

Impact Analysis Statement

Summary IAS

Details

Lead department	Office of Industrial Relations (Department of State Development and Infrastructure)
Name of the proposal	Queensland Government's decision in relation to regulatory proposals to extend workers' compensation coverage to gig workers and bailee taxi and limousine drivers
Submission type (Summary IAS / Consultation IAS / Decision IAS)	Summary Impact Analysis Statement (Summary IAS) with attached Decision Impact Analysis Statement (Decision IAS)
Title of related legislative or regulatory instrument	<i>Workers' Compensation and Rehabilitation Act 2003</i> <i>Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2024</i>
Date of issue	12 February 2024

This Summary IAS with **attached** Decision IAS finalises the Government's decision in relation to regulatory proposals to extend workers' compensation coverage to gig workers and bailee taxi and limousine drivers. It aligns with recommendations from the 2018 and 2023 five-year review of the Queensland workers' compensation scheme (2018 review and 2023 review).

The 2023 review made a total of 54 recommendations and regulatory analysis for these recommendations has been undertaken as follows:

Recommendations not dealt with in a separate Summary IAS as they are not being progressed, are under consideration or do not require regulatory amendments.	1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 13, 15, 16, 18, 21, 23, 24, 25, 28, 30, 32, 35, 36, 38, 39, 40, 41, 43, 44, 46, 47, 49, 50, 51 and 54
Recommendations dealt with in a separate Summary IAS.	9, 12, 14, 17, 19, 20, 22, 26, 27, 29, 31, 33, 34, 37, 38, 42, 45, 48 and 52
Recommendations outlined in this Summary IAS and attached Decision IAS.	53

Proposal type	Details
Minor and machinery in nature	Nil.
Regulatory proposals where no RIA is required	Nil.
Cabinet exemptions	Nil.

*Refer to [The Queensland Government Better Regulation Policy](#) for regulatory proposals not requiring regulatory impact analysis (for example, public sector management, changes to existing criminal laws, taxation).

For all other proposals

What is the nature, size and scope of the problem? What are the objectives of government action?

Proposal to extend workers' compensation coverage to gig workers

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. Gig workers perform employee-like work but the exact legal status of an individual gig worker is difficult to ascertain as engagement models vary significantly and the legal status of gig workers remains unclear nationally.

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. 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 and intermediary-provided insurance is of a lower standard than coverage provided by the Queensland scheme.

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, leading to poor equity outcomes. 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.

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.

Most 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 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.

The Government recognises that if gig workers are injured due to the nature of work, they do not have the same protections as workers within the scheme and that intervention may be required to address the identified problem.

Nationally, Safe Work Australia along with all Australian jurisdictions are investigating the implications of extending of workers' compensation coverage to gig workers. To date no jurisdiction has yet taken action to extend coverage. However, the New South Wales government has committed to introducing workers' compensation entitlements for gig workers that are akin to those currently provided to injured employees.

In addition, 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.

Proposal to extend workers' compensation coverage to bailee taxi and limousine drivers

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.

This approach potentially exposes them to a risk of uncompensated or undercompensated work-related injury. That said, 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 *Transport Operations (Passenger Transport) Act 1994* (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.

Similar to gig workers, it is possible some of the injury and rehabilitation costs for their injuries is shifted to individual drivers and the community. Further, Queensland is one of only two Australian jurisdictions (the other being Western Australia) that has not extended workers' compensation entitlements to bailee taxi drivers, leaving it out of step with national regulatory approaches to this issue.

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 Department of Transport and Main Roads (DTMR). These accreditations authorise the holder to drive a vehicle being used to provide public passenger service, including taxi, limousine and rideshare services.

Further, there are approximately 3,248 taxi service licences and 470 limousine service licences authorised and issued by DTMR. There is no public information available on the number of taxi and limousine operators conducting a business in Queensland.

What options were considered?

The 2018 five-year review of Queensland's workers' compensation scheme recommended workers' compensation coverage be extended to gig workers. In 2019 the Government published a Consultation Regulatory Impact Statement (Consultation RIS) seeking public comment on this proposal, as well as a proposal to extend coverage to bailee taxi and limousine drivers. Proposals presented in the Consultation RIS were as follows.

Proposal to extend workers' compensation coverage to gig workers

- Option 1: 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* (WCR Act) to extend workers' compensation coverage to gig workers and require intermediary businesses to pay premiums.

Proposal to extend workers' compensation coverage to bailee taxi and limousine drivers

- 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.
- Option 2: Enhance existing private personal accident insurance under existing industry arrangements and mandate this insurance via a condition on taxi and limousine licenses issued by DTMR.
- Option 3: Amend the WCR Act to extend Queensland's workers' compensation scheme to include taxi and limousine drivers engaged under a bailment arrangement.

