Consultation Regulatory Impact Statement

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

Workers' Compensation and Rehabilitation Act 2003

Queensland Government

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Executive summary

Purpose of this Consultation Regulatory Impact Statement (RIS)

The key objectives of Queensland's workers' compensation and rehabilitation scheme are to provide fair and appropriate benefits for workers, and persons other than workers, who sustain injury from work, encourage improved health and safety performance, and ensure reasonable cost levels for employers.

As traditional employment relationships have fragmented and changed since the mid-1980s, Queensland has been committed to ensuring that the *Workers' Compensation and Rehabilitation Act 2003* (the Act) keeps pace with the modern realities of non-traditional forms of work and recognises that it is not just employees who warrant the protection of beneficial legislation.[1] This has seen the legislation extended to cover specific classes of persons who do not fit into the traditional concept of 'worker', including certain contractors and labour hire workers.

Currently, there are some Queenslanders working in the gig economy[2] and the taxi and limousine industry who are not covered for workers' compensation under Queensland's workers' compensation scheme.

The Queensland Government is investigating a possible extension of workers' compensation coverage to certain persons working within the gig economy and to persons driving taxis and limousines under certain arrangements. The investigation includes consultation with community, employers, workers, gig economy participants, the taxi and limousine industry, the legal profession, other representative groups and associations, and government stakeholders.

This Consultation Regulatory Impact Statement (Consultation RIS) focusses on possible reform options for the following categories of persons in the gig economy and taxi and limousine industry who are currently outside the scope of the Queensland workers' compensation scheme:

1. Gig workers performing 'work on demand' work in the gig economy where an employment contract (a contract of service) is not created, and the gig worker is performing work:

    - facilitated by an 'intermediary' (that is a person,[3] or a group of persons, who facilitates the introduction of a person to another person for the purpose of the first person entering into an agreement with the other person to do work for the person), for example a platform used by workers to find work;

    - where the intermediary maintains a level of control over important aspects of the work, including the price, standards and managing the workforce, for

[1] Peetz, P. (2018). *Operation of the Queensland Workers' Compensation Scheme.* Retrieved from www.worksafe.qld.gov.au/__data/assets/pdf_file/0005/159125/workers-compensation-scheme-5-year-review-report.pdf.

[2] The gig economy includes predominately short-term work that is akin to a 'gig' performed in all industries that is facilitated either through an electronic platform (e.g. an app) or traditional business modes (e.g. agency).

[3] A 'person' includes an individual and a corporation.

example, the intermediary sets a maximum price that the worker can charge; and

- where the gig worker may be considered an independent contractor working under a contract for service, or working under an undefined agreement for a person that may be short-term in nature.

2. Taxi and limousine drivers engaged under a bailment arrangement (a contract where a bailor operator transfers to a bailee driver a taxi or a limousine for the driver to control or temporarily use, and the driver pays the operator either a set rate or a share of profits to use of the taxi or limousine).

The Consultation RIS does not contemplate workers' compensation reform for persons working under the following types of arrangements:

1. Independent contractors undertaking work, whether it is 'crowd work'[4] in the gig economy or other work, which involves the person advertising and independently negotiating the performance of services;

2. Taxi and limousine drivers who are a lessee under a lease;

3. Persons working in the gig economy and taxi and limousine industry who are already captured as 'workers' and covered for workers' compensation under the Queensland workers' compensation scheme, including persons subject to contracts of service where the gig worker is a worker of an intermediary; and

4. persons performing work under a contract of service with—
   a) a corporation, of which the person is a director; or
   b) a trust, of which the person is a trustee; or
   c) a partnership, of which the person is a member; or
   d) the Commonwealth or a Commonwealth authority.

The reforms considered in this Consultation RIS are limited to workers' compensation and personal accident insurance only, and do not seek to limit or otherwise restrict the way persons are engaged or the way work is undertaken in the gig economy or the taxi and limousine industry.

The purpose of this Consultation RIS is to consider the benefits, costs and issues associated with potentially extending workers' compensation coverage to include gig workers within the 'gig' economy in Queensland and to persons driving taxis and limousines, and to seek stakeholder comment.

The application of workers' compensation to gig workers and taxi and limousine drivers is considered separately throughout this Consultation RIS, in acknowledgment of the different nature of business arrangements between the businesses who conduct work in the gig economy and the broader personalised transport industry.

[4] 'Crowd work' typically involves an intermediary facilitating the introduction of two parties to a contract and interested parties bidding and negotiating their own contract terms.

The options proposed for in-scope gig workers are:

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* to extend workers' compensation coverage to gig workers and require intermediary businesses to pay premiums (Preferred option).

The options for taxi and limousine drivers engaged under a bailment arrangement are:

Option 1:	Status quo – Taxi and limousine drivers rely on voluntary personal accident insurance and are not covered by the workers' compensation scheme (this option is not preferred).
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 the Department of Transport and Main Roads.
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.

It is expected that implementation of Option 2 for in-scope gig workers and Options 2 and 3 for taxi and limousine drivers under bailment arrangements would not impact the delivery of services in these industries and the potential impact on service and business costs flowing on to the Queensland community (including regulated maximum taxi fares) is expected to be minimal.

Submissions are invited from industry, intermediaries, those engaged in gig economy work, drivers and operators in the taxi and limousine industry, representative organisations and the general public.

How to have your say

The Queensland Government is undertaking a comprehensive consultation process as part of its investigation. This includes discussions with workers, employee groups, employer groups and individual employers, industrial organisations, relevant peak bodies, academic researchers, and the community.

The Government will have regard to issues raised in written submissions responding to this Consultation RIS.

You are invited to have your say about the extension of workers' compensation coverage to persons working within the gig economy and to persons driving taxis and limousines.

Open submissions can be provided or you can address the focus questions provided below in relation to the respective options proposed for the gig economy and taxi and limousine industry. These questions are designed to assist in finalising the regulatory analysis of the options, however they are not intended to limit comment relevant to the investigation.

Focus Questions:

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

2. *What is your preferred option? Please justify why.*

3. *What are the costs and benefits or disadvantages associated with the current arrangements and your preferred option?*

4. *Are there any other costs and benefits or disadvantages of each option that have not been identified? Please provide substantiating evidence where possible.*

5. *Are there any features in the options presented that you have concerns with? Or, are there any features that you consider should be included? Please justify why and provide substantiating evidence where possible.*

Written submissions to this Consultation RIS can be lodged via:

Email: wcpolicy@oir.qld.gov.au

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

Written submissions must be received by Monday, 8 July 2019.

Submissions will be published unless provided in confidence. Material provided in confidence should be clearly marked 'IN CONFIDENCE'.

Any questions about this consultation process can be submitted via the above email address or by contacting the Office of Industrial Relations on 07 3406 9909.

PART ONE: Overview of Queensland workers' compensation

1. Background

1.1. Queensland workers' compensation scheme at a glance (as at May 2019)



The scheme covers over **168,000 employers**



28 self-insured employers



WorkCover Queensland **funding ratio** of **181%**[5]



Lowest average state **premium rate** in Australia of **$1.20**



17% reduction of the **serious injury rate** over last 5 years



Less than **5%** of claims lodged are in relation to a **psychological** injury



Less than **3%** of claims seek **common law** damages



Over **93%** of workers **return to work** after injury



Approximately **3%** of claims decisions are **disputed**



Fastest dispute resolution of all Australian jurisdictions

[5] WorkCover's funding ratio is reported annually, and is current as at 30 June 2018.

1.2. What is workers' compensation and how does it operate in Queensland?

The Queensland workers' compensation scheme is a no-fault, centrally-funded scheme that covers more than 168,000 employers and an estimated 2.4 million workers (as at May 2019). The objective of Queensland's workers' compensation scheme is to provide injured workers with fair and reasonable benefits at the lowest possible premium to employers, balanced in a way that maintains the long-term viability of the scheme.

The *Workers' Compensation and Rehabilitation Act 2003* (the Act) and Workers' Compensation and Rehabilitation Regulation 2003 (the Regulation) establish Queensland's system of workers' compensation.

Administration of the workers' compensation scheme is comprised of:

- The Office of Industrial Relations:
    - through the Workers' Compensation Regulator (the Regulator), the Office of Industrial Relations regulates insurers, provides legal and medical dispute resolution, provides rehabilitation advisory services and promotes education about the scheme; and
    - implements the Queensland Government's policy and legislative agenda, and manages the wider nexus between workers' compensation and work health and safety, and
- Workers' compensation insurers - WorkCover Queensland (WorkCover) and 28 self-insured employers.

Queensland's workers' compensation scheme is a centrally-funded scheme. In a centrally-funded scheme, a single public insurer 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.[6]

The Act establishes WorkCover as the public provider of accident insurance to Queensland employers (other than self-insurers). WorkCover is a government-owned statutory body that operates as a commercial enterprise. It is fully funded by the premiums paid by employers and its charter is to maintain a balance between benefits for injured workers and affordable premiums for employers.

Under the Act, an employer is required to insure or self-insure[7] against work-related injury sustained by a worker of the employer where work is a significant contributing factor to the injury. An 'employer' is a person who engages a worker to perform work[8].

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[6] Safe Work Australia. (2018). *Comparative Performance Monitoring Report 20th edition—Part* 3. Retrieved from www.safeworkaustralia.gov.au/collection/comparative-performance-monitoring-reports.
[7] *Workers' Compensation and Rehabilitation Act 2003* s 48.
[8] *Workers' Compensation and Rehabilitation Act 2003* s 30.

There are also 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 PAYG taxation withholding[9]. The Australian Taxation Office provides an interactive decision tool to assist in determining whether a person should be considered an employee—or an independent contractor—for PAYG taxation withholding purposes at www.ato.gov.au/Calculators-and-tools/Employee-or-contractor/.

The Act also provides that other individuals may also be deemed a worker, subject to specific criteria, such as some sharefarmers, sales persons paid on commission or a person engaged by a labour hire agency or group training organization.[10] The Act further specifies examples of who is *not* considered to be a worker under the Act, including directors of a company, trustees of trusts, partners in a partnership, professional sportspersons or those participating in the Commonwealth's 'Work for the Dole' initiative.[11]

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. This ensures that a worker who is injured at work receives fair financial, medical and rehabilitation and return to work support.

Like all Australian schemes, Queensland's statutory workers' compensation scheme is a no-fault scheme. An injured worker who meets the 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.

The Queensland scheme, like all other Australian jurisdictions, allows very large employers (employing at least 2,000 employees) to self-insure[12] if they meet certain requirements and demonstrate the financial capacity to fully fund future liabilities. Self-insurers must also have adequate work health and safety, injury management and return to work arrangements, and the capacity to effectively manage workers' compensation.[13] Licensing and oversight of self-insurer performance is undertaken by the Regulator.

There are currently 28 licences for self-insurance in the scheme.[14] These licences cover approximately 297 employers and approximately 173,990 workers in Queensland, which is approximately 7.1 per cent of the total number of employees in Queensland. Fourteen

[9] *Taxation Administration Act 1953* (Cwlth), schedule 1, part 2-5.
[10] Examples of other individuals who are deemed 'workers' are in Schedule 2, Part 1 to the *Workers' Compensation and Rehabilitation Act 2003*.
[11] Further examples of who is not deemed a 'worker' are in Schedule 2, Part 2 to the *Workers' Compensation and Rehabilitation Act 2003*.
[12] Detailed formation about Queensland's self-insurance scheme is available at www.worksafe.qld.gov.au/insurance/self-insurance-auditing/self-insurance.
[13] *Workers' Compensation and Rehabilitation Act 2003* ss 71 and 72.
[14]Queensland Government. (2019). *Find a self-insurer.* Retrieved from www.worksafe.qld.gov.au/insurance/find-a-self-insurer.

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

1.3. 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 Act.[15] Specifically, the worker is eligible for compensation for the injury or disease if it arose out of, or in the course of, the worker's employment and the employment was 'a significant contributing factor' to the injury[16]. A worker is also entitled to compensation for injuries sustained while on a journey between work and home,[17] as well as on recess breaks.[18]

Workers cannot receive compensation for psychological and psychiatric injuries unless work is 'the major significant contributing factor'. In addition, they cannot receive compensation if the psychological and psychiatric injury arises out of, or in the course of, reasonable management action.[19] Workers are also ineligible to receive compensation for an injury that is self-inflicted[20] or caused by the worker's misconduct.[21]

For more than 90 per cent of people injured in the Queensland scheme, statutory benefits and supports enable a successful recovery and return to work**.**

The Queensland workers' compensation scheme provides injured workers with statutory benefits that enable them to receive medical treatment, weekly payments of compensation (for lost wages) and rehabilitation during their recovery and return to work. Workers who are permanently impaired due to their injury may also be entitled to a lump sum payment of compensation. Statutory benefits available for injured workers can include:

- weekly compensation for lost wages;
- all reasonable medical, surgical and hospital expenses, as specified in the table of costs;
- medical and other supplies;
- rehabilitation treatment and equipment or services;
- necessary and reasonable travelling expenses for the worker to obtain medical treatment or rehabilitation;
- death benefits for dependents and funeral expenses, and
- lump sum compensation.

[15] *Workers' Compensation and Rehabilitation Act 2003* s 9.
[16] Ibid s 32.
[17] Ibid s 35.
[18] Ibid s 34(c).
[19] Ibid s 32(5).
[20] Ibid s 129.
[21] Ibid s 130.

Weekly compensation

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 comparative between the worker's normal weekly earnings (NWE) and the current value of Queensland ordinary times earnings (QOTE).

NWE are a worker's weekly earnings from continuous or intermittent employment during the 12 months prior to an injury. NWE may not be the same as average weekly earnings. Average weekly earnings are the average of all amounts paid to a worker where as NWE takes into account only regular payments made, 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 $1,527.80.

'Step downs' in compensation are also used to determine a worker's weekly compensation. 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,[22] and reduces costs for the scheme and the employer.

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% NWE; or – 100 per cent of award or agreement amount	The greater of: – 85% NWE; or – 80% QOTE
26-104 weeks	The greater of: – 75% NWE; or – 70% QOTE	The greater of: – 75% NWE; or – 70% QOTE
104 weeks onwards	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.	

[22] 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.

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.;
- the worker has received weekly payments for the incapacity for five years; or
- the weekly benefits received reach the maximum amount ($330,240 as at 1 July 2018).

Lump sum compensation

Lump sum compensation for a permanent impairment resulting from a work-related injury is also available, based on a percentage of the statutory maximum of $330,240 payable according to the degree of permanent impairment sustained. Additional lump sum compensation of up to $330,240 if the degree of permanent impairment is 30 per cent or greater, and up to $374,100 for gratuitous care if the impairment is 15 per cent or greater to ensure the most seriously injured workers with the greatest need are supported. Workers with pneumoconiosis are also entitled to lump sum compensation of up to $123,700, depending on the level of their pneumoconiosis score.

Lifetime care and support

Injured workers are eligible for lifetime treatment, care and support payments if they sustain serious personal injuries. Serious personal injuries are prescribed injuries including serious permanent spinal injury, a traumatic brain injury, high level or multiple amputations, severe burns or permanent traumatic blindness.[23]

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.

Common law

The short tail of the Queensland scheme is offset by the ability of injured workers to elect to seek damages at common law. Queensland's workers' compensation scheme, allows workers to sue their employer for negligence through a common law or damages claim and if the worker is able to prove negligence, a lump sum payment of damages is awarded

[23] Chapter 4A of the *Workers' Compensation and Rehabilitation Act 2003.*

to the worker taking into account their future economic loss (loss of wages) and pain and suffering.

Most Australian jurisdictions operate long tail schemes that pay benefits for the duration of a worker's incapacity, with heavily restricted or no access to common law remedies.

Death Benefits

Benefits and dependency payments are also available if a worker dies from a work-related injury or disease. The amount of compensation payable will depend on whether the worker's dependent was totally or partially dependent on the worker and may include:

- a lump sum of up to $618,565 depending on the level of dependency
- an additional lump sum of $16,540 for a totally dependent spouse or $33,060 for dependents who are under 16 or students
- a lump sum of $61,860 for a non-dependent spouse
- reasonable medical and funeral expenses for the deceased worker, and
- weekly benefits for dependent children who are under 16 or a student.

There is also an additional lump sum compensation amount for workers with terminal, latent onset injuries which ranges between $33,030 to $330,240, depending on the worker's age.

1.4. Rehabilitation and return to work

A positive stay at, or prompt return to work outcome is a key focus area of the workers' compensation scheme. Employers engaged in formal claims administration supported by the workers' compensation process will benefit from wholistic claims management approaches, incorporating vocational rehabilitation. 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.[24] These benefits transcend the direct financial impact of reducing claims costs and an employer's workers' compensation premium. There is evidence that employer involvement in return to work planning also reduces disruption to the workplace, increases productivity, reduces staff turnover and improves staff morale and workplace relations.

The Australasian Faculty of Occupational & Environmental Medicine's '*Realising the Health Benefits of Work*' Position Statement[25] identifies that if a person is off work for:

- 20 days, the chance of ever getting back to work is 70 per cent;

[24] Waddell, G., Burton, A., and Kendall N. (2008). *Vocational Rehabilitation: What Works, for Whom and When?* The Stationary Office; London, UK.
[25] 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.

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

Access to the workers' compensation scheme provides for a coordinated approach to injury management, in turn leading to improved return to work outcomes. The scheme is designed to support vocational rehabilitation, which integrates the medical, social and vocational elements, key to a worker's recovery.

