period as they have been self-employed.			<p>2023-24 financial year QOTE is \$1,760.70].</p> <p>From the end of the first 2 years of the incapacity until the end of the first 5 years of the incapacity either:</p> <ul style="list-style-type: none"> – 75% of the worker's NWE – 70% of QOTE – the single pension rate (as at December 2023 is \$548.35 per week).
Duration of Income replacement	Not specified.	As above.	Benefit period – 104 weeks.	Five years or until the worker has been paid \$380,575.31 in income replacement (or the entitlement to compensation otherwise ends under the WCR Act).
Death	Additional cover for Accidental death. 100% sum insured.	Up to \$500,000 lump sum.	Up to \$250,000 lump sum.	<p>Lump sum payment up to \$712,854.61 to dependants plus;</p> <ul style="list-style-type: none"> – Weekly benefits for each child under 6 (8% QOTE); plus

Benefit	Personal accident and Illness Insurance (general insurance)	Intermediary-provided personal accident insurance (personalised transport and food delivery)	Intermediary-provided personal accident insurance (care and support industry)	WorkCover Queensland Policy
				<ul style="list-style-type: none"> – Weekly benefits for each child up to 16 years or students (10% QOTE); plus – Other additional lump sums depending on dependant's circumstances.
Funeral	Nil.	\$15,000. Plus spouse/partner and dependent child supplement \$25,000 per spouse/partner and dependent child up to a maximum benefit per covered person of \$75,000.	Reimbursement of reasonable expenses incurred up to the amount shown on the Policy Schedule. Dependent Child Supplement - \$5,000 per Dependent Child up to \$15,000. Orphan Benefit - \$10,000 per Dependent Child up to \$30,000.	Reasonable expenses.
RRTW Assistance	Up to \$5,000 reimbursement for cost of RTW program.	Up to \$750 (cost of consultation with Rehab consultant).	Rehabilitation Benefit – payment for tuition or advice for an insured person from a licensed vocational school – up to \$10,000.	No limit, reasonable fees and costs.*
Assault benefit	Nil.	\$5,000 lump sum.	Accidental HIV Infection Benefit - \$10,000. Workplace Assault Benefit – up to \$2,000.	Can access victim of crime benefit.

Benefit	Personal accident and Illness Insurance (general insurance)	Intermediary-provided personal accident insurance (personalised transport and food delivery)	Intermediary-provided personal accident insurance (care and support industry)	WorkCover Queensland Policy
Medical cost	Nil.	Up to \$2,000 fractured bones.	Up to \$3,000 fractured bones. Out of Pocket Expenses Benefit – up to \$1,500.	No limit, reasonable fees and costs.*
Hospital costs	Nil.	\$1,500 if hospitalised for up to 4 consecutive nights; or \$5000 if hospitalised for 5 or more consecutive nights.	Bed Care Benefit – \$500 per week up to a maximum 26 weeks. Coma benefit - \$145 per day up to 90 days.	No limit, reasonable fees and costs.*
Injury and Travel costs	Nil.	Out of Pocket expenses can be reimbursed up to \$5000.	Accommodation and Transport benefit – up to \$5,000. Car jacking benefit – up to \$5,000. Chauffeur benefit – up to \$1,500.	No limit, reasonable fees and costs.*
Common law	Nil.	Nil.	Nil.	Indemnifies employer, ensures full damages paid to worker.
Serious personal injury	Nil.	Nil.	Nil.	Lifetime treatment, care and support.
Permanent impairment	Lump sum benefit, percentage of sum insured (dependent on injury).	Lump sum benefit up to \$500,000 (dependent on injury). Includes permanent serious mental illness.	Lump sum benefit up to \$250,000 (dependent on injury).	Maximum of \$380,575.31 plus: - Additional lump sum for injuries >30%DPI

Benefit	Personal accident and Illness Insurance (general insurance)	Intermediary-provided personal accident insurance (personalised transport and food delivery)	Intermediary-provided personal accident insurance (care and support industry)	WorkCover Queensland Policy
				- Additional lump sum for gratuitous care >15% DPI.
Carers allowance	Nil.	Childcare benefit – up to \$5,000.	Childcare Benefit – up to \$5,000.	No limit, reasonable fees and costs.*
Excess	Excess period applies - subject to agreed excess in policy.	Not specified.	Not specified.	Benefits paid during excess period, employer pays for excess.