To ensure continuity, these proposals are also the subject of the Decision IAS.

What are the impacts?

Proposal to extend workers' compensation coverage to gig workers

Option 1 would maintain the status quo and gig workers would remain unable to access Queensland's workers' compensation scheme. 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 the level of coverage offered by personal accident insurance products.

Full benefits, impacts and costs of this option are set out in the Decision IAS. The estimated cost impacts of this option are as follows (in the 2023/24 financial year):

	<i>Direct costs (\$m)</i>	<i>Indirect costs (\$m)</i>	<i>Total cost (\$m)</i>	<i>Per cent 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

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. 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, independent contractors who undertake work through these intermediaries would not be captured.

Full benefits, impacts and costs of this option are set out in the Decision IAS. The estimated cost impacts of this option are as follows (in the 2023/24 financial year):

	<i>Direct costs (\$m)</i>	<i>Indirect costs (\$m)</i>	<i>Total cost (\$m)</i>	<i>% 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

Proposal to extend workers' compensation coverage to bailee taxi and limousine drivers

Option 1 would retain current arrangements within the taxi and limousine industry where drivers source their own private insurance arrangements (or rely on industry-provided policies). This option provides no regulation of the level of coverage offered by personal accident insurance products.

Full benefits, impacts and costs of this option are set out in the Decision IAS. The estimated cost impacts of this option are as follows (in the 2023/24 financial year):

	<i>Direct (\$m)</i>	<i>Indirect (\$m)</i>	<i>Total (\$m)</i>	<i>% total cost</i>
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

Option 2 would seek to enhance and mandate private accident insurance coverage as a condition of taxi and limousine licences issued by DTMR. The obligation to insure would fall on licence holders (or operators where they lease or manage a licence). This option would require an amendment to the *Transport Operations (Passenger Transport) Act 1994*.

The level of insurance coverage 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 rehabilitation and return to work support available in the scheme.

Full benefits, impacts and costs of this option are set out in the Decision IAS. The estimated cost impacts of this option are as follows (in the 2023/24 financial year):

	<i>Direct (\$m)</i>	<i>Indirect (\$m)</i>	<i>Total (\$m)</i>	<i>% total cost</i>
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

Option 3 would require amendments to the WCR Act to prescribe that a bailee taxi or limousine driver is a 'worker' under the WCR Act. This would give bailee drivers access to no-fault statutory workers' compensation entitlements, as well as access to common law damages.

The obligation to insure and pay premium would attach to the person who bails the taxi or limousine to the bailee 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 by WorkCover Queensland or have the option of self-insuring against their workers' compensation liabilities where they meet certain criteria.

Full benefits, impacts and costs of this option are set out in the Decision IAS. The estimated cost impacts of this option are as follows (in the 2023/24 financial year):

	<i>Direct (\$m)</i>	<i>Indirect (\$m)</i>	<i>Total (\$m)</i>	<i>% 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

Who was consulted?

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 from individuals, employers, registered industrial organisations and the legal profession. Nine of these were confidential. Stakeholder views were divergent.

Scheme stakeholders were also consulted on proposals to extend coverage to gig workers and bailee drivers as part of consultation on the recommendations of the 2023 five-year review.

What is the recommended option and why?

Proposal to extend workers' compensation coverage to gig workers

The Queensland Governments 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 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 subsequent determinations by the Fair Work Commission on whether gig workers have 'employee-like' status.

Proposal to extend workers' compensation coverage to bailee taxi and limousine drivers

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. 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 did not express clear support for extending coverage.

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

Impact assessment

All proposals – complete

	First full year	First 10 years**
Direct costs – Compliance costs*	Refer to attached Decision IAS	Refer to attached Decision IAS
Direct costs – Government costs	Refer to attached Decision IAS.	Refer to attached Decision IAS

* The *direct costs calculator tool* (available at www.treasury.qld.gov.au/betterregulation) should be used to calculate direct costs of regulatory burden. If the proposal has no costs, report as zero. **Agency to note where a longer or different timeframe may be more appropriate.

Significant proposals – also complete this table and a full IAS (refer box 1 below):

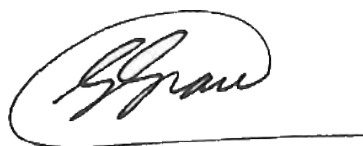
	First full year	First 10 years
Total costs***	Refer to attached Decision IAS.	Refer to attached Decision IAS.
Total benefits***	Refer to attached Decision IAS.	Refer to attached Decision IAS.
Net present value***	Refer to attached Decision IAS.	Refer to attached Decision IAS.

*** Detail and assumptions should be recorded in the Full IAS.

Signed



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Minister for Industrial Relations and
Minister for Racing

Date: 11 / 04 / 2024

Date: 11 / 04 / 2024