

# Consultation Draft Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2024

Submission to the Workers' Compensation  
Regulatory Services, Office of Industrial Relations,  
Queensland

**21 March 2024**



## Contents

<b>Who we are</b> .....	4
<b>Introduction</b> .....	5
<b>Changing nature of work</b> .....	6
The gig economy .....	6
<b>Conclusion</b> .....	17

## Who we are

The Australian Lawyers Alliance (ALA) is a national association of lawyers, academics and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual.

We estimate that our 1,500 members represent up to 200,000 people each year in Australia. We promote access to justice and equality before the law for all individuals regardless of their wealth, position, gender, age, race or religious belief.

The ALA is represented in every state and territory in Australia. More information about us is available on our website.<sup>1</sup>

The ALA office is located on the land of the Gadigal of the Eora Nation.

ALA Queensland has provided support and feedback to Queensland policy makers on workers' compensation policy and legislation for over 25 years.

---

<sup>1</sup> [www.lawyersalliance.com.au](http://www.lawyersalliance.com.au).

## Introduction

1. The ALA welcomes the opportunity to have input to the Office of Industrial Relations (OIR) regarding the recommendations and outcomes arising from the Stakeholder Reference Group meetings in February and March of 2024 and the Consultation Draft Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2024 (Qld) ('draft Bill').
2. The ALA has participated in the Stakeholder Reference Group meetings in relation to the draft Bill and raised our feedback in relation to the individual components of that draft Bill in those forums. We do not intend to go over all component of that feedback again in these submissions. However, the ALA will note that – whilst materials were provided with considerably short timeframes, in some cases a matter of hours, not allowing for considered and thorough feedback – we do appreciate the invitation to attend these forums. We do consider that the meetings are of limited value if sufficient timeframes are not afforded to stakeholders to adequately prepare.
3. The ALA reiterates our strongly-held view that there is urgent need for action in relation to implementing recommendation 53 and 54 of the 2023 Review of the Operation of the Queensland workers' compensation scheme.<sup>2</sup> The ALA considers the intended effect of these recommendations if carried out in full would be to extend existing workers' compensation rights to 'gig workers' in Queensland.
4. **Our submission intends to outline the history from 2018 to present regard the 'gig economy' and its workers and what ALA members see as a simple legislative solution that has long been supported by all stakeholders.** We submit that the need for coverage is becoming more and more imperative as the gig economy grows and is becoming less safe for workers.
5. The images below are sourced from Google images when searching "*Gig Workers Queensland*". This is workplace health and safety at its worst, and it is not reflective of the safe, secure 'workplaces' that all relevant stakeholders strive for in Queensland. Gig workers should be afforded the same safety and access to treatment, and other statutory benefits when something goes wrong in the course of their employment as all 'traditional' workers in Queensland. **The time to extend those rights to 'gig workers' in Queensland is now.**

---

<sup>2</sup> Workers' Compensation Regulatory Services, Office of Industrial Relations, *2023 review of the operation of the Queensland workers' compensation scheme* (Final Report, June 2023).



## Changing nature of work

6. The ALA maintains that urgent action is required from the Queensland Government to respond to the changing nature of the workforce and to extend workers' compensation rights to 'gig workers' now.
7. **We reiterate the reasoning detailed in our submission dated 7 March 2023 which therein referred to the ALA's submission made in 2018.**<sup>3</sup> Increases in precarious work and contracting, and the increasing use of technology in the allocation of work all magnify the effects of poor employment practices, which include the exploitation of visa workers, young workers and those seeking to re-join the workforce. **The time to act on this is now.**

## The gig economy

8. It is clear what the definition of who and what a 'gig worker' and 'gig economy' is, and so too should be their rights for workers' compensation in Queensland be clear. The following description from the Fair Work Ombudsman aptly describes the gig economy:<sup>4</sup>

The gig economy uses mobile apps or websites to connect individuals providing services with consumers. ...