Evidence supports that this 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.[26]

The 2017 Safe Work Australia report analysing the Return to Work survey results, found that when there had been early contact, the return to work rate following physical injury was 88 per cent, versus 70 per cent when no contact had been made. For psychological injuries, the return to work rate was 77 per cent with early contact versus 53 per cent when there had been no workplace contact.[27]

The Queensland workers' compensation scheme's return to work rate for 2017-18 was 93.2 per cent. There was also a 3.1 per cent drop in average work days lost between 2016-17 and 2017-18 which is likely attributable to the scheme's focus on early intervention.[28]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 and procedures and must appoint a rehabilitation and return to work coordinator. The Act defines a 'rehabilitation and return to work coordinator' as someone who is 'appropriately qualified' to perform the functions of this role. A large number of private organisations currently provide a variety of training programs in rehabilitation and return to work and injury management. These programs differ in delivery method, complexity and duration. Many return to work coordinators are existing employees who undertake this role in conjunction with other functions, and some organisations choose to contract out this role.

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 of Rehabilitation* prescribes the key principles to assist employers in meeting their obligations under the Act.[29] This standard enables employers to be prepared in the event a worker is injured and requires rehabilitation assistance.

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[26] Ibid.
[27] Safe Work Australia. (2017). *Return to work: A comparison of psychological and physical injury claims, analysis of the Return to Work Survey results*.
[28] Queensland Government. (2018). *Workers' Compensation Scheme Statistics 2017-18.* Retrieved from hwww.worksafe.qld.gov.au/__data/assets/pdf_file/0003/167628/wcr-stat-report-2017-18.pdf.
[29] *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.

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

- An *injured worker*[30] 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.

- An *insurer*[31] 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.

Returning an injured worker to the same job with the same employer is the best outcome which can be achieved on a claim. This is the outcome achieved in most cases, with 86.9 per cent of injured workers who had time off work returning to the same job and the same employer.

In 2017-18, 93.2 per cent of injured workers returned to some type of employment (92.1 per cent in 2016-17). In a small number of cases, the worker is deemed fit to return to work but there is no job for the worker to return to work (2.3 per cent of time lost claims) or the worker chooses not to return (2.9 per cent of claims).

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.[32] At present, 4.5 per cent of claims lodged are in relation to a psychological injury, and 1.5 per cent have this as a secondary work-related injury.

1.5. 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.[33] Queensland is the most efficient scheme of all centrally-funded and managed schemes, with 65 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.

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[30] *Workers' Compensation and Rehabilitation Act 2003* s 232.
[31] *Workers' Compensation and Rehabilitation Act 2003* s 220.
[32] 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.*
[33] *Workers' Compensation and Rehabilitation Act 2003* s 5(4)(a).

As at 30 June 2018, WorkCover's equity position is $2.443 billion, with a funding ratio of assets to liabilities of 181 per cent, meaning WorkCover remains fully funded in accordance with the requirements of the Act.[34]

The risk of self-insured employers not being able to meet their workers' compensation liabilities is managed by the Act's requirement for them to lodge bank guarantees for at least 150 per cent of their estimated claims liability, to have a specified level of reinsurance, and through regular monitoring of their performance and financial results by the Regulator.

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.

For more than ten years, WorkCover has consistently delivered either the lowest or second lowest average premium rate for employers when compared with all other State schemes. WorkCover's average premium rate increased between 2009-10 and 2013-14, from $1.15 per $100 of wages to an average premium rate of $1.45, before reducing to $1.20 per $100 of wages in 2014-15. WorkCover's average premium rate has remained at $1.20 per $100 of wages since 2014-15.

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.[35]

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.

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 e.g. an employer's 2017-18 premium will be affected by statutory claims arising in

[34] *Workers' Compensation and Rehabilitation Act 2003* s 453.
[35] 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.

2014-15, 2015-16 and 2016-17 and common law claims arising from injuries that occurred in the 2013-14 financial year.

EBR systems are the predominant incentive used in other jurisdictions. 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 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.

WorkCover also offers an early payment discount to employers who pay their annual premium before 16 September each year. This discount was increased in the 2017-2018 financial year from 3 to 5 per cent.

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.

Queensland efforts to improve health and safety for Queensland workers has resulted in a 17 per cent reduction in serious injury claims over the previous five-year period.

1.6. Economic cost of work-related injuries

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.[36] 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).

[36] 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.

The total economic cost of work-related injuries includes direct and indirect costs. Direct costs are comprised of common law and statutory claim payments, while indirect costs include costs beyond workers' compensation payments and are those indirectly imposed on employers, workers and the community as a whole.

The Office of Industrial Relations 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 Australia[37] and Access Economics[38] was used as a basis to determine the estimated economic cost of work-related incidents for Queensland in 2013-14. 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 were 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 4.3 times larger than the *direct* cost of work-related injuries for 2013-14. Applying this factor to the total cost of statutory claims in 2017-18 of $943.50 million suggest that the total economic cost of these work-related injuries to the Queensland economy is around $4.057 billion.

For injured workers entitled to workers' compensation, the direct 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 Queensland's distribution of *gross statutory claim costs* for the 2017-18 financial year.

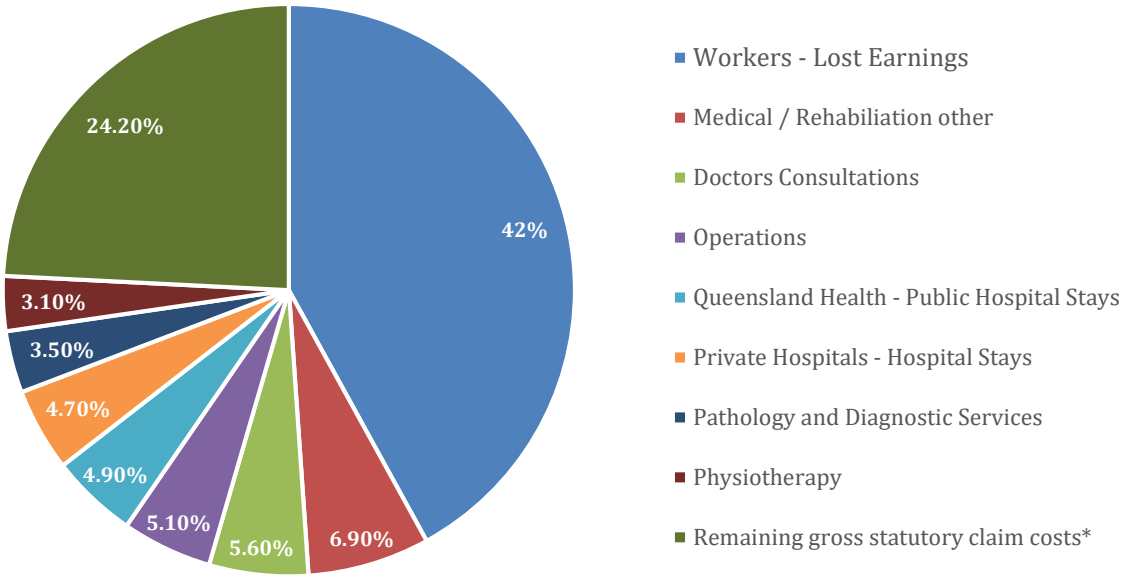


Chart 1: WorkCover Queensland distribution of gross statutory claim costs (2017-18)

[37] Ibid.
[38] Access Economics. (2004). *Costs of workplace injury and illness to the Australian economy: Reviewing the estimation methodology and estimates of the level and distribution of costs*.

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 1A below shows the current cost distribution of total costs in 2017/18.

	Direct costs ($m)	*Indirect costs ($m)*	*Total cost ($m)*	*% of total cost*
Community	$0	$1,681.3	$1,681.3	41%
Workers	$0	$1,120.9	$1,120.9	28%
Employers	$943.5	$311.4	$1,254.9	31%
TOTAL	**$943.5**	**$3,113.6**	**$4,057.1**	**100%**

Table 1A: Current cost distribution for statutory payments in 2017/18.

Table 1A shows that 41 per cent of the total economic cost of work-related injuries is borne by the community. The community bears the largest amount of the total cost of a work-related injury, owing to payments for medical-related treatments, long-term compensation payments or welfare payments and foregone taxation revenue from the injured worker.

Workers carry approximately 28 per cent of the total cost. This amount was largely driven by a loss of net income and requirement to pay for medical treatments and rehabilitation.

Employers bear the remaining 31 per cent of total economic cost which is largely represented by workers' compensation insurance costs and foregone income from production stoppages and wastage. Employers also bear an increase in costs owing to a potential rise in staff turnover and sick leave taken by an injured worker.

1.7. 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 decision[39]. Queensland has the lowest dispute rate and the highest number (85.1per cent) of disputes resolved within three months of all jurisdictions.[40]

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 less than 10 per cent of disputes proceeding to an appeal to the Queensland Industrial Relations Commission (QIRC) or Industrial Magistrate. Approximately 40 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.[41] The Commissioner or Magistrate will hear

[39] *Workers' Compensation and Rehabilitation Act 2003* s 541.
[40] Safe Work Australia. (2019). *Comparative performance Monitoring Report: Part 3 – Premiums, entitlements and Scheme performance*. Retrieved from www.safeworkaustralia.gov.au/system /files/documents/1905/comparative-performance-monitoring-report-20th-edition-part-3.pdf.
[41] *Workers' Compensation and Rehabilitation Act 2003* s 548A.

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.

PART TWO: Background and policy objective

2. The five-year review of Queensland's workers' compensation scheme

Under the 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 workers' compensation scheme's coverage and flexibility in responding to emerging non-traditional work arrangements has been a standing terms of reference in each review. In the first five-year review undertaken by the Queensland Parliament's Finance and Administration Committee[42] the Committee reported that '*of major concern to the Committee is ensuring that the principle of universal coverage is protected and vulnerable workers are not unknowingly excluded. The Committee considers that there are several groups of workers who are in a disproportionate position of power when it comes to negotiating their entitlements. These groups include those whose employment status is unclear, the poorly educated and those from culturally and linguistically diverse backgrounds*'.

An independent reviewer, Professor David Peetz, was appointed to conduct the second review of the Queensland workers' compensation scheme (the scheme) which was required to be completed by no later than 30 June 2018. Professor Peetz is a Professor of Employment Relations at Griffith University's Business School. The terms of reference for the second review (the five-year review) included a requirement to report to the Parliament on emerging issues facing the Queensland workers' compensation scheme.

Professor Peetz conducted targeted consultation and took written submissions from key stakeholders, including unions, employer representatives, the legal profession, medical and allied health associations, and insurers.

Of relevance to this Consultation RIS, the five-year review[43] found the scheme is performing well, is financially sound, involves low costs for employers and provides fair treatment for both employers and injured workers. Major scheme reform is not recommended; however, the review found that gig work is an emerging issue that should be addressed by the Queensland workers' compensation scheme.

In Queensland, only persons who are 'workers' (which includes persons deemed to be workers) are covered for workers' compensation under Queensland's workers' compensation scheme. Business owners and independent contractors are not entitled to compensation under the Act.

The five-year review found that there is '*…growing concern that the legal structures underpinning some 'gig economy' arrangements provide a mechanism for platforms to shift costs and risk to workers, and for gig workers to be exploited due the way they are being engaged'*, and that '*…many full-time workers in the platform economy are vulnerable and receive low wages that would be below that normally applying to the relevant award. They*

[42] Part 3.4 of the Committee report. The full inquiry by the Committee can be viewed at www.parliament.qld.gov.au/work-of-committees/former-committees/FAC/inquiries/past-inquiries/OpQldWorkersComp.

[43] Peetz, P. (2018). *Operation of the Queensland Workers' Compensation Scheme.* Retrieved from www.worksafe.qld.gov.au/__data/assets/pdf_file/0005/159125/workers-compensation-scheme-5-year-review-report.pdf.

are often not classed as 'employees' and so they are often not covered by workers' compensation systems'.

The five-year review considered several possible options for the coverage of gig economy workers in workers' compensation systems, noting that most have a number of drawbacks, especially when applied in a state where the private sector operates under the federal industrial relations system.

The five-year review's preferred approach in relation to work performed in the 'gig economy' in recommendations 10.1-10.3 involves:

- redefining the coverage of workers' compensation laws and responsibilities 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, and

- requiring agents who engage any person to perform work under a contract (other than a contract of service) for another person to pay premiums, based normally on the gross income received by the agencies.

A Stakeholder Reference Group (SRG) was established following the release of the five-year review to consider all recommendations from the five-year review. The SRG included WorkCover, the Association of Self-Insured Employers Queensland, the Australian Lawyers' Alliance, the Queensland Law Society, the Housing Industry Association, Master Builders QLD, AiGroup, the Australian Rehabilitation Providers Association, Occupational Therapy Australia, the Australian Workers' Union, the Construction Forestry Maritime Mining Energy Union Construction and Mining Divisions, the Queensland Council of Unions, SDA Queensland, the Bar Association of Queensland, Chamber of Commerce and Industry Queensland and the Consultative Committee for work-related fatalities and serious incidents.

The SRG met on 19 September 2018, 11 October 2018 and 7 March 2019 to consider the legislative recommendations arising from the five-year review.

Following consideration by the SRG of recommendations 10.1-10.3 at its second meeting, it was identified that expanded consultation was required on the gig economy recommendations. While the five-year review did not make specific recommendations regarding the taxi and limousine industry this consultation noted that the proposals to incorporate the recommendations of the five-year review may lead to inconsistences in workers' compensation coverage with other areas of the personalised transportation industry, including taxi and limousine drivers.

OIR subsequently engaged in targeted consultation with key organisations that may be affected by the proposed options for the gig economy and taxi and limousine sectors. As a result, the Taxi Council Queensland, Limousine Action Group, Limousine Association of Queensland, Uber and the Ride Share Association joined the membership of the SRG and attended the most recent meeting on 7 March 2019.

3. Scope of the Consultation RIS

The five-year review, and subsequent consideration and consultation on its recommendations, identified two categories of persons who perform work in the gig economy and taxi and limousine industry which are not covered for worker's compensation by the Act as they are considered to be 'independent contractors', but who may share similar characteristics to workers covered for workers' compensation. The Consultation RIS's scope of investigation is limited to considering the workers' compensation entitlements of these gig workers and bailee taxi and limousine drivers.

Table 1 below provides a high-level comparison of the key features of gig workers and taxi and limousine driver arrangements intended to be captured by the Consultation RIS and identifies similarities and differences between these work arrangements with 'workers' already covered under the Act and other independent contractors outside of the scope of the Consultation RIS.

Traditional worker ⟷ **Independent contractor**

	Worker*	Gig worker[44] via an intermediary	Taxi / limousine driver under a bailment arrangement[45]	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** • **Contract *for* service** • **Bailment**	**Yes** **Yes** (if deemed) No	**No** **Yes** **No**	**No** **No** **Yes**	**No** **Yes** **No**
Who do they contract with for the performance of work?	Employer	• Intermediary • May also have a contract with customer	• 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	• Bailee • Booking entity	Independent contractor
Control[46] 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	• Regulated • Bailee • Bailor • Booking entity	Independent Contractor
Flow of payment	Employer to worker	• Intermediary to gig worker OR • Customer to gig worker	• Customer to bailee • Bailee to bailor	Customer to independent contractor

Table 1: Comparison of the key features of <u>in-scope</u> gig worker arrangements and taxi and limousine driver arrangements

*Table 1 is designed to outline key features only is not designed to provide a definitive assessment of an individual's status as a worker or independent contractor. The Australian Taxation Office provides an interactive decision tool to assist about whether a person should be considered an employee—or an independent contractor—for PAYG taxation withholding purposes at www.ato.gov.au/Calculators-and-tools/Employee-or-contractor/.

[44] For the meaning of '*Gig worker*' refer to section 5.1.
[45] For the meaning of '*Taxi / limousine driver under a bailment arrangement*' refer to section 8.1.
[46] Level of control or direction person is subject to regarding how work is undertaken/conducted.

4. Policy Objective

Queensland's workers' compensation scheme has, as its core objectives, the provision of fair and appropriate benefits to Queensland workers, and other persons, who sustain injuries in their employment and encouraging improved health and safety performance by employers.

The Queensland Government is committed to ensuring that the Queensland workers' compensation scheme keeps pace with the modern realities of non-traditional forms of work and recognises that it is not just traditional employees who warrant the protection of beneficial legislation.[47]

The objective of this Consultation RIS is to engage with the broader community to ensure that the Act is in step with non-traditional workplace arrangements and provides adequate protections to certain workers in the gig economy and the taxi and limousine industry. The Consultation RIS also seeks to determine whether a regulatory response is required to address this gap in coverage for gig workers and bailee taxi and limousine drivers, and if implementing a regulatory response will align with the Act's objectives of maintaining a balance between providing fair and appropriate benefits for injured Queensland workers at a reasonable cost for business.

[47] Peetz, P. (2018). *Operation of the Queensland Workers' Compensation Scheme.* Retrieved from www.worksafe.qld.gov.au/__data/assets/pdf_file/0005/159125/workers-compensation-scheme-5-year-review-report.pdf.

PART THREE: Gig workers in the gig economy

5. Background

5.1. What is the 'gig economy' and who is a 'gig worker'?

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' who, for the purposes of this Consultation RIS, is limited to a person[48] 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[49]) 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:

1. 'Crowd work', which typically involves an intermediary simply facilitating the introduction of two parties to a contract and interested parties bidding and negotiating their own contract terms.

   For example, designers, skilled licensed trades, writing and software developers who advertise across multiple platforms, and have control and discretion in relation to the work and contracts they perform.

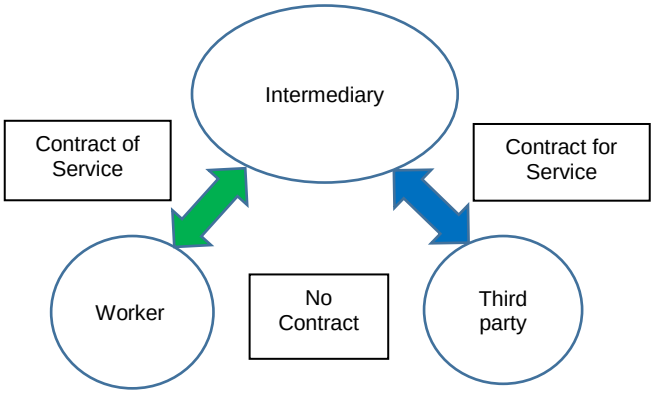
2. 'Work on demand', which involves the intermediary not only facilitating the introduction of two parties, but maintaining control over important aspects of the work, including the price, standards and managing the workforce.