Notes

* There are various provisions contained in the WCR Act that end an injured worker's entitlement to compensation from the insurer. These provisions include:

- *section 119* – Entitlement to compensation ends if damages claim is finalised
- *section 144A* – Weekly payments of compensation stop if:
 - the incapacity because of the work-related injury stops
 - the worker has received weekly payments for the incapacity for 5 years
 - compensation reaches the maximum amount (currently \$380,575.31).
- *section 144B* – Payment of medical treatment, hospitalisation and expenses stops when medical treatment by a registered person is no longer required for the management of the injury because the injury is not likely to improve with further medical treatment or hospitalisation.
- *section 168* – Review of compensation and associated payments (subject to changed circumstances and in reliance of another provision that supports the decision.
- *section 176* – No compensation after redemption payment made (only made if agreed with worker and the worker has moved interstate, overseas, or has been on benefits for more than two years)
- *section 190* – No further compensation after fixed time (20 business days after an offer of lump sum compensation has been made following an assessment of the workers degree of permanent impairment).

Medical expenses are subject to conditions set by WorkCover under a medical treatment table of costs.

Common law damages settlements are subject to caps and are assessed in accordance with Chapter 5 Part 9 of the WCR Act.

In addition, the amount of damages that an employer is legally liable to pay to a claimant for an injury must be reduced by the total amount paid or payable by an insurer by way of compensation for the injury.

Annexure D – Methodology of costings

Costings referenced in this Decision IAS are based on independent actuarial analysis which utilised the following approach:

1. Estimate the number and wages of gig economy workers and bailee drivers working in Queensland.
2. Convert the number of workers into a Full Time Equivalent (FTE) using average hours worked.
3. Estimate statutory and common law claim costs using a frequency times size approach by the major industry of the worker. This is equivalent to the annual direct financial impact.
4. Convert annual direct costs into an impact on the headline premium rate for the Queensland workers' compensation scheme.
5. Estimate the total financial impact of workplace injuries using similar methodology¹³⁷ to the Consultation RIS costings based on data from Safe Work Australia and Access Economics. The indirect cost of workplace injuries was estimated as the difference between the financial impact and direct financial impact estimates.
6. Allocate the direct, indirect and total financial cost between the worker, employer and community using the allocation methodology contained in Safe Work Australia's 2015 *The Cost of Work-related injury and illness for Australian Employers* report for the various options.

Costings are subject to the following limitations:

- Assessing exposure is difficult due to the lack of data available. This is particularly true for the gig economy as most sources of information extrapolate and draw conclusions from a small sample of survey participants. For bailee drivers, the analysis has had to rely on previous costings and these have not been independently verified.
- Indirect impacts have been estimated using methodology and data from external modelling which relies on a large range of assumptions. There is a high degree of uncertainty with these estimates.
- Allocation of costs between economic agents has been based on previous work from OIR in 2019. The original workings have not been independently verified.
- The overall cost of workplace injury is unchanged under all options. No allowance has been made for potential estimated savings. Potential savings can result from efficiencies and bypass of profit margins by going through the workers' compensation scheme rather than the private insurance market.
- Potential subsequent behavioural impacts that can occur from the changes proposed under each option were not considered.

¹³⁷ The ratio of total economic cost to direct cost of workplace injuries in Australia is applied to direct costs for gig economy and bailee taxi and limousine drivers to arrive at the total economic cost for these workers.