In the gig economy, individuals provide services to consumers for a fee via digital platforms or marketplaces. These platforms can provide consumers with greater choice and flexibility in their daily lives.

---

<sup>3</sup> Australian Lawyers Alliance Submission to the Workers' Compensation Regulatory Services, Office of Industrial Relations, *2023 Review of the Operation of the Queensland Workers' Compensation Scheme* (7 March 2023) <[www.lawyersalliance.com.au/documents/item/2415](http://www.lawyersalliance.com.au/documents/item/2415)>; Australian Lawyers Alliance Submission to the Office of Industrial Relations, *2018 Review of Qld Workers' Compensation Scheme* (April 2018) <[www.lawyersalliance.com.au/documents/item/2394](http://www.lawyersalliance.com.au/documents/item/2394)>.

<sup>4</sup> Fair Work Ombudsman, *Gig economy* (Web Page) <<https://www.fairwork.gov.au/find-help-for/independent-contractors/gig-economy>>.

Common gig economy services in Australia include:

- ride sharing services – for example, where consumers book an individual to drive them somewhere
- delivery services for a fee – for example, where consumers engage an individual to deliver food or other items to them
- personal services for a fee – for example, where consumers engage an individual to provide creative or professional services like graphic design and web development, or odd jobs like assembling furniture and house painting.

9. As of December 2020, approximately 250,000 people were part of Australia’s gig economy.<sup>5</sup> There is a huge amount of research and literature on the growth of the gig economy.<sup>6</sup> This number is rapidly growing.
10. Thus far, however, participants in the gig economy in Australia have not been the subject of legislative initiatives in response to such rapid growth and the need to offer protections to those individuals and their families, especially in the case of injury or death.
11. Within the gig economy, workers are highly vulnerable to exploitative conduct by the entity connecting those individuals with consumers. Sham contracting is rife, with workers told they must be independent contractors rather than traditional employees. These individuals are then deprived of superannuation, insurance, workers’ compensation, award protections and the other workplace benefits Australian workers have come to expect.
12. We will not again reiterate the points made in our 2018 submission; however, we will note that that submission was made nearly six years ago and the need for action has been imperative since that time.<sup>7</sup> **The most marginalised workers are over-represented in the gig economy.**
13. **The common law has not kept pace with the nature and evolution of the gig economy, and the ALA strongly contends that legislative solutions are needed.**

---

<sup>5</sup> Actuaries Institute, *The Rise of the Gig Economy and its Impact on the Australian Workforce* (Green Paper, December 2020) <<https://actuaries.asn.au/Library/Opinion/2020/GPGIGECONOMYWEBtest.pdf>>.

<sup>6</sup> See, eg, *Ibid*.

<sup>7</sup> Australian Lawyers Alliance Submission to the Office of Industrial Relations, *2018 Review of Qld Workers’ Compensation Scheme* (April 2018) 8–11 <[www.lawyersalliance.com.au/documents/item/2394](http://www.lawyersalliance.com.au/documents/item/2394)>; all footnotes accessible in the submission.