   For example, food delivery workers, sub-trades and labour only, 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 are not otherwise engaging actively in advertising outside of the intermediary or intermediaries to arrange work.

The type of contractual arrangements an intermediary or the recipient of the work being performed (the third party) uses to engage a person to perform work in the gig economy will impact on their current coverage under Queensland's workers' compensation scheme.

[48] A 'person' includes an individual and a corporation.
[49] The phrase 'contract of service' is generally used to refer to the contract between an employer and an employee. It contrasts with the term 'contract for service', which is generally used to characterise a relationship with an independent contractor.

1. <u>The person performing the work is a worker of the intermediary (**currently eligible for workers' compensation**):</u>

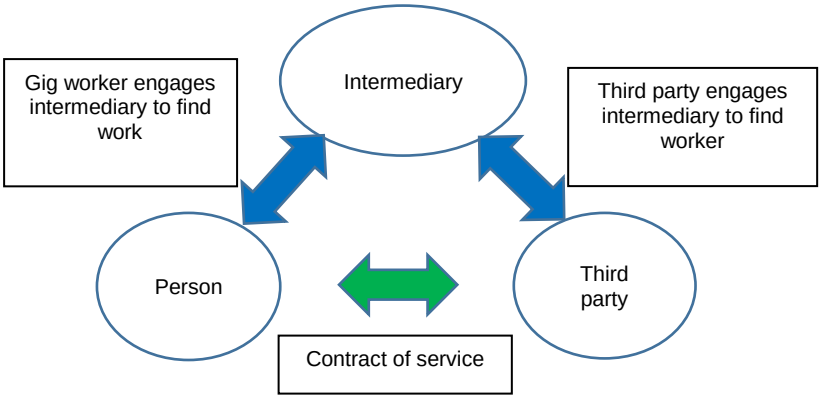


This type of arrangement is typically seen in labour hire arrangements. For example, in this arrangement the intermediary may limit the reasonable ability of a worker (such as a food delivery person), to sublet work, requires the worker to present to third parties in a certain way or use specified equipment,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

In this circumstance the intermediary may be considered under the Act to be an employer of the person performing the work, who is considered a worker under the Act and covered for workers' compensation.

2. <u>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**):</u>

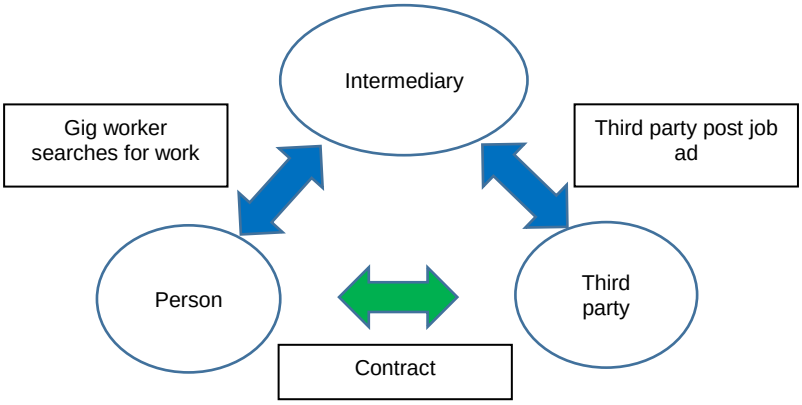
a) employment agent



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 contract is between the person performing the work and the third party and the intermediary is not a party to the contract but rather the conduit to bring about the contractual relationship. For example, the engagement of a specific 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, as that person is considered a worker under the Act and covered for workers' compensation.

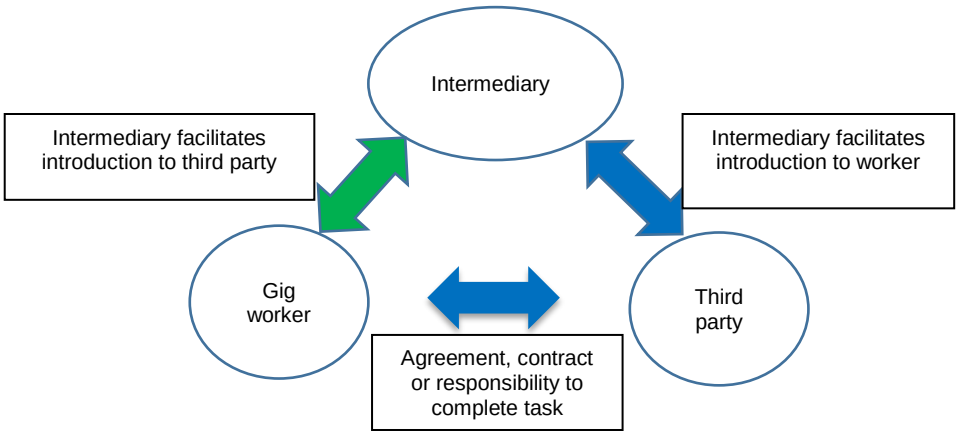
b) Bulletin board / job board/job aggregator/social media



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 will 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 then the person performing the work will be considered a worker under the Act. Alternatively, if the person performing the work is an, independent contractor then they will not be covered by the Act and entitled to workers' compensation.

3. <u>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**):</u>



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. For example, a person who is engaged to perform short-term, task specific engagements (such as driving a third party from one location to another or a model undertaking a single day shoot) 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 may be considered a contract for service, or may be undefined, due to the short-term nature of the engagement. In this circumstance, the person performing the work is not a worker under the Act and there is no employer under the Act and the person performing the work is not covered for worker's compensation.

It is this type of engagement that has been identified in multiple reviews as creating a vulnerable workforce within the gig economy (an overview of recent inquiries and studies in Australia can be found at **Attachment A**)**.** This group of persons performing work in the gig economy have been identified as often being unaware of their employment rights (including the right to seek compensation for a work-related injury), and lacking the resources to seek redress. They have also been recognised as being at greater 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 or workers in regional and rural areas.[50]

As a result, the Consultation RIS is limited to considering the impacts of current workers' compensation arrangements on this category of persons (3) who perform work in the gig economy. For the remainder of this Consultation RIS, the term 'gig worker' refers to this in-scope category of worker, unless otherwise specified.

5.2. 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. Although many attempts have been made to assess the scale and economic impact of the gig economy, precise estimates are hindered by the lack of regulation and very limited information publicly available regarding total revenue or the number of people performing work under these arrangements.

There has been research regarding the size and characteristics of gig employment. In Australia, Minifie[51] estimates that less than 80,000 Australians regularly perform work on or through a platform. A recent study by AlphaBeta commissioned by Uber[52] indicated there are up to 60,000 driver-partners performing services through Uber in Australia, however nearly half of these drivers spend less than 10 hours each week on the app. A

[50] Peetz, P. (2018). *Operation of the Queensland Workers' Compensation Scheme.* Retrieved from www.worksafe.qld.gov.au/__data/assets/pdf_file/0005/159125/workers-compensation-scheme-5-year-review-report.pdf.
[51] Minifie, J. (2016). *Peer-to-Peer Pressure – Policy for the Sharing Economy*. Grattan Institute. Retrieved from https://grattan.edu.au/wp-content/uploads/2016/04/871-Peer-to-peer-pressure.pdf.
[52] AlphaBeta. (2019). *Flexibility and fairness: What matters to workers in the new economy*. Retrieved from www.alphabeta.com/wp-content/uploads/2019/03/ flexibilityandfairness-whatmatterstoworkersintheneweconomy.pdf.

study by Deloitte Access Economics[53] found that 92,400 people from New South Wales earned income from the collaborative economy during 2015-16. The collaborative economy considered in the study is greater than the work performed in the gig economy and includes people engaging with platforms that do not involve the provision of labour (such as eBay and Airbnb to sell a product or an accommodation service). As a result, the number of full time equivalent gig workers identified in these studies are expected to be less due to a higher proportion of part-time nature in this work, and the failure of these studies to distinguish between the different forms of gig work, namely crowd work and work on demand.

The total Australian working population is 12.5 million people and Queensland's share of the total working population is 2.4 million people. Utilising the Minifie study[54], this would be a workforce of 15,000. However, factoring reasonable growth in part-time employment in Queensland over the three years since the report's release, the estimated size of the Queensland gig workforce is 16,500. As gig work is generally incidental to a person's usual work, most gig workers will also be employed by other employers.

Independent analysis has suggested that the estimated size of the Queensland gig workforce could be up to 25,000, noting that this is total workforce and that the full-time equivalent number of workers will be less. The estimated wages paid to gig workers is between $600 million (16,500 workers) and $1 billion (25,000 workers), which is less than 1 per cent of total declared wages to WorkCover from Queensland employers.

5.3. Work-related injuries in the gig economy

The limitations in data surrounding the size and scope of the gig economy also flows to data in relation to work-related injuries sustained in the gig economy or by gig workers.

There is no single, homogenous gig industry—gig workers work across all industries and regions in Queensland. This means there is no single injury profile for gig workers or a single injury frequency rate.

Table 2 below highlights the Queensland industry injury profiles[55] which are provided 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. Broader industry injury profiles can be viewed on the Safe Work Australia website.[56]

[53] Deloitte Access Economics. (2017). *Developments in the Collaborative Economy of NSW.* Retrieved from www2.deloitte.com/au/en/pages/economics/articles/review-collaborative-economy-nsw.html.
[54] Minifie, J. (2016). *Peer-to-Peer Pressure – Policy for the Sharing Economy*. Grattan Institute. Retrieved from https://grattan.edu.au/wp-content/uploads/2016/04/871-Peer-to-peer-pressure.pdf.
[55] Queensland Workers' Compensation Scheme data, Workers' Compensation Regulator
[56] The Safe Work Australia can be retrieved from www.safeworkaustralia.gov.au/industry_business/all.

Industry	Average finalised claim cost (2017-18)	Estimated Claim Rate[a] (per 1000 workers)	Most likely injuries	Main cause of injury[b]
Road Passenger Transport	**$11,856**	**39.80**	• Muscular stress while handling objects **(19%)** • Falls on the same level **(14%)** • Vehicle incident **(12%)**	• Vehicle incident **(69%)** • Being trapped by moving machinery **(23%)** • Being assaulted by a person/s **(8%)**
Labour Hire[(c)]	**$8,803**	**61.50**	• Laceration or open wound not involving traumatic amputation **(17%)** • Soft tissue injuries due to trauma **(13%)** • Trauma to muscles and tendons **(8%)**	• Muscular stress while Lifting and putting down objects **(17%)** • Falls on the same level **(10%)** • Being hit by moving objects **(10%)**
Automotive Repair and Maintenance	**$13,082**	**55.00**	• Laceration or open wound not involving traumatic amputation **(25%)** • Soft tissue injuries due to trauma **(8%)** • Contusion, bruising and superficial crushing **(7%)**	• Hit by moving objects **(17%)** • Hitting moving objects, e.g. hitting oneself with a tool **(14%)** • Muscular stress while Lifting and putting down objects, e.g. vehicle parts **(11%)**

Table 2: Selected industry profiles for potential claims in the gig-economy

***Notes to Table 2*:**

a. The 'estimated claim rate' is the potential claims that the industry could expect based on current claims in that sector.

b. For the 'Road Passenger Transport' sector, the 'main cause of injury' reflects the main cause of fatality.

c. The labour hire claim rate could be considered an upper bound as Queensland labour hire includes a large percentage of high-risk industries (for example, Construction). It is reasonable to assume the industry mix for an intermediary would include a higher proportion of lower risk industries, particularly in the professional sectors.

6. What is the problem needing to be addressed?

The nature of work in the gig economy and the employment protections offered to workers in the gig economy is an issue that is being explored in the majority of Australian jurisdictions. The Queensland Government has identified that injured gig workers do not have the protections offered by Queensland's workers' compensation scheme. Queensland is exploring options to extend workers' compensation coverage for gig workers in Queensland for the following reasons:

Gig workers have been identified as a vulnerable workforce

While gig workers' individual circumstances may be variable; as a group, gig workers have been identified in a number of reviews as a vulnerable workforce.

The five-year review identified that gig workers are a vulnerable workforce that should be offered the protections of Queensland's workers' compensation scheme. The five-year review recognised that, while gig workers may be categorised as independent contractors, they enter into an arrangement or contract with an intermediary (or agent) who has a high level of control over the work they are performing either through the delivery of that work, branding, or by setting the cost of providing the service. As a result, 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.

The five-year review is not the only Australian review undertaken to conclude that vulnerability attaches to gig workers. Other reviews have found:

- Young workers (aged from 15-24 years) are the demographic most likely to be employed by digital platforms and the 'gig economy', and are therefore more vulnerable to precarious work practices;[57]

- Culturally and linguistically diverse (CALD) Australians are likely to be over-represented in insecure employment arrangements. This is pronouncedly the case for women, resettled refugees, very young and older migrants;[58]

- Gig work is 'insecure, unprotected, sporadic work' which raises serious questions and consequences for people without specialised skills and without a financial safety net beneath them, or for people who make a living by stringing odd jobs together,[59] and

[57] Commonwealth Government, Senate Select Committee on the Future of Work and Workers. (2018). *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/Report.

[58] Ibid.

[59] Commonwealth Government, Senate Education and Employment Committee. (2017). *Corporate Avoidance of the Fair Work Act*. Retrieved from www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment/AvoidanceofFairWork/Report.

- The Federal Parliament's research into characteristics and use of casual employees in Australia found that casual workers are 'much more likely to face irregular and insufficient hours of work and fluctuations in earnings.'[60]

Existing socio-economic vulnerabilities of some workers in the gig economy have also been found to be impacted by the federal industrial relations landscape in which gig workers operate. As highlighted in the Queensland Government's 2018 submission to the Senate Select Committee on the *Future of Work and Workers*[61] gig workers' access to industrial relations and related entitlements contribute to the precarious nature of gig work.

In particular, gig workers:

- are responsible for their own insurance, superannuation and taxation;
- have no access to leave entitlements;
- are paid at or below the rate that would be mandated by an industrial instrument in a traditional employment relationship, and
- 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.

Workers' compensation reform for vulnerable gig workers is consistent with the Queensland Government's recommendation to the Federal Government to improve industrial relations protections for these workers in the federal industrial relations jurisdiction[62] to provide a fair and equitable workplace relations system for vulnerable workers.

Specifically, the Queensland Government has separately called for reform of the *Fair Work Act 2009* and other relevant legislation to more adequately accommodate emerging forms of non-traditional employment, including engagement within the gig economy to ensure that the national workplace relations system remains fair and equitable for all working Australians and protects vulnerable workers.

A number of reviews have recommended reform for gig workers

Queensland is one of a number of Australian and international jurisdictions investigating potential reform in the gig economy. A number of other Australian jurisdictions have, or are currently undertaking reviews and inquiries to consider the emergence of labour market disruptions caused by the gig economy, including the lack of access to workers' compensation and adequacy of existing accident insurance coverage.

[60] Gilfillan, G. (2018). *Characteristics and use of casual employees in Australia*. Retrieved from www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1718/CasualEmployeesAustralia.
[61] 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.
[62] Ibid.

Specifically:

- the inquiry into the Victorian on-demand workforce is currently examining workplace relations, work health and safety, superannuation, taxation and accident compensation matters and is due to report to the Victorian Government in late 2019;

- the New South Wales gig economy stakeholder reference group continues to discuss the potential impacts of the gig economy on the workers' compensation system to ensure regulation is fit for purpose;

- 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 that companies operating in the gig economy are responsible for the safety of workers engaged in the gig economy;

- The Federal Productivity Commission's 2016 *Digital Disruption* report highlighted the need to consider changes to workplace relations regulations and income support to ensure they are not barriers to workforce engagement and helps to reduce income volatility for low income workers; and

- The United Kingdom's independently commissioned report "*Good work: the Taylor review of modern working practices*" examined how employment practices need to change in order to keep up with modern business models, including the rise in the number of people doing gig work. The review recommended changes to the status and entitlements of workers in the gig economy, with a new recommended category of 'dependent contractor', which sits somewhere between full-time employed and self-employed status.

A list of recent reviews undertaken into the gig economy is in **Attachment A.**

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

While a number of intermediaries have voluntarily purchased personal accident insurance to cover gig workers for work-related injuries, anecdotally the majority of workers in the gig economy are considered to be independent contractors and either have to source their own insurance or are uninsured for work-related injuries. The five-year review highlighted the low likelihood of gig workers adopting voluntary methods of compensation coverage, even if they had easy access to this coverage.

The standard of insurance coverage available in the sector is limited

The coverage of the private accident insurance policies offered to some gig workers has been analysed by the Office of Industrial Relations and found to be of a lower standard than the entitlements of injured workers under Queensland's workers' compensation scheme. As discussed in section 1, compensation and other entitlements under the Act include:

- no fault statutory compensation for all work-related injuries (including psychological 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, and
- extensive independent review and appeal rights and judicial review rights for workers and employers, as well as access to the independent Medical Assessment Tribunals.

In contrast, the private accident insurance products analysed seek to restrict the nature of injuries able to be claimed for (including for psychological injuries and aggravations of pre-existing conditions). They also place tighter restrictions on the amounts and types of compensation available. In particular, Commonwealth legislation[63] prevents general insurers from insuring any Medicare-related medical expenses. As a result, the medical cost of injuries for gig workers is shifted from the business to the individual (or their private health insurer) or the public health care system.

Under the 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.