14. Our previous submissions, other inquiries and media coverage have drawn attention to the fact that injuries occur working in the gig economy daily and, tragically, deaths also occur.
15. Commendably, the report arising from the 2018 Review recommended legislative change to regulate the gig economy for workers' compensation purposes:<sup>8</sup> The details of those recommendations are known and have been covered in previous submissions made by the ALA. **The ALA strenuously supported the intent of these recommendations in 2018.**
16. Subsequent to the release of the last report, the Queensland Government flagged an intent to move on this issue released a RIS. The ALA participated in several stakeholder forums prompted by the release of the regulatory impact statement and there was an unanimity of views from the legal sector, the labour movement and employer organisations that Queensland had a major opportunity to regulate for workers' compensation purposes the gig economy, and that it should do so at the earliest opportunity.
17. The ALA observes that the problem is now bigger and more urgent as there has been in the last now six years a proliferation in the number of platforms operating within the Queensland economy and in the Australian economy more broadly.
18. The common law has not kept pace with the growth and complexity of the gig economy and a legislative remediation of the situation is in our view imperative.
19. **The ALA contends there is an urgent need for action from the Queensland Government.**
20. Based on the stakeholder forums convened after the 2019 RIS, the Queensland Government ought to, in our view, confidently expect strong stakeholder alignment on the need for reform and action.
21. In other jurisdictions (including the UK) and after incredibly protracted litigation, Uber drivers have been accorded "worker" status by the common law.
22. In 2023 we saw the tragic death of Uber driver Scott Cabrie, killed in the course of his work in Hervey Bay, Queensland.<sup>9</sup> In cases like this, any children or other dependents of the deceased

---

<sup>8</sup> Professor David Peetz, *The Operation of the Queensland Workers' Compensation Scheme* (Report, 27 May 2018) xxv-xxvi <<https://cabinet.qld.gov.au/documents/2018/Jun/Rev2WC/Attachments/Review.PDF>>.

<sup>9</sup> Jake Kearnan, Lucy Loram, and Grace Whiteside, 'Outpouring of grief for Scott Cabrie, allegedly murdered by teens while driving Uber', *ABC News* (online, 14 February 2023) <<https://www.abc.net.au/news/2023-02-14/grief-for-uber-driver-allegedly-murdered-by-passengers/101969694>>.

– even if they are dependent on the deceased’s earnings – do not have access to any workers’ compensation benefits.

23. Were legislative mechanisms in place, however, to capture Uber drivers and other gig economy workers within the ambit of Queensland’s workers’ compensation scheme, the children of a deceased and any other dependants would have had access to, inter alia, a dependency benefit up to the statutory maximum.<sup>10</sup>

24. The process which stalled after the 2018 Review’s report, subsequent RIS and stakeholder process, should be urgently re-enlivened. That process should not be regarded as being dependent on any hypothesised or potential federal regulation of the gig economy. The beneficiaries of legislation to address the problem will include:

- Employers, who do the right thing and seek a level playing field with gig economy employers;
- Injured workers in the gig economy and their families and dependents;
- The Workcover Scheme through having premium revenue from sources not presently available; and
- The community generally through safer workplaces due to the scrutiny of the workers’ compensation scheme and its regulator.

25. The ALA contends that the following recommendations we made in 2018 are also still pertinent to this inquiry:

- That the OIR invest resources in determining a 'definition of worker' which will satisfy the Queensland context. Such a definition should draw on, but not be constrained by, common law jurisprudence on the question of 'worker'.
- That the OIR seek to ensure clearer statutory and regulatory framing of the definition of 'worker', to reflect contemporary circumstances. This process may involve consultation with Senior Counsel.

---

<sup>10</sup> *Workers’ Compensation and Rehabilitation Act 2003* (Qld) ss 200 and 201.

- That the OIR seek alignment between the outcomes of recent labour hire reform initiatives and issues relating to access to workers' compensation.
- That the OIR explore the possibility of legislating a deeming provision, which would give the regulator the capacity to deem certain cohorts as 'workers' in the context of access to workers' compensation and related benefits.
- That the OIR be conscious of cultural sensitivities in developing responses to emerging workplace issues.

26. Five to six years later in 2023, the next five (5) year review process was underway. The final report 2023 review of the operation of the Queensland workers' compensation scheme made the following recommendations in relation to gig workers, dated 28 June 2023:

**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 CRIS. That is, in relation to gig economy workers, to:
  - (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); and
  - (b) in relation to the other insecure work covered by the CRIS, 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.

Is legislation required: Yes  
 Amendments to Regulation: Possible  
 Organisational responsibility: OIR

**Recommendation 54:** That, after the Queensland system of workers' compensation is extended to gig workers, OIR should monitor developments in the federal jurisdiction to determine if any other groups of vulnerable workers, not captured by the recommendation in the 2018 Review, should be covered by the Queensland workers' compensation system. Options for including such workers would include use of the deeming provisions in the Act.

Is legislation required: Not initially  
 Amendments to Regulation: Not initially  
 Organisational responsibility: OIR

27. The ALA was grateful to attend Stakeholder Reference group hearings throughout late 2023, and made the following written submissions in relation to those recommendations, dated 23 November 2023:

Recommendations 53 and 54

<b>No.</b>	<b>Detail</b>	<b>ALA position and feedback</b>
<b>53</b>	<p>That, in light of the likely outcomes from developments in the federal sphere, the Minister:</p> <ol style="list-style-type: none"> <li>1. note the absence of impediments to legislating in the area of gig economy workers; and so</li> <li>2. consider introducing a Bill to implement preferred options from the CRIS. That is, in relation to gig economy workers, to:               <ol style="list-style-type: none"> <li>(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); and</li> <li>(b) in relation to the other insecure work covered by the CRIS, 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</li> </ol> </li> </ol>	<p>The ALA would like to address, after further consideration, some comments made at the Stakeholder Reference Group meeting on Monday, 20 November 2023 in relation to the extension of workers' compensation coverage for bailee taxi and limousine drivers.</p> <p>One point made was that the personal accident insurance policies for bailee taxi and limousine drivers is sufficient. It was stated that some 95 per cent of such drivers hold a personal accident policy. Further, that they are not expensive and provide coverage comparable to, and different then, workers' compensation.</p> <p>Having reviewed this commentary, the ALA notes that personal accident insurance policies cannot cover medical and allied health treatment. In other words, injured drivers cannot access rehabilitation and return-to-work. The ALA submits this makes the policy inferior to workers' compensation coverage.</p> <p>A personal accident insurance policy may</p>
<b>54</b>	<p>That, after the Queensland system of workers' compensation is extended to gig workers, OIR should monitor developments in the federal jurisdiction to determine if any other groups of vulnerable workers, not captured by the recommendation in the 2018 Review, should be covered by the Queensland</p>	<p>provide higher level income supplementation, for longer, than workers' compensation. That is subject to the type of policy and the insurer. However, it comes at a significant additional cost to the driver, compared to low workers' compensation premiums in Queensland.</p>

	<p>workers' compensation system. Options for including such workers would include use of the deeming provisions in the Act.</p>	<p>The extension of personal accident insurance coverage will do nothing to deal with the critical issue: ensuring injured drivers are provided rehabilitation and return-to-work support.</p> <p>In the ALA's view, this makes personal accident insurance policies sub-standard to workers' compensation coverage.</p> <p>A second point made during the discussion was that the taxi industry is seeing a move away from bailment arrangements towards leasing or management agreements. The ALA submits that this is a means by which the provisions originally proposed in 2018 may be circumvented. It was acknowledged by the Taxi Council of Queensland representative that such arrangements would not fall within the workers' compensation coverage proposed.</p> <p>It is the ALA's view that such arrangements are merely a chameleon changing colours, and thus should be covered. We are happy to engage further on the draft provisions to ensure coverage includes such arrangements.</p>
--	---	--

28. On 29 February 2024 the ALA along with other stakeholders were provided with a Draft Bill and accompanying materials for a Stakeholder Reference Group meeting to be held the following day on 1 March 2024. The materials provided covered the following in relation to Recommendation 53 and 54:

### 3. Flexibility for future coverage of gig workers

#### 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 CRIS [Consultation Regulatory Impact Statement]. That is, in relation to gig economy worker, to:*
  - (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); and*
  - (b) *in relation to the other insecure work covered by the CRIS, 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.*

#### Background

The government's response to the review recommendations and the Decision Impact Analysis Statement (Decision IAS) which 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 was released in February 2024.