A comparison of a de-identified private accident insurance product used by intermediaries to cover gig workers against the entitlements and protections provided under a workers' compensation policy is in **Attachment B**.

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

The five-year review found that the business model used by intermediaries who engage gig workers may increase the costs of injury through potential delays in seeking medical treatment, and the lack of a direct incentive for intermediaries to prioritise work health and safety of gig workers.

Using the methodology and factors detailed in section 1.6 of the Consultation RIS, and applying it to the estimated claims costs of $17 million for work-related injuries sustained by gig workers suggest that the total economic cost of these work-related

[63] *Health Insurance Act 1973* (Cwlth) s 126(2).

injuries to the Queensland economy is around $73.1 million. It is considered that the estimated $17 million of gig worker direct claims costs are currently distributed almost evenly between community and the worker.

At present the direct costs of work-related injuries are being borne by the injured gig worker, their family and community. Applying the distribution from the WorkCover Queensland Performance Report 2017-18 detailed in section 1.6 to the estimated $17 million of uninsured gig work claims costs:

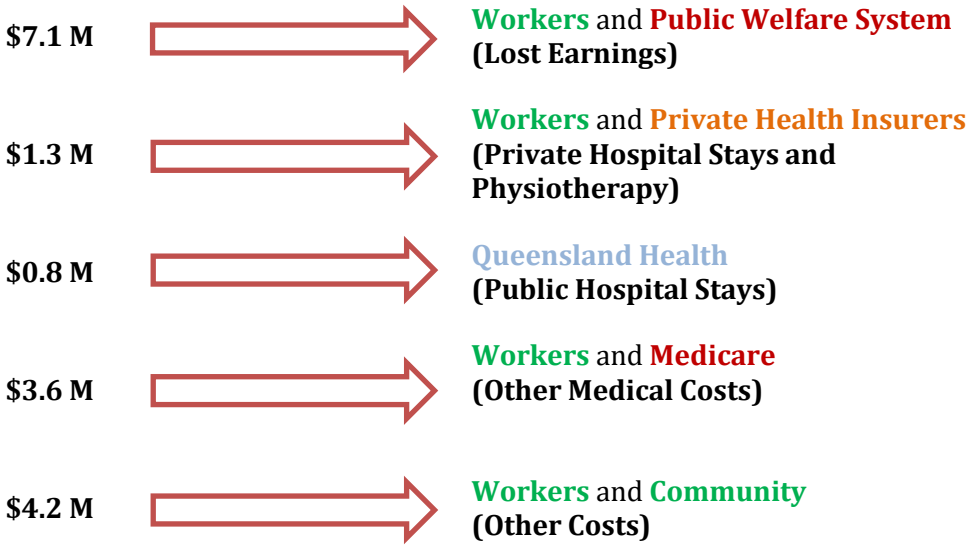


Figure 1: *$17M of direct costs of work-related injuries borne by gig workers and the community*

Using the methodology detailed above and the current distribution of gross statutory claims costs, table 3 below shows the current cost distribution for gig workers who are not entitled to workers' compensation.

	Direct costs ($m)	*Indirect costs ($m)*	*Total cost ($m)*	*% of total cost*
Community	$9.00	$30.50	$39.50	54%
Gig Worker	$8.00	$18.30	$26.30	36%
Intermediary	$0.00	$7.30	$7.30	10%
TOTAL	**$17.00**	**$56.10**	**$73.10**	**100%**

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

Table 3 shows that the community bears the largest amount of the total cost of a work-related injury (54 per cent of the total economic cost of work-related injuries), owing to payments for medical-related treatments, long-term compensation payments or welfare payments and foregone taxation revenue from the injured worker.

Workers carry approximately 36 per cent of the total cost, largely driven by a loss of net income and requirement to pay for medical treatments and rehabilitation.

Employers bear the remaining 10 per cent of total economic cost which is largely represented by foregone income from production stoppages and wastage. Employers also bear an increase in costs owing to a potential rise in staff turnover and sick leave taken by an injured worker.

There are likely to be poorer return to work outcomes for gig workers

Voluntary private accident insurance coverage and increased self-management of work-related injuries due to the nature of a gig worker's work arrangements increases the risk that there will be a lack of prompt medical intervention in responding to work-related injuries. Evidence shows that there is a correlation between a lack of early intervention and poor recovery, increased time off work and poorer return to work outcomes for injured workers.[64]

General insurers and gig economy businesses do not have the capacity or incentive to provide return to work services to facilitate the early return to work with suitable duties for injured workers. Employers engaged in formal claims administration supported by the workers' compensation process benefit from wholistic claims management approaches, incorporating vocational rehabilitation. 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.[65]

There is a lack of incentive to improve work health and safety

An employer's workers' compensation premium plays a crucial role in encouraging a sharper focus on injury prevention and participation in rehabilitation and return to work. Workers' compensation premium is directly linked to injury rates and work health and safety of the business; the safer a business's work - the lower their premium will be. This nexus between safety and premium is a significant motivator to encourage improved health and safety performance.

Intermediaries electing not to insure gig workers are not incentivised in this way to improve work health and safety, resulting a higher risk of injuries occurring compared to workplaces subject to workers' compensation insurance.

While private accident insurance may provide some incentive in terms of payment of compensation claims, the level of compensation provided by private accident insurance, which sees the majority of medical costs shifted away from the Intermediary, means this incentive is limited compared to employers insured under the workers' compensation scheme.

6.1. Options identified by the five-year review to address the problem

The five-year review involved an analysis of gig work and identified potential changes to address the challenges and risks being experienced by gig workers. In addition to not making any changes, the following options were considered by Professor Peetz as part of the five-year review:

Option A Relying on the ATO definition of 'worker' to determine workers' compensation coverage;

[64] Safe Work Australia. (2017). *Return to Work: A comparison of psychological and physical injury claims, analysis of the Return to Work Survey results*.
[65] 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. (2018): A *best practice framework for the management of psychological claims in the Australian workers' compensation sector.*

Option B Creating a new definition of worker or a new class of employed person such as 'dependent contractor';

Option C Redefining the coverage of workers' compensation laws and responsibilities to be similar to those under workplace health and safety (WHS) legislation, relating to persons conducting a business or undertaking (PCBU) and workers;

Option D Redefining the coverage of workers' compensation laws and responsibilities to encompass those who work under agency arrangements, and require payment of premiums by the intermediaries or agencies;

Option E Redefining the coverage of workers' compensation laws and responsibilities to encompass those who work under agency arrangements, but require payment of premiums by those who hire them, or

Option F Giving the Minister (or other regulator) power to 'deem' certain classes of people to be 'workers' for workers compensation legislation and/or certain classes of organisation to be 'employers' for such purposes.

Following consultation with workers' compensation scheme stakeholders, Professor Peetz concluded that most options have a number of drawbacks, especially when applied in a state that operates in the context of a federal system of employment law, and found:

- Options A and B were reliant on changes to Commonwealth legislation given industrial relations powers lie with the Australian Government
- Options C and E would present issues with consistent application across all gig economy businesses, which would lead to inconsistencies and gaps in coverage, and
- Option F promoted an ad hoc and uncertain approach that could be subject to legal challenges.

Professor Peetz's preferred approach was Option D (to redefine the coverage of workers' compensation laws and responsibilities to encompass those who work under agency arrangements, and require payment of premium by the intermediaries or agencies who engage the workers).

The ability for private insurers to provide workers' compensation was not considered an appropriate option to provide insurance for gig workers within the context of the structure of Queensland's workers' compensation scheme as a centrally-funded scheme. In 2000, a public benefit test was conducted which examined a number of alternatives, including combinations of public and private underwriting, claims and case management. The review ultimately recommended retaining WorkCover Queensland's central insurer status due to factors such as the relative efficiency and effectiveness of the private insurance market, stability and the impact on scheme administration costs. The structure of the scheme remains broadly supported by all scheme stakeholders, including employers, as it provides significant economies of scale, and maximises efficiency allowing Queensland to offer the lowest State average premium rate in Australia. As

highlighted earlier, Queensland continues to have the highest proportion of total expenditure paid direct to claimants and the lowest proportion expended on insurance operations, which provides a simple measure of efficiency.

7. What are the proposed options to address the problem?

Based on the outcomes of the five-year review and consultation on the recommendations, two options are proposed within the Consultation RIS for further investigation (however, stakeholders may wish to consider and put forward alternative measures or proposals for consideration):

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

This option maintains the status quo and gig workers continue to be unable to access Queensland's workers' compensation scheme.

Under this option, gig workers will 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. In addition, 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).**

This option proposes to amend the Act to extend the coverage of the workers' compensation scheme to gig workers and consequently requires intermediaries to pay workers' compensation premiums to cover the cost of this coverage.

Under this option, workers' compensation coverage would only be extended to gig workers. That means that this option will only apply where the gig business (intermediary) has a level of control or influence over the work, cost or conditions of work being performed by the gig worker. This will ensure that coverage is provided to vulnerable gig workers (e.g. ride share drivers and food delivery workers) and, due to the similarity of the business arrangements and potential vulnerability, workers in other more traditional gig arrangements (e.g. agents representing models, actors, musicians). This ensures that intermediaries that operate more as bulletin boards or job finders and do not exercise any control over the worker's agreement, conditions or charge rates, and the independent contractors who undertake work through these intermediaries, are not captured.

This option would deem gig workers to be 'workers' for the purposes of the Act. The option could prescribe that a gig worker is a 'worker' by amending the Act to define a 'gig worker' as a person introduced by an intermediary to perform work under a contract (other than a contract of service) for another person.

The term 'intermediary' would be expressly defined in the Act to capture in-scope gig workers.[66] For example, 'intermediary' could be defined to include a person[67] 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; and

- controls or influences the terms or substantial terms of the agreement or the charge rate (including the minimum or maximum amount) to be paid to the first person.

Workers' Compensation Entitlements

Gig workers would have access to the same no-fault statutory workers' compensation entitlements and access to common law damages under the Act as a worker.[68] It is noted that under the Act, a worker will be entitled to weekly compensation that will consider income or wages from not only for the work being performed through the intermediary but also other work that may be undertaken by the gig worker.

Due to the nature of work performed by a gig worker, it is recognised that there may be concerns that the nature of work performed in the gig economy could introduce additional complexities in determining when and where a gig worker should be covered for work-related injuries. For example, it will be necessary to consider when a compensable injury arises at the place of work when a gig worker may perform work for multiple intermediaries, or on a journey to and from work.

These are considerations that often form part of the existing claims determination process. The allocation of work to some gig workers has similarities to casual and on-call workers already covered by the scheme, in that they may be holding themselves to be available for work without any guarantee that they will be offered work.

There is existing case law precedent determining whether a worker is on-call and would have an entitlement to workers' compensation. This includes principles outlined in decisions such as:

- *Blackwood v Ziebarth* [2016] ICQ 005,

- *Comcare v PVYW* (2013) 250 CLR 246,

- *Commonwealth Bank v Wark* (1995) 22 AAR 181, and

- *Hatzimanolis v ANI Corporation Limited* (1992) 173 CLR 473.

As outlined in the decisions above, relevant questions for determining whether a worker is on-call may include:

- Was the worker engaged in actual work?

[66] The definition of 'intermediary' will be informed by feedback to this Consultation RIS, and other stakeholders, and will be subject to legislative drafting practices.
[67] A 'person' includes an individual and a corporation.
[68] These benefits are detailed in section 1.3.

- If not, what was the worker doing when injured?
- How was the injury brought about? Was it by reference to a place, or by reason of the worker being engaged in an activity?
- Did the intermediary induce or encourage the worker to be at that place or to engage in the activity?

Other considerations include determining when a person has commenced work versus holding themselves out as being available for work. For example, a rideshare driver who has logged onto an app, but has not yet received and accepted an offer for a job, would not be engaged in work for the purposes of workers' compensation, unless there is an obligation that if they are logged on they will take all jobs offered. This is consistent with the current workers' compensation scheme arrangements for on-call and casual workers.

It is also recognised that a gig worker may cease work but continue to hold themselves available for further work without returning home. In these circumstances, the worker should be entitled to compensation for an injury arising during this period of time unless there is a substantial delay or interruption that would affect the person's availability to accept further work.

It is recognised that the Act may need to be amended to clarify when a worker should be entitled to compensation for an injury.

Rights and obligations of intermediaries

While it is not intended to deem an intermediary to be an 'employer', it is proposed they will have the same obligations and responsibilities as an employer under the Act for the payment of premium, obligations for rehabilitation and return to work (which may include a rehabilitation and return to work coordinator). They will likewise be indemnified for compensation and common law damages under the Act by WorkCover. An intermediary would also have the option of seeking a licence to become a self-insurer and indemnify themselves against any workers' compensation liabilities. This proposal will be informed by feedback to this Consultation RIS and other stakeholders and will be subject to legislative drafting practices.

7.1. What are the impacts of each option?

A summary of the impacts, costs and benefits of each option is set out below. For further detail on the impacts, costs and benefits on various stakeholders refer to **Attachment D**):

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	• Some workers may have access to voluntary private personal accident insurance coverage.	• No impact on existing worker's compensation or other rights, responsibilities and entitlements.	• No additional costs. • Majority of gig workers must source and fund own insurance.

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**
		• Less comprehensive and lower standard of personal accident insurance coverage compared to workers. (Refer to **Attachment B** for policy comparison) • Low level of work-related compensation entitlements compared to workers. • High risk of delayed medical intervention for work-related injuries. • Likely to experience greater medical needs over longer periods of time. • At greater risk of a work-related injury and not being able to achieve a durable return to work.	• A direct cost to cost Queensland's gig workers of $8 million a year largely driven by a loss of net income and requirement to pay for medical treatments and rehabilitation. • 36% of the total cost of a work-related injury (or $26.3 million a year).
Intermediaries	• No mandatory insurance costs. • No responsibility for rehabilitation and return to work.	• No impact on existing rights and responsibilities. • Lack of involvement in rehabilitation and return to work	• No mandatory insurance premiums or 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**
	• Competitive cost advantage against employers in their industry. • Uninsured Intermediaries have a competitive cost advantage against Intermediaries who voluntarily insure.	outcomes for gig workers likely to increase disruption to the business, decrease productivity, increase gig worker turnover and impact gig worker morale. • Intermediaries electing not to insure gig workers will not be incentivised to improve work health and safety to reduce their premiums, leading to a higher risk of injuries occurring compared to workplaces subject to insurance.	• No direct cost of work-related injuries. • 10% of the total cost of work-related injury (or $7.3 million a year) which includes foregone income from gig worker absences, stoppages and wastage
Employers	• Nil.	• No impact on existing rights and responsibilities for workers' compensation. • Employers in the same industry as Intermediaries are at a competitive disadvantage to Intermediaries, as they must factor the cost of workers' compensation insurance into their business costs.	• No additional costs. • Employers continue to pay premiums under the *Workers' Compensation and Rehabilitation Act 2003* 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**
General accident and personal injury insurance providers	• Retention of market to provide insurance products which cover gig workers	• Nil.	• Nil.
Community	• Cost efficiencies in using the services of Intermediaries.	• Increased use and costs of public health system and personal health insurance. • Increased usage and cost of the public welfare system.	• A direct cost of $9 million of work-related injuries a year including for lost earnings transferred to the welfare system, private hospital and other medical costs. • 54% (or $39.50 million a year) of the total cost of work-related injuries.

Economic cost of work-related injury:
Using the methodology and factor in section 1.6 of the Consultation RIS, and applying it to the estimated claims costs of $17 million for injuries suffered by gig workers suggest that the total economic cost of these work-related injuries to the Queensland economy is around $73.1 million.

Based on the methodology detailed above and the current distribution of gross statutory claims costs, Table 3 shows the cost distribution for gig workers if they were entitled to workers' compensation.

	Direct costs ($m)	*Indirect costs ($m)*	*Total cost ($m)*	*% of total cost*
Community	$9.00	$30.50	$39.50	54%
Workers	$8.00	$18.30	$26.30	36%
Intermediary	$0.00	$7.30	$7.30	10%
TOTAL	**$17.00**	**$56.10**	**$73.10**	**100%**

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

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**
Gig worker	• Fair and equal access to same level of compensation and access to common law damages for work-related injuries as workers. • Improved timeliness of medical intervention for work-related injuries. • Improved durable return to work outcomes. • Improved work health and safety outcomes. • Early medical intervention and enhanced benefits structures also improve secondary psychological impacts on the worker and their family.	• No impact on industrial relations rights or entitlements. • No impact on the flexibility of gig work.	• No direct cost of work-related injury. • 25% of the total cost of work-related injuries (compared to 36% under Option 1).
Intermediaries	• Improved work health and safety outcomes as Intermediaries will be incentivised to improve performance through premiums/self-insurance. • Rehabilitation and return to work obligations are likely to reduce	• Applies to a discrete group of Intermediaries within the gig economy across a number of industries. • Intermediary would be required to have a workers' compensation insurance policy with WorkCover	• An estimated workers' compensation premium cost of $17 million with an estimated average premium rate of $1.70 per $100 of wages. • Premium costs will vary from business to business depending on the business's

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**
	disruption to the workplace, increase productivity, reduce gig worker turnover, and improve gig worker morale.	Queensland or self-insure. • When the remuneration paid to gig worker equates to or exceeds approximately 50 full time workers for high risk industries and 100 full time workers for other industries an Intermediary would be required to have a person undertaking the role of a Return to Work-Coordinator. • Does not limit or restrict how Intermediaries conduct their business, how they engage persons or introduce any new industrial relations rights or obligations. • Intermediaries would pay the same proportion of costs on workers' compensation as current employers pay in the same industry. • Adoption of this option would result in Queensland having a nationally inconsistent approach to workers'	predominant industry and the claims experience observed for each business. • This results in a shift in the total cost of work-related injury to 33%, with Intermediaries having a direct cost of work-related injury of $17 million. • Potential offset against any current personal accident insurance the Intermediary is currently purchasing. • Possible offset for public liability insurance costs due to common law indemnity. • Administrative costs of declaring remuneration and maintaining a workers' compensation insurance policy.