The Decision IAS finds that while there are benefits to covering gig workers, 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. This means that it is not proposed to make regulatory amendments to extend coverage to gig workers at this time.

The Decision IAS proposes to amend the WCR Act to provide flexibility for the government to clarify the status of gig workers in the future by inserting a head of power for a regulation to prescribe who is a 'worker' and who is an 'employer' in particular circumstances.

Consideration will be given to use of this 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 (or other industrial tribunal) on whether gig workers have 'employee-like' status.

#### Proposed amendment

The draft includes amendments to:

- Section 11 (who is a worker) to provide that a regulation may prescribe who is a worker in particular circumstances;
- Insert in Schedule 3 (who is an employer) to provide that a regulation may prescribe who is an employer of the worker.

*Note: it is not proposed to make the supporting regulation at this time.*

**Affected provisions:** See Clauses 4 and 14 of the draft Bill.

**Commencement:** Assent

**Transitional:** Nil

3.	<p><b>Section 11 (Who is a Worker) (1).</b></p> <p>(1) A <i>worker</i> is a person who—                  (a) works under a contract; and</p>	<p><b>Amendment of Section 11 (1).</b></p> <p>(1) A <i>worker</i> is —                  (a) a person who—</p>
----	--	---

<p>(b) in relation to the work, is an employee for the purpose of assessment for PAYG withholding under the <i>Taxation Administration Act 1953</i> (Cwlth), schedule 1, part 2-5.</p>	<p>(<del>ai</del>) works under a contract; and                  (<del>bi</del>) in relation to the work, is an employee-for the purpose of assessment <del>for</del> of PAYG- withholding under the <i>Taxation Administration Act 1953</i> (Cwlth), schedule 1, part 2-5; <del>or-</del>                  (b) a person who-                  (i) provides a service or performs work of a kind prescribed by regulation; and                  (ii) in relation to the service or work, meets requirements prescribed by regulation for the person to be regarded as a worker.</p>
--	--

29. The ALA considers that the effect of this change provides a power to extend the definition of worker to included classes of workers, included gig workers prescribed by regulation. Its purpose appears to only provide flexibility for the government to clarify the status of gig workers **in the future** by inserting a head of power for a regulation to prescribe who is a ‘worker’ and ‘employer’ in particular circumstances and does not provide any immediate or imminent change to workers’ compensation rights for ‘gig workers’. In summary, it simply provides no remedy to the current inadequacy of the legislation for ‘gig workers’.

30. It is noted that there were some additional points, including:

- a. It is not proposed to make the supporting regulation at this time; and
- b. It was stated that consideration will be given to use of this power once the full extent of the impacts of Closing the Loopholes Bill is known, such as any subsequent determinations by the Fair Work Commission (or other industrial tribunal) on whether gig worker have employee-like status.

31. Again, cementing the position that this amendment at this current time makes no tangible difference to a ‘gig workers’ ability to access workers’ compensation entitlements in Queensland.

32. The ALA's view is that this proposed amendment doesn't provide a remedy to the issue namely it does not extend statutory rights to 'gig workers'. It essentially allows for some flexibility once there is movement at a national level to include 'gig workers' in the definition of worker under the *Fair Work Act*. This is fair from adequate to fulfill the recommendations in both the 2018 and 2023 recommendation reports.
33. Further materials were then provided on or about 13 March 2024 ahead of a Stakeholder Reference Group meeting to be held on 15 March 2024. Those materials contained a further amendment to section 11 of the WCRA:

**Amendment of s 11 (Who is a worker)**

(1) A *worker* is –

- (a) a person who is—
  - (i) works under a contract; and
  - (ii) in relation to the work, is an employee for the purpose of assessment of PAYG withholding under the *Taxation Administration Act 1953* (Cwlth), schedule 1, part 2-5; or
- (b) a person who is:
  - (i) a regulated worker under the *Fair Work Act 2009* (Cwlth) to whom a minimum standards order or a collective agreement applies under that Act, chapter 3A; and
  - (ii) prescribed by regulation to be a worker.