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**
		compensation arrangements. • Will need to record the remuneration paid to each worker.	
Employers	• Intermediaries would no longer have a competitive advantage compared to employers as they will be required to factor in the cost of workers' compensation into business costs, levelling the playing field.	• No impact on existing rights and responsibilities for workers' compensation.	• No additional costs. • Employers continue to pay premiums under the *Workers' Compensation and Rehabilitation Act 2003* and associated administration costs.
General accident and personal injury insurance providers	• Nil	• Loss of current gig worker accident and personal insurance market.	• 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 will have a noticeable impact on the general insurers.
Community	• Reduction in the impact of work-related injury on families and the community. • The total cost of work-related injuries on the public health and private insurance schemes, and the public welfare	• The cost of using Intermediaries to obtain services may increase to accommodate insurance premiums and increased business costs. • WorkCover's sustainability	• No direct cost of work-related injury. • 42% of the estimated total work-related injury costs (compared to 54% under Option 1).

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**
	system will be reduced.	would not be compromised.	

Economic cost of work-related injury

Using the methodology and factor in section 1.6 of the Consultation RIS, and applying it to the estimated claims costs of $17 million for injuries suffered by gig workers suggest that the total economic cost of these work-related injuries to the Queensland economy is around $73.1 million.

Based on the methodology detailed above and the current distribution of gross statutory claims costs, table 4 shows the cost distribution for gig workers if they were entitled to workers' compensation.

	Direct costs ($m)	*Indirect costs ($m)*	*Total cost ($m)*
Community	$0	$30.50	$30.50
Gig worker	$0	$18.30	$18.30
Intermediary	$17	$7.30	$24.30
TOTAL	**$17**	**$56.10**	**$73.10**

Table 4: cost distribution for gig workers if they were entitled to workers' compensation

Table 4 shows that only 42 per cent of the total economic cost of work-related injuries is now borne by the community compared to 54 per cent from option 1.

Compared to option 1, the workers proportion is now reduced from 36 per cent to approximately 25 per cent of the total cost, while employers now bear the remaining 33 per cent (up from 10 per cent) of total economic cost which is largely represented by workers' compensation insurance costs.

7.2. What is the preferred option and why?

Taking into account the benefits, impacts and costs of the two options, Option 2 is the preferred option in the Consultation RIS on the basis that it will:

- protect gig workers who are particularly vulnerable by providing fair and equal access to workers' compensation rights and entitlements in Queensland;
- improve injured workers' chances of achieving a durable return to work following injury;

- support the flexibility offered by the gig economy (which is a strong driver of participation and job satisfaction of many gig workers[69]), by not altering or limiting the way in which Intermediaries operate;

- provide a level playing field by ensuring gig businesses pay the same proportion of costs on workers' compensation as current employers pay in the industry that the intermediary is working in;

- reduce cost-shifting to the community—in particular, to the public health system or a worker's private medical insurance to recover from the injury, and

- result in improved work health and safety outcomes due to the incentivisation of workers' compensation insurance premiums to improve performance.

While Option 2 will impose a new cost on business, this will only be to the extent necessary to fund the cost of compensating and rehabilitating a worker injured while performing work facilitated by the intermediary and will only impact in-scope Queensland businesses.

Adoption of Option 2 would mean that Queensland would be the only Australian state or territory extending workers' compensation coverage to gig workers, which would create a jurisdictionally inconsistent approach in this space. The Queensland Government is committed to ensuring that Queensland's workers' compensation scheme does not leave behind certain gig workers who have been identified by various reviews and inquiries as warranting workers' compensation protections, including most recently Queensland's own five-year review of the workers' compensation scheme.

[69] For example, 78% of drivers joined Uber because it gives them the flexibility to balance work, study and family commitments, and more than three in five Uber drivers say that they could not work in traditional roles that do not offer this type of flexibility: Alpha Beta. (2019). *Flexibility and fairness: What matters to workers in the new economy* [Report].

PART FOUR: Taxi and limousine drivers

8. Background

8.1. Who are 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 Booked Hire/Taxi driver authorisation issued by the Department of Transport and Main Roads, the taxi and limousine industry has different licensing and operates in a different way to ride share businesses that participate in the gig economy.

A taxi service is provided in a vehicle of no more than 11 seats (excluding driver), which can also be hailed by members of the public and may ply or stand for hire on a road. To operate a taxi, an operator must hold a taxi service licence to provide a taxi service in a specific area. A taxi is the only licence holder in the personalised transportation industry that can accept rank and hail work—that is, work that is not facilitated via an intermediary/booking entity.

In comparison, a vehicle operated under a limousine licence is provided by a specific motor vehicle. To operate a limousine, an operator must have one of either two types of licences:

- limousine licences—allow you to provide a limousine service in Queensland, or
- special purpose limousine licences—allow you to offer a tourist service, or services for wedding and student events (such as proms and formals).

Taxis and limousines also conduct their business operations in a different manner compared to intermediaries in the gig economy.

Many licence owners lease or outsource management of the licence to an operator, with many 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.

The licensee or the operator will contract with a booking entity 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 the Department of Transport and Main Roads, such as surveillance recording devices.

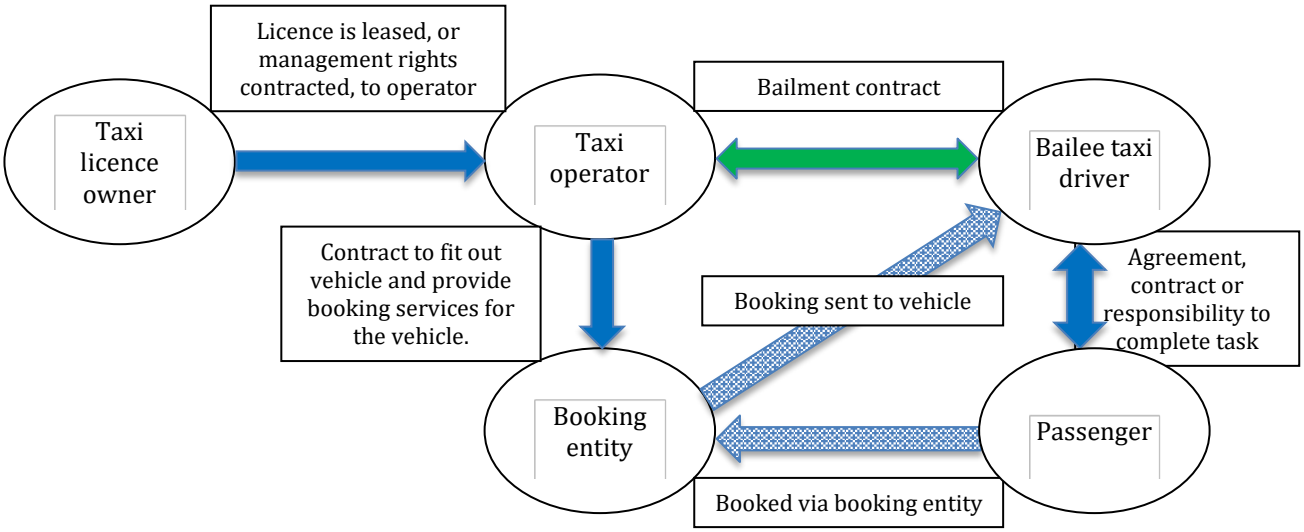
Taxi and limousine drivers can be engaged under bailment arrangements, leases and other contracts, and limousine drivers can also use intermediaries or, in some circumstances, be engaged in a manner that means they are considered a 'worker' under the Act.

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. Under this arrangement, a bailee would pay the bailor for the use of the property. This means that 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 instead there may be profit share arrangements (at an agreed percentage of the taxi or limousine's fares), or in some instances it could be a fixed fee. The bailee driver does not generally have any contract with the booking entity.

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, excluding drivers engaged under bailment arrangements from workers' compensation coverage under the Act. However, it is important to consider the individual facts and circumstances of every engagement when considering if a person is a worker or independent contractor.

An example of an bailee taxi arrangement is detailed below.



8.2. What is the size of the taxi and limousine industry?

As at May 2019, there are approximately 3,250 taxi licences and 500 limousine licences authorised and issued by the Department of Transport and Main Roads in Queensland. There is no public information available on the number of taxi and limousine operators conducting a business in Queensland.

There are also approximately 400 booking entities authorised by the Department of Transport and Main Roads 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 that are used across Queensland, including Black and White Cabs, 13Cabs, Uber and Ola. It is not possible to disaggregate the number of booking entities only providing services to taxis and limousine drivers.

Taxi vehicles are generally worked between 8 to 12 shifts per week with a usual limit of 14 shifts per week. Each taxi vehicle can average between three to four drivers per vehicle, with some drivers working 5 shifts per week and many others working 1 to 2 shifts per week.

There is no publicly available information on the exact number of taxi and limousine drivers undertaking work in Queensland.

8.3. Work-related injuries in the taxi and limousine industry

Taxi drivers and limousine drivers are exposed to injury, including serious injury, in the course of their work.

Table 5 below shows the number of serious claims, including all claims with one week or more time lost from work, but excluding fatalities and journey claims across Australian jurisdictions.

Jurisdiction	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17p	Grand Total
ACT Private	15	10	5	10	5	np	**70**
ACTGS	0	0	0	0	0	0	**np**
Cth	np	np	0	np	np	10	**35**
NSW	145	130	150	150	170	145	**1415**
NT	np	5	np	0	0	0	**15**
QLD	20	15	15	10	5	15	**175**
SA	5	np	np	np	np	np	**75**
TAS	15	5	15	10	5	np	**80**
VIC	115	65	85	90	80	50	**740**
WA	10	np	10	15	15	10	**80**
Grand Total	**330**	**240**	**290**	**285**	**285**	**245**	**2675**

Table 5: Number of serious claims among Automobile drivers (ANZSCO: 7311) by jurisdiction (*excerpt*)
Source: National dataset for compensation-based statistics (NDS)

Safe Work Australia data[70] indicates that the main causes of injury in the road passenger transport sector across Australia include:

- 19 per cent—muscular stress while handling objects;
- 14 per cent—falls on the same level;
- 12 per cent—vehicle incident.

One in ten injuries in this section are due to being assaulted by a person or persons.

Safe Work Australia data[71] also shows that the main causes of fatality in the road passenger transport sector across Australia include:

- 69 per cent—vehicle incident;
- 23 per cent—being trapped by moving machinery;

[70] Safe Work Australia. (2018). *Road Passenger Transport – Safe Work Australia (SWA): Priority industry snapshot: Road transport June 2018.* Retrieved from www.safeworkaustralia.gov.au/system/files/documents/1903/road-transport-priority-industry-snapshot-2018.pdf.
[71] Ibid.

- 8 per cent—being assaulted by a person/s.

9. What is the problem to be addressed?

The Queensland Government has identified that like gig workers, bailee taxi and limousine drivers have no entitlement to workers' compensation under Queensland's workers' compensation scheme, and there is no mandatory personal accident insurance coverage.

The five-year review noted that the Australian Taxi Federation in 2016 argued that '*if workers compensation cannot be changed to cover drivers, all owners, operators and partners must carry private insurance to cover drivers for accidents at work, and to and from work*'.[72]

The Review further noted that this implied '*support for the idea that workers compensation should be changed to cover taxi drivers, as well as pointing out the absence of insurance amongst drivers for Uber and other rideshare companies. In reality, requiring private compulsory injury insurance outside the* workers' *compensation context for 'gig economy' drivers, especially as so many do it on a part-time basis, would not adequately address the problem. It would be less efficient than applying coverage through WorkCover. That said, this issue does point to the need to attempt to design a system that neutralises as much as possible horizontal inequity*'.

Queensland is exploring options to extend workers' compensation coverage for bailee taxi and limousine drivers in Queensland for the following reasons:

Queensland is out of step with the majority of other Australian jurisdictions

All other State 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.[73]

An interjurisdictional comparison of the timing and legislative sources of workers' compensation coverage of bailment arrangements in the taxi and limousine industries is set out below:

Jurisdiction	When covered
Victoria	Coverage commenced in 1985 at the time of enactment of the original legislation, the *Accident Compensation Act 1985*. Currently covered under the *Workplace Injury Rehabilitation and Compensation Act 2013*. Schedule 1, Part 1, section 7.
NSW	Coverage commenced in 1987 at the time of enactment of the original legislation, the *Workers Compensation Act 1987*.

[72] Australian Taxi Federation Inc. (2016). *CTP Premium System Review*. Retrieved from www.sira.nsw.gov.au/__data/assets/pdf_file/0009/102330/Australian-Taxi-Federation.pdf.
[73] The Road Transport (Taxi Industry Innovation) Legislation Amendment Regulation 2016 (No 1) introduced changes to the Workers Compensation Regulation 2002 – with effect from 1 November 2016.

Jurisdiction	When covered
	Currently covered under the *Workplace Injury Management and Workers Compensation Act 1998* Schedule 1, section 10.
Tasmania	In 2007, the Tasmanian Parliament passed the *Workers Rehabilitation and Compensation Amendment Act 2007,* which included clarification of coverage of luxury hire car drivers and consolidation of provisions relating to taxi drivers. Currently covered under the *Workers Rehabilitation and Compensation Act 1988*. Section 4DB.
South Australia	Coverage introduced in 1987 under the Workers Rehabilitation and Compensation (Claims Registration) Regulations 1987. Currently covered under the Return to Work Regulations 2015. Part 2, section 5.
Northern Territory	Coverage commenced in 1987. Currently covered under the Return to Work Regulations 1986. Section 3A. This cover is optional for taxi operators to register for as Northern Territory has a privatised workers' compensation scheme.
Australian Capital Territory	The Road Transport (Taxi Industry Innovation) Legislation Amendment Regulation 2016 (No 1) introduced changes to the Workers Compensation Regulation 2002 – with effect from 1 November 2016. Currently covered under the Workers Compensation Regulation2002. Section 4A
Western Australia	Not covered.

Bailee taxi and limousine drivers are out of step with other deemed profit share workers

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 .[74] Persons involved in a bailment agreement are considered to '*occupy a relationship in the nature of that of joint adventurers.'*[75] 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.

[74] *Workers' Compensation and Rehabilitation Act 2003* Schedule 2.
[75] *Doggett v Waterloo Taxi Cab Company Limited* [1910] 2 KB 336.

Access to personal injury insurance coverage is not uniform across the industry

Bailee taxi and limousine drivers are required to voluntarily source and/or pay their own personal injury insurance or rely on the taxi operator purchasing private insurance on their behalf and coverage is not uniform. The industry has access to a number of tailored insurance products that cover all drivers of a taxi or limousine (including bailee and bailor drivers), and it is estimated that coverage of drivers is higher and is estimated to be between 85 to 95 per cent.

Notwithstanding the current high coverage of drivers in the industry, the sustainability of voluntary coverage over time may be eroded by the affordability of personal accident insurance for many taxi drivers, in an industry with variable driver earnings.

A large number of taxi drivers work less than 5 shifts a week and the latest data from the Australian Taxation Office[76] shows the average taxable income for taxi drivers during 2016-2017 to be $27,766 for males and $26,011 for females. Australian Bureau of Statistics' data shows that in 2017, employees in Australia earned a median weekly pay of $1,019 per week, or $52,988 a year.[77]

It is important to note that these are indicative figures only and based on the only publicly available information on the income of drivers in the taxi and limousine industry.

The standard of insurance coverage in the taxi and limousine industry is limited

The standard of coverage provided under the taxi industry's tailored insurance products is subject to the same limitations as the products used in the gig economy—for example, the personal accident insurance products prevent access to compensation for psychological or psychiatric injuries (e.g. Post-traumatic Stress Disorder) and aggravations of pre-existing conditions. In addition, entitlements are also significantly lower than under the workers' compensation scheme and general insurers are also unable to provide insurance benefit for any Medicare medical expenses.[78] These products also limit the ability for these insurers to support and facilitate return to work outcomes.

Under the private accident insurance policies, the bailor taxi and limousine operator is not indemnified for a common law damages claims made by bailee drivers for work-related injuries. Depending on the circumstances of the injury a negligent party (which may include a bailor operator) may be uninsured or have public liability insurance, or compulsory third-party insurance.

A comparison of a de-identified private accident insurance product against the benefits provided by a workers' compensation policy is provided in **Attachment C**.

There is an 'unlevel playing field' in the taxi and limousine industry and personalised transportation industry

There is currently an unlevel playing field in the personalised transportation industry. There are a proportionally small number of taxi and limousine drivers that are engaged

[76] Australian Taxation Office. (2017). *Taxation Statistics 2016-17*. Retrieved from www.ato.gov.au/About-ATO/Research-and-statistics/In-detail/Taxation-statistics/Taxation-statistics-2016-17/.
[77] Australian Bureau of Statistics. (August 2018). *Characteristics of Employment, Australia.* Retrieved from www.abs.gov.au.
[78] *Health Insurance Act 1973* (Cwlth) s 126(2).

as workers (and therefore have an entitlement to workers' compensation). This increases the costs for those taxi operators in conducting their taxi and limousine business as compared to other taxi operators. There is also disparity across taxi operators who use bailment arrangements, and as compared to ride share drivers in relation to personal accident insurance coverage. This inconsistency in accident insurance results in an unlevel playing field of all businesses and drivers in the personalised transport industry.

Injury costs are increased and shifted from the taxi / limousine business to drivers or community

Like workers in the gig economy, voluntary private accident insurance coverage of bailee drivers has the potential to result in increased personal, family and community impact of a work-related injury. It also potentially increases the overall cost of an injury not only through potential delays in seeking medical treatment, but also through the lack of a direct incentive for taxi and limousine operators to prioritise work health and safety of bailee taxi and limousine drivers, and shifts these costs from the taxi and limousine operators who conduct the taxi and limousine service to the driver or the community.

Using the methodology and factors detailed in section 1.6 of this Consultation RIS, and applying it to the estimated claims costs of $3.6 million for injuries suffered by bailee taxi and limousine drivers, the total economic cost of these work-related injuries to the Queensland economy is estimated to be around $15.48 million.

It is considered that the estimated $3.6 million of bailee taxi and limousine drivers direct claims costs are currently distributed almost evenly between the taxi or limousine operator, community and the worker. The taxi or limousine operator's costs are attributed to an estimate that 85 per cent of operators have purchased a private personal accident insurance policy for the benefit of their bailee drivers. The estimated direct cost of this private insurance is $1.5 million, resulting in an estimate of $2.1 million of uninsured direct claims costs.

At present a greater proportion of the direct costs of work related injuries are being borne by the injured bailee taxi or limousine driver, their family and the community. Applying the distribution from the WorkCover Queensland Performance Report 2017-18 detailed in section 1.6 to the estimated $2.1 million of uninsured taxi and limousine claims costs:

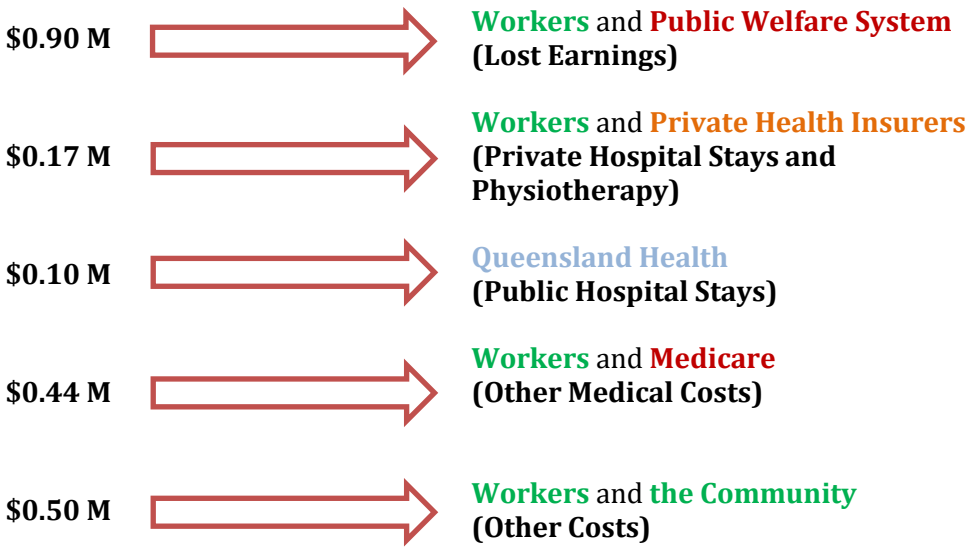


***Figure 2**: Distribution of $2.1M of direct costs of work-related injuries borne by taxi and limousine drivers and the community*

Based on the methodology detailed above and the current distribution of gross statutory claims costs, Table 6 below shows the current cost distribution for bailee taxi and limousine drivers who are not entitled to workers' compensation recognising the industry's existing insurance arrangements.

	Direct costs ($m)	*Indirect costs ($m)*	*Total cost ($m)*	*% of total cost*
Community	$1.10	$6.42	$7.52	49%
Bailee driver	$1.00	$4.28	$5.28	34%
Operators	$1.50	$1.19	$2.69	17%
TOTAL	**$3.60**	**$11.88**	**$15.48**	**100%**

Table 6: current cost distribution for bailee taxi and limousine drivers who are not entitled to workers' compensation

Table 6 shows the community bears the largest amount of the total cost of a work-related injury (49 per cent), owing to payments for medical related treatments, long-term compensation payments or welfare payments and foregone taxation revenue from the injured bailee taxi and limousine driver.

Bailee taxi and limousine drivers carry approximately 34 per cent of the total cost, largely driven by a loss of net income and requirement to pay for medical treatments and rehabilitation.

Taxi and Limousine operators bear the remaining 17 per cent of total economic cost, which is largely represented by the cost of purchasing personal accident insurance for bailee drivers, foregone income from production stoppages and wastage. Operators also bear an increase in costs owing to a potential rise in driver turnover and sick leave taken by an injured bailee taxi or limousine driver.

There is a lack of incentive to improve work health and safety

An employer's workers' compensation premium plays a crucial role in encouraging a sharper focus on injury prevention and participation in rehabilitation and return to work. Workers' compensation premium is directly linked to injury rates and work health and safety of the business; the safer a business's work - the lower their premium will be. This nexus between safety and premium is a significant motivator to encourage improved health and safety performance.

Bailor taxi and limousine operators electing not to insure bailee taxi and limousine drivers are not incentivised in this way to improve work health and safety, resulting in a higher risk of injuries occurring compared to workplaces subject to workers' compensation insurance.

While private accident insurance may provide some incentive in terms of payment of compensation claims, the level of compensation provided by private accident insurance, which sees the majority of medical costs shifted away from the operator, means this incentive is limited compared to employers insured under the workers' compensation scheme.

10. What are the proposed options to address the problem?

The taxi and limousine industry functions under a different business model from gig economy businesses. For example, booking entities within the taxi and limousine industry operate differently from ride share booking entities as they do not have the same level of control over the way drivers engage in their work, and taxi drivers can accept rank and hail work, that is, work not facilitated via an intermediary or a booking entity.

Three options are outlined below to investigate improved personal accident benefits for taxi and limousine drivers or the extension of workers' compensation coverage to the taxi and limousine industry taking into account the business arrangements of these industries:

Option 1: Status quo—Taxi and limousine drivers rely on voluntary personal accident insurance and do not have workers' compensation coverage (this option is not preferred)

This option maintains the status quo with taxi and limousine drivers engaged under bailment arrangements 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 the Department of Transport and Main Roads

As it has been identified that a large number of taxi and limousine drivers are currently covered for personal accidents, this option extends this coverage to ensure there is mandatory consistent personal accident insurance coverage for 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 that 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 licencees 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 *Transport Operations (Passenger Transport) Act 1994* 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.

As there is no corresponding licence type applicable within the ride share sector of the personalised transport service industry and consequently this option is not possible for consideration for the ride share sector. 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 *Workers' Compensation and Rehabilitation Act 2003* 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 Act to prescribe that a person who drives a taxi or limousine who is a bailee, is a 'worker' under the 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 work and 'rank and hail' work). It is noted that under the Act a worker will be entitled to lost income, not only for the work being performed through the intermediary but also other sources of income derived from their labour. Drivers would also be covered for 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 those responsible for the operation of the taxi or limousine licence (e.g. the licensee or, where the licence has been leased or outsourced, the operator). The Act would also be amended to prescribe that the licensee or, where licence has been leased or outsourced, the operator, has the same obligations and responsibilities as an employer under the Act for the payment of premium, obligations for rehabilitation and return to work (which may include a rehabilitation and return to work coordinator). They will likewise be indemnified for compensation and common law damages under the Act by WorkCover. They would also have the option of seeking a licence to become a self-insurer and indemnify themselves against any workers' compensation liabilities. This aligns with the approach taken in other state workers' compensation jurisdictions.

Consistency of coverage for workers' compensation for drivers in the personalised transportation industry could be achieved by adopting option 2 for gig workers.

10.1. What are the impacts of each option?

A summary of the impacts, costs and benefits of each option is set out below. For further detail on the impacts, costs and benefits on various stakeholders refer to **Attachment E**.

Option 1: Status quo—Taxi and limousine drivers rely on voluntary personal accident insurance and do not have workers' compensation coverage (not preferred)			
Stakeholder	**Benefits**	**Impacts**	**Costs**
Bailee taxi and limousine drivers	• Approximately 85-95% have a level of voluntary private personal accident insurance cover.	• No impact on existing worker's compensation or other rights, responsibilities and entitlements. • Lower personal accident insurance coverage compared to injured workers. (Refer to **Attachment C** for a de-identified policy comparison.) • Low level of work-related compensation entitlements compared to workers. • High 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.	• No additional costs. • Some bailee taxi and limousine drivers must fund (and some may be required to source) their own personal accident insurance. • A direct cost to Queensland's bailee taxi and limousine drivers of $1 million a year largely driven by a loss of net income and requirement to pay for medical treatments and rehabilitation. • 34% of the total cost of a work-related injury (or $5.28 million a year).
Bailor taxi and limousine operators	• Uninsured operators have a competitive cost	• No impact on existing worker's compensation or	• A direct cost of work-related injury of

Option 1: Status quo—Taxi and limousine drivers rely on voluntary personal accident insurance and do not have workers' compensation coverage (not preferred)			
Stakeholder	**Benefits**	**Impacts**	**Costs**
	advantage compared to operators who voluntarily insure. • Competitive cost advantage compared to operators in the personalised transportation industry that are employers.	other rights, responsibilities and entitlements. • Lack of involvement in rehabilitation and return to work outcomes for bailee drivers is likely to increase disruption to the business, decrease productivity, increase driver turnover and impact driver morale. • Operators electing not to insure bailee taxi and limousine drivers will not be incentivised to improve work health and safety.	$1 million per year which is largely the cost of purchasing personal accident insurance for bailee drivers not recovered from the bailee. • 17 per cent of the total cost of work-related injuries ($15.48 million per year), which includes foregone income from driver absences, stoppages and wastage.
Other operators in the personalised transportation industry	• Nil.	• No impact on existing rights and responsibilities for workers' compensation. • Employers in personalised transportation industry are at a competitive disadvantage to bailee taxi and limousine operators as they must factor the cost of workers' compensation insurance into	• No additional costs. • Employers in the personalised transportation industry continue to pay premiums under the *Workers' Compensation and Rehabilitation Act 2003* and associated administration costs.

Option 1: Status quo—Taxi and limousine drivers rely on voluntary personal accident insurance and do not have workers' compensation coverage (not preferred)			
Stakeholder	**Benefits**	**Impacts**	**Costs**
		their business costs.	
General accident and personal injury insurance providers	• Providing personal accident insurance products to taxi and limousine operators.	• Nil.	• Nil.
Community	• Cost efficiencies in using the service of operators.	• Increased use and costs of public health system and personal health insurance. • Increased usage and cost of the public welfare system.	• A direct cost of $1.10 million of work-related injuries a year including payments for medical related treatments, long-term compensation payments or welfare payments and foregone taxation revenue from the driver. • 49% (or $7.52 million a year) of the total cost of work-related injuries.

Economic cost of work-related injury

Table 6 below shows the current cost distribution for bailee taxi and limousine drivers who are not entitled to workers' compensation recognising the industry's existing insurance arrangements.

	Direct costs ($m)	*Indirect costs ($m)*	*Total cost ($m)*	*% of total cost*
Community	$1.10	$6.42	$7.52	49%
Bailee driver	$1.00	$4.28	$5.28	34%
Operators	$1.50	$1.19	$2.69	17%
TOTAL	**$3.60**	**$11.88**	**$15.48**	**100%**

Table 6: current cost distribution for injured taxi and limousine drivers who are not entitled to workers' compensation

Table 6 shows the community bears the largest amount of the total cost of a work-related injury (49 per cent), owing payments for medical related treatments, long-term

Option 1: Status quo—Taxi and limousine drivers rely on voluntary personal accident insurance and do not have workers' compensation coverage (not preferred)			
Stakeholder	**Benefits**	**Impacts**	**Costs**
compensation payments or welfare payments and foregone taxation revenue from the injured taxi and limousine driver.			

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 the Department of Transport and Main Roads			
Stakeholder	**Benefits**	**Impacts**	**Costs**
Bailee taxi and limousine drivers	• 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. • Some improvement in achieving a durable return to work. • Some improvement in safety of work environments.	• This option will ensure the proportion of taxi and limousine drivers not currently covered for personal accident insurance (approximately 5-15%) are afforded coverage. • Improved compensation for work-related injuries compared to Option 1, however, there will be a disparate and lower level of work-related compensation entitlements compared to workers (for example, medical and treatment expenses, access to common law, life-time treatment, care and support, ongoing support for a deceased worker's dependents). Refer to **Attachment C** for a sample policy comparison.	• A direct cost of injury to Queensland's bailee taxi and limousine drivers of $0.9 million a year largely driven by a requirement to pay for medical treatments and rehabilitation. • 33 per cent of the total cost of work-related injuries ($15.48 million per year) compared to 34 per cent in Option 1.

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 the Department of Transport and Main Roads			
Stakeholder	**Benefits**	**Impacts**	**Costs**
		• 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. • 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	• All taxi and limousine operators will be required to pay for personal accident insurance therefore removing the competitive advantage of bailor taxi and limousine operators who currently elect not to insure their drivers.	• Taxi and limousine operators will continue to be able to obtain insurance through existing private personal accident insurers and providers. • Does not limit or restrict how taxi and limousine operators conduct their business, how they engage	• Estimated potential increase of $250 to $700 per vehicle for operators with existing personal accident insurance policies. This cost will be specific to the insurer, the operator and potentially their claims experience. • A direct cost to Queensland bailor

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 the Department of Transport and Main Roads			
Stakeholder	**Benefits**	**Impacts**	**Costs**
		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 arrangements for payment.	taxi and limousine operators of $1.80 million, which is largely the cost of purchasing personal accident insurance. • 19 per cent of estimated total cost of work-related injuries ($15.48 million) borne by employers (compared to 17 per cent under Option 1). • Administrative cost of reporting private accident insurance arrangements as part of the existing taxi and limousine licencing process.
Other operators in the personalised transportation industry	• Employers in the personalised transportation industry will no longer be at a competitive disadvantage to bailee taxi and limousine operators who will also be required to factor the cost of workers' compensation insurance into business costs. • If option 3 for gig workers is not	• If option 3 for gig workers is adopted, this option will create an inconsistent regulatory approach to compensation coverage for Intermediaries and taxi/limousine operators in the personalised transportation industry.	• Nil additional costs. • Employers in the personalised transportation industry continue to pay premiums under the *Workers' Compensation and Rehabilitation Act 2003* and associated administration costs.

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 the Department of Transport and Main Roads			
Stakeholder	**Benefits**	**Impacts**	**Costs**
	adopted, Intermediaries in the personalised transportation industry who do not have personal accident insurance will have a competitive advantage.		
General accident and personal injury insurance providers	• Provision of personal accident insurance products to an increased (5-15%) number of taxi and limousine operators.	• Nil.	• Nil additional cost because the increased cost of additional entitlements is likely to be recovered in increases in operator premiums.
Community	• Nil.	• Any increase in service costs could be passed onto consumers of taxi and limousine services. • Increased usage and costs of public health system and personal health insurance. • Increased usage and cost of the public welfare system. • Administrative complexity for government in regulating a new	• A direct cost of injury of $0.9 million, which includes lost earnings transferred to the public welfare system, private hospital stays and physiotherapy transferred to private health insurers, public hospital stays and other medical costs. • 47 per cent of the total economic cost of work-related injuries ($15.48 million) is borne by the community compared to 49 per

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 the Department of Transport and Main Roads			
Stakeholder	**Benefits**	**Impacts**	**Costs**
		licencing requirement.	cent under Option 1.

Economic cost of work-related injury

	Direct costs ($m)	*Indirect costs ($m)*	*Total cost ($m)*	*% of total cost*
Community	$0.90	$6.42	$7.32	47%
Bailee Driver	$0.90	$4.28	$5.18	33%
Operators	$1.80	$1.19	$2.99	19%
TOTAL	**$3.60**	**$11.88**	**$15.48**	**100%**

Table 7: current cost distribution for injured bailee taxi and limousine drivers who are not entitled to workers' compensation

Option 3: Amend the *Workers' Compensation and Rehabilitation Act 2003* 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	• 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 which are of a much higher standard compared to policies available in the private market (Refer to **Attachment C** for a sample policy comparison). • Improved timeliness of medical intervention for work-related injuries. • Improved durable return to work outcomes. • Improved work health and safety outcomes.	• No impact on industrial relations rights or entitlements.	• No direct cost of work-related injury on Queensland's bailee taxi and limousine drivers. • 28 per cent of the total cost of work-related injuries ($15.48 million) borne by workers (compared to 34% in Option 1 and 33% in Option 2).
Bailor taxi and limousine operators	• Improved work health and safety outcomes due to premium incentivisation. • Rehabilitation and return to work obligations are	• Bailor taxi and limousine operators would be required to have a workers' compensation insurance policy with WorkCover Queensland or self-	• An estimated workers' compensation premium cost of $3.6 million. This is based on a premium rate of $1.751 per $100 of wages, or

Option 3: Amend the *Workers' Compensation and Rehabilitation Act 2003* to extend Queensland's workers' compensation scheme to include taxi and limousine drivers engaged in bailment arrangements			
Stakeholder	**Benefits**	**Impacts**	**Costs**
	likely to reduce disruption to the workplace, increase productivity, reduce driver turnover, and improve driver morale.	insure. This insurance would only cover the bailee, and other insurance would be required to cover a bailor or other driver. • When the remuneration paid to bailee drivers equates to or exceeds approximately 50 full time workers for high risk industries and 100 full time workers for other industries an operator would be required to have a person undertaking the role of a Return to Work-Coordinator. This does not involve a requirement to appoint an external Return to Work-Coordinator. • Does not limit or restrict how bailor taxi and limousine operators conduct their business, how they engage persons or introduce any new industrial relations rights or obligations.	alternatively $1,400 per vehicle per year. • Premium costs can vary from business to business depending on the business's predominant industry and the claims experience observed for each business. • Potential for offset against any current personal accident insurance the business is currently purchasing. • Most taxi and limousine 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. • This results in a shift in the total cost of work-related injury to 31%, with operators having

Option 3: Amend the *Workers' Compensation and Rehabilitation Act 2003* to extend Queensland's workers' compensation scheme to include taxi and limousine drivers engaged in bailment arrangements			
Stakeholder	**Benefits**	**Impacts**	**Costs**
			a direct cost of work-related injury of $3.60 million. • Administrative costs of declaring remuneration and maintaining a workers' compensation insurance policy.
Other operators in the personalised transportation industry	• All Employers in the personalised transportation industry would be required to pay workers' compensation insurance premiums and factor these costs into their business, therefore removing any competitive advantage currently able to be gained by bailee taxi and limousine operators which elect not to obtain private accident insurance for bailee taxi and limousine drivers. • If Option 2 for gig workers is adopted, Intermediaries in the personalised transportation industry would similarly not have a competitive advantage compared to bailee	• If Option 2 for gig workers is not adopted, there would be an inconsistent regulatory approach to compensation coverage for Intermediaries and taxi/limousine operators in the personalised transportation industry.	• No additional costs. • Employers in the personalised transportation industry continue to pay premiums under the *Workers' Compensation and Rehabilitation Act 2003* and associated administration costs.