**Amendment of sch 3 (Who is an employer in particular circumstances)**

(9) A person is the employer of a person who is a worker under section 11(1)(b) if the person is—

- (i) is a regulated business under the *Fair Work Act 2009* (Cwlth) to which a minimum standards order or a collective agreement applies under that Act, chapter 3A; and
- (ii) prescribed by regulation to be an employer of the worker.

34. The ALA fails to see how the recommendations in both the 2018 and 2023 reports been addressed by the current draft Bill and amendments. The ALA once again submits that the time is now to clearly extend workers' compensation rights to 'gig workers' in Queensland.
35. The ALA maintains the position that the definition of 'worker' is fundamental to the workers' compensation scheme and not a matter that is appropriate for change by regulation.

36. While it is appreciated that the draft Bill is intends to afford flexibility, the ALA is of the view that the requirement to meet recommendation 53 and 54 is to amend section 11 of the WCRA to provide a complete definition of worker to include 'gig workers'

37. Amending Section 11 of the Workers' Compensation and Rehabilitation Act 2003 in Queensland must include gig workers and the only way to adequately do this without ambiguity would involve expanding the definition of a "worker" to explicitly encompass individuals engaged in gig work.

38. The ALA submits that in order to adequately ensure that workers' compensation laws keep pace with the changing nature of the workforce that any definition of worker adequately includes any person who works under a contract of service, including employees, apprentices, and gig workers engaged in gainful employment through digital platforms or apps.

39. The ALA therefore submits that the proposed amendment 11(b) simply read as follows:

*(b) a person who-*

*(i) is engaged in gainful employment through digital platforms or apps; or*

*(ii) engaged under a contract where they agree to perform work or services for another party (employer) in exchange for payment, regardless of the duration or frequency of such engagements.*

40. This amended section would explicitly recognize gig workers as part of the definition of a worker under the Act, ensuring that they are entitled to workers' compensation benefits and protections along with other types of workers.

41. In the alternative, if the Act cannot be amended to include a specific definition of 'gig worker' then it is proposed that the following amendments to the current definition be considered:

Amendment of s 11 (Who is a worker)

(1) A **worker** is –

(a) a person who—

(i) works under a contract; and

(ii) in relation to the work, is an employee for the purpose of assessment of PAYG withholding under the *Taxation Administration Act 1953* (Cwlth), schedule 1, part 2-5; or

- (b) a person who is:
- (i) ~~a regulated worker~~ **an employee-like worker, or road transport employee-like worker**, under the *Fair Work Act 2009* (Cwlth) to whom a minimum standards order, **minimum standards guidelines** or a collective agreement applies under that Act, chapter 3A; ~~and or~~
  - (ii) prescribed by regulation to be a worker **because they are engaged to perform work in the same or similar circumstances to a person mentioned in subparagraph (i) whether or not an instrument mentioned in subparagraph (i) applies.**

*Amendment of sch 3 (Who is an employer in particular circumstances)*

- (9) A person is the employer of a person who is a worker under section 11(1)(b) if the person is—
- (i) a regulated business under the *Fair Work Act 2009* (Cwlth) **who is covered by the ~~to~~ which** a minimum standards order, **minimum standards guidelines**, or a collective agreement **that applies to the worker** under that Act, chapter 3A; ~~and or~~
  - (ii) prescribed by regulation to be an employer of ~~the~~ **a worker under section 11(1)(b)(ii).**

## Conclusion

42. The ALA would welcome further discussion and consultation in relation to this very important amendment to ensure all Queensland workers have equal and adequate access to workers' compensation.



**Sarah Grace**  
**President, Queensland Branch Committee,**  
**Australian Lawyers Alliance**