Option 3: Amend the *Workers' Compensation and Rehabilitation Act 2003* to extend Queensland's workers' compensation scheme to include taxi and limousine drivers engaged in bailment arrangements			
Stakeholder	**Benefits**	**Impacts**	**Costs**
	taxi and limousine operators as all would be required to factor mandatory premium costs into their business costs. • Conversely, if Option 2 for gig workers is not adopted, Intermediaries in the personalised transportation industry would have a competitive advantage.		
General accident and personal injury insurance providers	• Nil	• 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 products and could provide personal accident insurance to operators.	• Loss of premium income (and associated benefit costs) for bailee taxi and limousine drivers.
Community	• Reduction in the impact of work-related injury on families and the community.	• The cost of taxi and limousine services may increase to accommodate insurance premiums and	• No direct cost of work-related injury. In particular lost earnings transferred to the public welfare system, private

Option 3: Amend the *Workers' Compensation and Rehabilitation Act 2003* to extend Queensland's workers' compensation scheme to include taxi and limousine drivers engaged in bailment arrangements			
Stakeholder	**Benefits**	**Impacts**	**Costs**
		increased business costs. This cost is expected to be minimal. • The total cost of work related injuries on the public health and private insurance schemes, and the public welfare system will be reduced.	hospital stays and physiotherapy transferred to private health insurers, public hospital stays and other medical costs. • 41% of the estimated total work-related injury costs (compared to 49% under Option 1 and 47% under Option 2).

Economic cost of work-related injury

	Direct costs ($m)	*Indirect costs ($m)*	*Total cost ($m)*	*% of total cost*
Community	$0.00	$6.42	$6.42	41%
Bailee Driver	$0.00	$4.28	$4.28	28%
Operators	$3.60	$1.19	$4.79	31%
TOTAL	**$3.60**	**$11.88**	**$15.48**	**100%**

Table 8: cost distribution for injured bailee taxi and limousine drivers if they were entitled to workers' compensation.

10.2. What is the preferred option and why?

Unlike the options relating to workers in the gig economy, the five-year review did not make specific recommendations regarding the taxi and limousine industry. As a result, the Consultation RIS does not indicate a preferred option.

It is noted that Options 2 and 3 will:

- improve the benefits and entitlements available to taxi and limousine drivers following a work-related injury;
- provide a more level playing field by ensuring all taxi and limousine drivers are afforded personal accident benefits and entitlements;

- reduce cost shifting to the public health system or a worker's private medical insurance to recover from their injury;

- improve an injured worker's chance of achieving a durable return to work following an injury, and

- result in improved work health and safety outcomes.

Option 1 (maintaining the status quo) is not preferred as it:

- does not ensure a level playing field within the taxi and limousine industry and the personalized transport industry more broadly, and

- is inconsistent with the workers' compensation approach taken by the majority of other Australian jurisdictions with respect to bailee taxi and limousine drivers.

PART FIVE: Compliance, implementation and evaluation

11. Competition principles and fundamental legislative principles

The Queensland Government Guide to Better Regulation[79] requires that a preferred option in a consultation paper of this nature should be consistent with:

- clause 5 of the Council of Australian Governments' 1995 Competition Principles Agreement;[80] and
- Section 4 of the Queensland *Legislative Standards Act 1992*.

11.1. Consistency with competition principles

The proposal does not impinge on national competition policy principles. Specifically, the proposal does not involve:

- third party access to state controlled or monopoly infrastructure, or
- issues of competitive neutrality where government enterprises enjoy unfair advantage.

It is acknowledged that WorkCover is a government monopoly provider of workers' compensation accident insurance. In 2000, a National Competition Policy (NCP) *Legislation Review of the WorkCover Queensland Act 1996* was conducted in accordance with the intergovernmental NCP agreement. The review recommended retaining WorkCover's monopoly insurer status but that its regulatory functions be separated from the organisation and set up as an independent entity. Legislation establishing a separate regulator was passed in 2003.

In 2005, a number of outstanding matters from the 2000 NCP review were addressed in the *Report of the National Competition Policy Review of Certain Aspects of the Workers' Compensation and Rehabilitation Act 2003*. These issues included:

- exclusive claims management by WorkCover;
- self-insurance licensing criteria;
- the use of allied health professionals, and
- workplace rehabilitation requirements.

The Report recommended the relaxation of some aspects of the self-insurance licensing criteria and workplace rehabilitation requirements to allow self-insurers and employers greater flexibility in organising their workers' compensation and rehabilitation arrangements. These were accepted by the government of the day and legislative

[79] Queensland Treasury. (2016). *The Queensland Government Guide to Better Regulation*. Retrieved from https://s3.treasury.qld.gov.au/files/guide-to-better-regulation.pdf.
[80] Council of Australian Governments. (As amended to 13 April 2007). *Competition Principles Agreement*. Retrieved from www.coag.gov.au/about-coag/agreements/competition-principles-agreement

amendments were passed. No changes to the use of allied health professionals or claims management by WorkCover were recommended.

11.2. Consistency with fundamental legislative principles

The meaning of 'fundamental legislative principles' is set out in the *Queensland Legislative Standards Act 1992*, which states that legislation should have sufficient regard to:

1. the rights and liberties of individuals;
2. the institution of Parliament.

Having sufficient regard to the rights and liberties of individuals may depend on whether the legislation:

- ensures access to review of administrative decisions;
- is consistent with natural justice;
- allows administrative powers to be delegated only to appropriate persons;
- does not reverse the onus of proof in criminal proceedings;
- confers search and seizure powers only with a warrant;
- provides appropriate protection against self-incrimination;
- does not have adverse retrospective impacts; and
- is drafted in clear and precise language.

Having sufficient regard to the institution of Parliament may depend on whether the legislation:

- subjects delegated legislative powers to the scrutiny of the Legislative Assembly; and
- authorises the amendment of an Act only by another Act.

The proposed changes to extend workers' compensation to gig workers' and taxi and limousine drivers have sufficient regard to both the rights and liberties of individuals and the institution of Parliament.

12. How the preferred options would be implemented, administered and evaluated

12.1. Implementation

In the event Option 2 for gig workers or Option 3 for bailee taxi and limousine drivers progresses, the Government would need to amend the Act to extend workers' compensation to gig workers and bailee taxi and limousine drivers. The adequacy and workability of this option will be evaluated through ongoing consultation with stakeholders. Subject to Government consideration, it is anticipated that the legislative amendments could be in place by 1 July 2020.

It is anticipated that the Office of Industrial Relations will have operational responsibility for implementing this work and will consult with stakeholders in industry, the community and government to develop the legislative scheme and overall implementation plan.

An awareness and engagement strategy would be developed by the Office of Industrial Relations and WorkCover Queensland to advise stakeholders of any changes in advance of those changes coming into effect. The Office of Industrial Relations and WorkCover would be available to provide advice to gig, intermediaries and the taxi and limousine sectors affected by any changes during the period between passage of an amendment Bill and commencement of the amendment.

12.2. Administration, compliance and enforcement

If Option 2 for gig workers and Option 3 for bailee taxi and limousine drivers was to progress, actuarial advice would be obtained by WorkCover to more accurately assess the premium required to adequately fund the cost of extending workers' compensation. WorkCover would use this information when preparing its method and rate gazette notice which details how premium is calculated.

Ensuring Queensland businesses have appropriate workers' compensation insurance, declare the right amount of wages and understand 'who is a worker', are key compliance objectives which underpin WorkCover's commitment to achieving a fair and sustainable workers' compensation scheme.

To help Queensland businesses do the right thing by having an accident insurance policy and paying the right amount of premium, WorkCover also encourages compliance through discounts for early payment, interest free instalment plans, online wage audits, site visits, education and awareness campaigns and identification of under-insured and un-insured businesses.

In addition, the Office of Industrial Relations is responsible for investigating and commencing proceedings for alleged offences against the Act. Workers' compensation insurers are required to give the Office of Industrial Relations the information in its possession which supports its reasonable belief that a person has committed an offence.

Offences against the Act can include (but are not limited to) fraud or attempted fraud, providing false or misleading statements or documents, obtaining or using a worker's compensation document for a purpose relating to the employment of a worker, failure to have written rehabilitation policies and procedures when required, dismissal of an

injured worker due to injury within 12 months of injury, and impersonating an authorised person. Investigation and proceedings can be commenced against any person including a worker/claimant, employer, service provider, or any other person or business.

12.3. Monitoring, evaluation and review

Under the 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 required to be completed no later than 30 June 2023.

If the proposed changes were implemented, the Office of Industrial Relations will work with WorkCover to monitor the impact of these proposals and report on the impact on the scheme's funding position in the medium to long term. Consultation will continue with stakeholders over the intervening period.

Attachment A

Recent reviews of gig work and engagement by gig businesses

Jurisdiction	Year	Name	Complete	Relevant recommendations
Commonwealth	2018	Hope is not a Strategy – Our Shared Responsibility for the Future of Work and Workers	Yes	*Recommendation 10.* The committee recommends that the Australian Government make legislative amendments that broaden the definition of employee to capture gig workers and ensure that they have full access to protection under Australia's industrial relations system.
Commonwealth	2018	Consultation on a Digital Economy Strategy	No	
Commonwealth	2017	Corporate Avoidance of the Fair Work Act 2009	Yes	The final report has a chapter on the gig economy which explores the extent of sham contracting for on-demand workers. *Recommendation 26* The committee recommends that the government initiate a review to determine the tax implications of the gig economy and examine legislative and regulatory mechanisms to minimise the avoidance of legitimate Commonwealth tax arrangements. *Recommendation 29* The committee recommends that the federal government work with state and territory safety regulators to review health and safety and workers' compensation legislation to ensure that companies operating in the gig economy are responsible for the safety of workers engaged in the gig economy.
Commonwealth	2016	Digital Disruption: What do Governments need to do?		*Finding 3.2* The 'gig' economy is in its infancy, making its future effect on the nature of employment uncertain. But if the gig economy develops quickly and its spread is wide, there will be risks that need to be managed. While governments need to address real concerns, blocking these technologies is not an appropriate

Jurisdiction	Year	Name	Complete	Relevant recommendations
				response. In the longer term, depending on the scale of change, governments may need to consider whether: • changes to workplace relations regulations are required to accommodate a growing category of employment • the income support system needs to be changed to ensure it is not a barrier to workforce engagement and helps reduce income volatility for low income workers.
Victoria		Inquiry into the Victorian on-demand workforce	No	
Western Australia		Review of the State Industrial Relations System	Yes	This review includes a section on gig work. *Recommendation:* As the State Government has a legitimate interest in the engagement, working conditions and termination of engagement of people working in the gig economy in Western Australia; therefore a taskforce be assembled and chaired by a representative of DMIRS and include a member from the CCI, UnionsWA, the WAIRC, the State Solicitor's Office and a nominee of the President of the Law Society of Western Australia, to monitor the engagement, working conditions and termination of engagement of people in the gig economy and to consider and report to and make recommendations to the Minister as to whether and to what extent the regulation of the industry can or ought to be pursued by the State Government, by way of representations to the Commonwealth Government, separate legislative action or otherwise.

Attachment B

Comparison table of benefits payable under general policy B VS a WorkCover Queensland policy (gig economy)

Benefit type	Policy B	WorkCover Queensland policy
Scope	Starts when person accepts a job and ends 15 minutes after completion of job.	personal injury arising out of, or in the course of, employment if the employment is a significant contributing factor to the injury. Includes journey and recess break.
Types of injures covered	Bodily injuries. Includes illness or disease but only resulting directly from medical or surgical treatment rendered necessary by any bodily injury. Excludes any pre-existing medical condition.	An ***injury*** is personal injury including a psychiatric or psychological disorder, a disease, loss of hearing, and an aggravation of a pre-existing injury. Injury must arise out of, or in the course of, employment; and employment is a significant contributing factor to the injury. Includes injury sustained during journey and recess.
Income replacement	Maximum of $150 per day up to a maximum of $4,500. Up to $5,000 for childcare expenses that would not have otherwise occurred.	For the first 26 weeks of the incapacity, the greater of 85% of the workers normal weekly earnings (NWE) or 100% of industrial instrument amount. 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 2018–2019 financial year QOTE is $1,527.80]. From the end of the first 2 years of the incapacity until the end of the first 5 years of the incapacity either: – 75% of the worker's NWE – 70% of QOTE – the single pension rate (as at March 2019 is $463.10 per week)

Benefit type	Policy B	WorkCover Queensland policy
Duration of Income replacement	30 days	Five years or until the worker has been paid $330,240 in income replacement.
Death	Maximum of $400,000 plus: $5,000 for each spouse or dependent child to maximum of $15,000	Lump sum payment up to $618,565 to dependants plus; – Weekly benefits for each child under 6 (8% QOTE); plus – Weekly benefits for each child up to 16 years or students (10% QOTE); plus – Other additional lump sums depending on dependant's circumstances
Funeral	Maximum of $10,000	Reasonable expenses
Rehabilitation and Return to Work Assistance	Nil	No limit, reasonable fees and costs*
Assault benefit	Maximum of $5,000 if unprovoked assault, reported to police and criminal charges pressed	Can access victim of crime benefit
Medical cost	Nil	No limit, reasonable fees and costs*
Hospital costs	$1,500 if hospitalised within 5 days of injury	No limit, reasonable fees and costs*
Injury and Travel costs	Maximum of $5,000 (includes all non-medical expenses)	No limit, reasonable fees and costs*
Common law	Nil	Indemnifies employer, ensures full damages paid to worker
Serious personal injury	Maximum of $400,000	Lifetime treatment, care and support
Permanent impairment	Maximum of $400,000	Maximum of $330,240 plus: - Additional lump sum for injuries >30% DPI - Additional lump sum for gratuitous care >15% DPI
Carers allowance	Nil	No limit, reasonable fees and costs*

Benefit type	Policy B	WorkCover Queensland policy
Excess	No benefits paid during excess period	Benefits paid during excess period, employer pays for excess

Notes

* There are various provisions contained in the 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 $330,240).
- *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 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.

Attachment C

Comparison table of benefits payable under general insurance policy A VS a WorkCover Queensland policy (taxi and limousine industry)

Benefit type	General insurance policy A	WorkCover Queensland policy
Types of injures covered	Injury only includes "identifiable physical bodily injury". Excludes an aggravation of a pre-existing Injury, or any degenerative condition, or Psychological Disorder (unless the Insured Person has been referred to and is under the continual treatment of a psychiatrist or psychologist AND Psychological Disorders in isolation of a physical bodily Injury will not be payable under this policy.)	An ***injury*** is personal injury including a psychiatric or psychological disorder, a disease, loss of hearing, and an aggravation of a pre-existing injury. Injury must arise out of, or in the course of, employment; and employment is a significant contributing factor to the injury. Includes injury sustained during journey and recess.
Income replacement	Maximum of $150 per shift up to a maximum of $750 per week.	For the first 26 weeks of the incapacity, the greater of 85% of the workers normal weekly earnings (NWE) or 100% of industrial instrument amount. 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 2018–2019 financial year QOTE is $1,527.80]. From the end of the first 2 years of the incapacity until the end of the first 5 years of the incapacity either: – 75% of the worker's NWE – 70% of QOTE – the single pension rate (as at March 2019 is $463.10 per week) –
Duration of Income replacement	– 156 weeks for drivers aged from 18 to 70 years inclusive ($117,000); – 52 weeks for drivers aged from 71 to 74 years inclusive ($39,000);	Five years or until the worker has been paid $330,240 in income replacement.

Benefit type	General insurance policy A	WorkCover Queensland policy
	– 26 weeks for drivers aged from 75 to 80 years inclusive ($19,500). –	
Death	Maximum of $250,000	Lump sum payment up to $618,565 to dependants plus; – Weekly benefits for each child under 6 (8% QOTE); plus – Weekly benefits for each child up to 16 years or students (10% QOTE); plus – Other additional lump sums depending on dependant's circumstances –
Funeral	Maximum of $10,000	Reasonable expenses
Rehabilitation and Return to Work Assistance	Maximum of $5,000	No limit, reasonable fees and costs*
Lifestyle modifications	Maximum of $10,000	No limit, reasonable fees and costs*
Dental	Maximum of $2,000	No limit, reasonable fees and costs*
Medical and Hospital cost	Nil	No limit, reasonable fees and costs*
Travel costs	Nil	No limit, reasonable fees and costs*
Common law	Nil	Indemnifies employer, ensures full damages paid to worker
Serious personal injury	Maximum of $250,000	Lifetime treatment, care and support
Permanent impairment	Maximum of $250,000	Maximum of $330,240 plus: – Additional lump sums for injuries >30% DPI – Additional lump sum for gratuitous care >15% DPI
Carers allowance	Nil	No limit, reasonable fees and costs*

Benefit type	General insurance policy A	WorkCover Queensland policy
Excess	No benefits paid during excess period	Benefits paid during excess period, employer pays for excess
Maximum entitlement	$250,000	Unlimited*

Notes

* There are various provisions contained in the 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 $330,240).
- *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 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.

Comprehensive overview of impacts (gig economy)

Option 1: Status-quo—Gig workers rely on voluntary private personal accident insurance and are not covered by the workers' compensation scheme

Gig workers

Benefits

- Some workers may have access to voluntary private personal accident insurance coverage.

Impacts

- No impact on existing worker's compensation or other rights, responsibilities and entitlements.
- The majority of gig workers are required to source and fund their own insurance.
- For gig workers who obtain voluntary personal accident insurance, they will have less comprehensive and an overall lower standard of work-related compensation entitlements compared to workers covered under the workers' compensation scheme. Refer to Attachment B for a sample policy comparison.
- Uninsured gig workers are subject to a higher risk of delayed medical intervention for work-related injuries and are more likely to experience greater medical needs over longer periods of time. They are also at greater risk of not being able to achieve a durable return to work.
- As insurance is voluntary, there is the potential for inconsistency between gig workers in terms of the coverage and benefits available to them following a work-related injury.

Impact on Intermediaries

Benefits

- No mandatory insurance costs.
- No direct cost of work-related injury.
- There will continue to be an impact on market disruption and cost differentials for all current employers and Intermediaries operating businesses and competing against intermediaries which elect not to take out an equivalent level of personal accident insurance policy for their gig workers. Specifically, this will result in a competitive cost advantage for these Intermediaries

compared to employers in their industry and other intermediaries who voluntarily insure and are required to factor premium costs into the cost of their business.

- No responsibility for rehabilitation and return to work.

Impacts

- No impact on existing rights and responsibilities.

- The lack of Intermediary involvement in rehabilitation and return to work outcomes for gig workers is likely to increase disruption to the business, decrease productivity, increase gig worker turnover and impact gig worker morale. Voluntary private accident insurance coverage and increased self-management of work-related injuries also increases the risk that there will be a lack of prompt medical intervention in responding to work-related injuries. Evidence shows that there is a correlation between a lack of early intervention and poor recovery, increased time off work and poorer return to work outcomes for injured workers[81].

- Greater risk of injury. Workers' compensation premium is directly linked to injury rates and work health and safety of the business; the safer a business's work - the lower their premium will be. This nexus between safety and premium is a significant motivator to encourage improved health and safety performance and will contribute to safer work environments for gig workers. Intermediaries electing not to insure gig workers will not be incentivised to improve work health and safety to reduce their premiums resulting in a higher risk of injuries occurring compared to workplaces subject to insurance. There will be no clear mechanism for 'lag' injury or claims data for the Intermediary to inform the development of injury prevention strategies including policies and procedures, unique to their industry.

Impact on employers

Benefits

- Nil.

Impacts

- No additional costs. Employers will continue to pay premiums under the *Workers' Compensation and Rehabilitation Act 2003* and associated administration costs.

- No impact on existing rights and responsibilities for workers' compensation.

- Employers in the same industry as intermediaries who are required to pay premiums under the workers' compensation scheme are competitively

[81] Safe Work Australia. (2017). *Return to Work: A comparison of psychological and physical injury claims, analysis of the Return to Work Survey results*.

disadvantaged by Intermediaries which elect not to insure their gig workers, as they are not required to factor the cost of insurance into their business costs.

Impact on general accident and personal injury insurance providers

Benefits

- Retention of market to provide insurance products which cover gig workers.

Impacts

- Nil.

Impact on community

Benefits

- Cost efficiencies in using the service of intermediaries.

Impacts

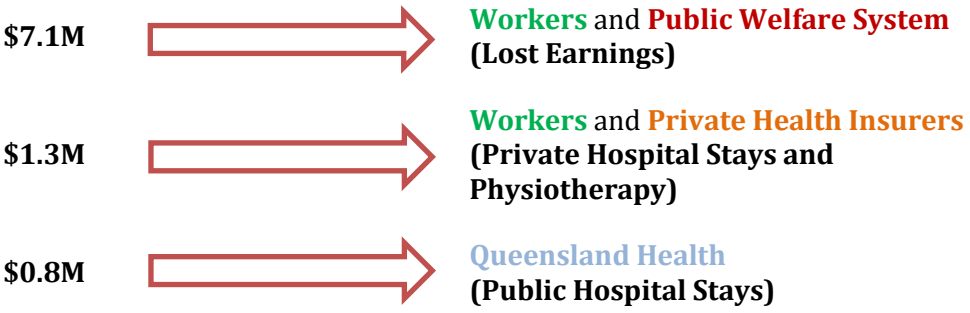
- This option continues to cost-shift the cost of gig workers' work-related injuries from the intermediary to the community and resulting in increased private health insurance costs, increased strain and inefficiencies to the public health system and increased dependence on the public welfare system.

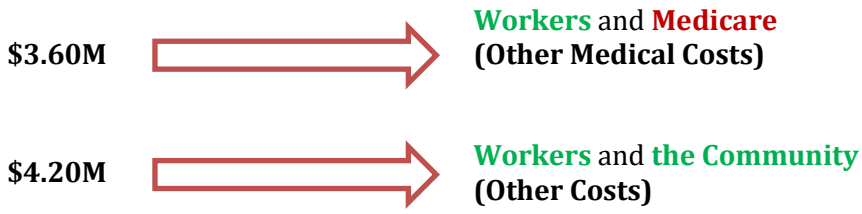
Economic cost of work-related injury

Using the methodology and factors detailed in section 1.6 of the Consultation RIS, and applying it to the estimated claims costs of $17 million for work-related injuries sustained by gig workers suggest that the total economic cost of these work-related injuries to the Queensland economy is around $73.1 million.

It is considered that the estimated $17 million of gig work direct claims costs are currently distributed almost evenly between community and the worker.

At present the direct costs of work related injuries are being borne by the injured gig worker, their family and community. Applying the distribution from the WorkCover Queensland Performance Report 2017-18 detailed in section 1.6 to the estimated $17 million of uninsured gig work claims costs:





$17M of direct costs of work-related injuries borne by gig workers and the community

Using the methodology detailed above and the current distribution of gross statutory claims costs, Table 3 below shows the current cost distribution for gig workers who are not entitled to workers' compensation.

	Direct costs ($m)	*Indirect costs ($m)*	*Total cost ($m)*	*% of total cost*
Community	$9.00	$30.50	$39.50	54%
Gig Worker	$8.00	$18.30	$26.30	36%
Intermediary	$0.00	$7.30	$7.30	10%
TOTAL	**$17.00**	**$56.10**	**$73.10**	**100%**

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

Table 3 shows that the community bears the largest amount of the total cost of a work-related injury (54 per cent of the total economic cost of work-related injuries), owing to payments for medical-related treatments, long-term compensation payments or welfare payments and foregone taxation revenue from the injured gig worker.

Gig workers carry approximately 36 per cent of the total cost, largely driven by a loss of net income and requirement to pay for medical treatments and rehabilitation.

Intermediaries bear the remaining 10 per cent of total economic cost which is largely represented by foregone income from production stoppages and wastage. Intermediaries also bear an increase in costs owing to a potential rise in staff turnover and sick leave taken by an injured worker.

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

Impact on gig workers

Benefits

- Fair and equal access to workers' compensation and entitlements for work-related injuries. Gig workers will have access to the same level of entitlements as other Queensland workers, including access to no-fault statutory compensation, return to work and rehabilitation support and access to common law damages.

- No impact on the flexibility offered by the gig economy, which is a strong driver of participation and job satisfaction for many gig workers,[82] by not altering or limiting the way in which Intermediaries operate

- Gig workers will no longer need to purchase their own personal accident insurance or rely on their own private health insurance policy for work related injuries which will increase the worker's purchasing power.

- No direct cost of work-related injury.

- Improved timeliness of medical intervention for work-related injuries. This option eliminates the need for those gig workers without private health insurance to rely on the public health system and support early medical treatment and support for work related injuries.

- Improved durable return to work outcomes. This option will allow for early intervention, and the provision of appropriate rehabilitation, vocational and other return to work services, and contribute to improvements in an injured worker's chance of achieving a durable return to work following their injury.

- Improved work health and safety outcomes. Workers' compensation premium is directly linked to injury rates and work health and safety of the business; the safer a business's work is the lower their premium will be. This nexus between safety and premium is a significant motivator to encourage improved health and safety performance and will contribute to safer work environments for gig workers.

- Early medical intervention and enhanced benefits structures will also improve secondary psychological impacts on the worker and their family.

Impacts

- No impact on industrial relations rights or entitlements. Workers' compensation legislation is beneficial in nature and is designed to cover the majority of workers in traditional employment relationships. However, as traditional employment relationships have fragmented since the mid-1980s, deeming provisions have allowed government to extend coverage to specific classes of workers who do not fit into a traditional contract of service, e.g. commission only salespersons or certain contractors who perform work personally. Such deeming provisions are limited in nature and generally have no effect on industrial rights beyond the workers' compensation scheme.

[82] For example, 78% of drivers joined Uber because it gives them the flexibility to balance work, study and family commitments, and more than three in five Uber drivers say that they could not work in traditional roles that do not offer this type of flexibility: AlphaBeta. (2019). *Flexibility and fairness: What matters to workers in the new economy* [Report].

Impact on Intermediaries

Benefits

- Improved work health and safety outcomes, as intermediaries will be incentivised through workers' compensation premiums or self-insurance arrangements to improve performance.

- Rehabilitation and return to work obligations are likely to reduce disruption to the workplace, increase productivity, reduce gig worker turnover, and improve gig worker morale.

Impacts

- This option will apply to a discrete group of intermediaries within the gig economy across a number of industries (for example ride share or food delivery businesses). An environmental scan has identified approximately 450 businesses that may meet the proposed definition of intermediary. Many of these businesses are likely to be booking entities engaged in the passenger transport industry. The majority of gig workers are likely to be engaged by only a small number of larger intermediaries.

- Intermediaries would be required to have a workers' compensation insurance policy with WorkCover Queensland or self-insure. An estimated workers' compensation premium cost of $17 million.

- There is no single, homogenous gig industry - gig workers work across all industries and all regions in Queensland. 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[83].

- WorkCover already provides insurance benefits to many businesses that would be operating in direct competition with gig businesses. For example, Chart 2 (below) shows WorkCover's average premium in sectors commonly associated with gig work for the 2018-19 premium year:

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.

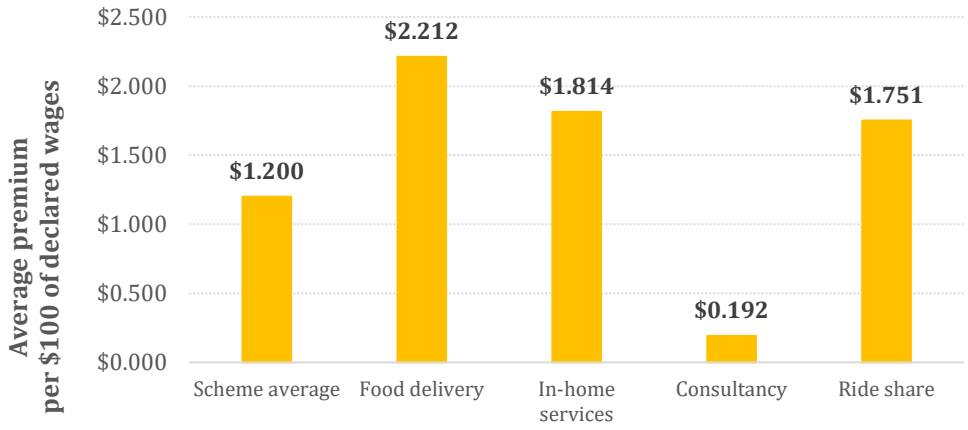


Chart 2: Average premium for certain industries 2018-19 premium year

- For small employers (less than $1.5 million wages per year), their premium is largely based on the industry experience with a maximum 10 per cent adjustment each year to reflect their own claims experience. For larger employers, their own claims experience has more impact. The table below provides indicative average premium rates for small and large gig businesses in the food delivery, in-home services, freelance consulting and rideshare industries:

Gig	Wages	2018-19 Average Premium Rate
1. Food delivery		***$2.212 per $100 of wages***
Small	$500,000	$11,060
Large	$3,000,000	$66,360
2. In home services		***$1.814 per $100 of wages***
Small	$500,000	$9,070
Large	$3,000,000	$54,420
3. Freelance consulting		***$0.192 per $100 of wages***
Small	$500,000	$960
Large	$3,000,000	$5,760
4. Ride share		***$1.751 per $100 of wages***
Small	$500,000	$8,755
Large	$3,000,000	$52,530

- The actual premium will vary from business to business depending on the business's predominant industry and the claims experience observed for each business. There is also the potential for an offset against any current personal accident insurance the business is currently purchasing as these insurance products will no longer be required.

- Administrative costs of declaring remuneration and maintaining a workers' compensation insurance policy.

- Possible offset for public liability insurance costs due to common law indemnity.

- No limits or restrictions placed on how intermediaries conduct their business, how they engage persons. New industrial relations rights or obligations will not be created.

- This option ensures gig businesses pay the same proportion of costs on workers' compensation as current employers pay in the industry that the gig business is facilitating work for.

- Safer workplaces and increased productivity. There is evidence that employer involvement in rehabilitation and return to work outcomes for workers reduces disruption to the workplace, increases productivity, reduces staff turnover and improves staff morale and workplace relations. Further, workers' compensation premium is directly linked to injury rates and work health and safety of the business; the safer a business's work is the lower their premium will be. This nexus between safety and premium is a significant motivator to encourage improved health and safety performance. Safer workplaces lead to less injuries and greater worker productivity.

- There is a requirement for businesses to engage a RRTWC when a wages threshold has been exceeded, the threshold equates to approximately 50 full-time workers for high risk industries and 100 full-time workers for other industries. A business that exceeds these thresholds would already be a large sophisticated business with extensive human resource services to support the business. Further, the requirement to appoint a RRTWC is not a requirement to engage a new person to undertake this function as a current appropriately qualified person can be appointed by the business to undertake this function.

- Adoption of this option would result in a nationally inconsistent approach to workers' compensation arrangements in Queensland as Queensland would be the first Australian jurisdiction to extend workers' compensation coverage to workers in the gig economy.

Impact on employers

Benefits

- Intermediaries would no longer have a competitive advantage compared to employers as, like employers, they will be required to factor in the cost of workers' compensation into business costs.

Impacts

- No impact on existing rights and responsibilities for workers' compensation under the Act.

- No additional costs. Employers will continue to pay premiums under the Act and associated administration costs.

Impact on general accident and personal injury providers

Benefits

- Nil.

Impacts

- Loss of current gig worker accident and personal insurance market. 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 will have a noticeable impact on the general insurers, which do not exclusively provide gig worker insurance products.

Impact on community

Benefits

- The impact of work-related injury on families and the community will be reduced.

- Reduction in the total cost of work-related injuries on the public health and private insurance schemes, and the public welfare system. The workers' compensation scheme is able to achieve prompt injury intervention to facilitate an efficient and durable return to work after injury. In contrast, workers unable to access prompt medical and rehabilitation intervention are more likely to experience greater medical services needs over a longer period of time and are at greater risk of not being able to achieve a durable return to work, leading to greater medical and welfare costs being imposed on the public systems and in turn the community.

Impacts

- Service and business costs may increase. Option 2 will cut across multiple industries and potentially impact the cost of service and business costs in these industries. The quantification of the impact will depend on the premium rate determined for each employer's industry by reference to the size, industry's claims experience and broader claims experience. The potential impact of the service and business costs flowing on to the Queensland community are anticipated to be minimal.

- WorkCover's sustainability will not be compromised. The estimated size of the total Queensland gig workforce may be between 16,000 workers and 25,000 workers. Due to the de-regulation in the insurance coverage of gig workers it is difficult to ascertain the number of gig workers who are injured while performing work. At present, there are no formal mechanisms for these injuries to be reported. This is further complicated by the fact that the gig workforce includes disproportionate numbers of young workers (aged from 15-24 years) and/or migrant workers (including those on temporary visas): two groups who are particularly vulnerable due to their limited knowledge about their rights, or how to defend them. The Queensland workers' compensation scheme injury claim rate for 2017-18 was 39.6 claims per 1,000 workers. It is estimated that the total cost which would be incurred by the scheme due to extending entitlement to gig workers is approximately

$17 million per year based on factors such as the claims experience of the employer and the particular industry. The impact of including gig workers into the scheme will be met by the premiums collected from intermediary businesses and is not anticipated to impact on scheme sustainability.

Economic cost of work-related injury

- Using the methodology and factor in section 1.6 of the Consultation RIS and applying it to the estimated claims costs of $17 million for injuries suffered by gig workers suggest that the total economic cost of these work-related injuries to the Queensland economy is around $73.1 million.

- Based on the methodology detailed above and the current distribution of gross statutory claims costs, Table 4 shows the cost distribution for gig workers if they were entitled to workers' compensation.

	Direct costs ($m)	*Indirect costs ($m)*	*Total cost ($m)*	*% of total cost*
Community	$0	$30.50	$30.50	42%
Gig worker	$0	$18.30	$18.30	25%
Intermediary	$17	$7.30	$24.30	33%
TOTAL	**$17**	**$56.10**	**$73.10**	**100%**

Table 4: cost distribution for gig workers if they were entitled to workers' compensation

- Table 4 shows that only 42 per cent of the total economic cost of work-related injuries is now borne by the community compared to 54 per cent from option 1.

- Compared to option 1, the Gig Workers' proportion is now reduced from 36 per cent approximately to 25 per cent of the total cost, while Intermediaries now bear the remaining 33 per cent (up from 10 per cent) of total economic cost which is largely represented by workers' compensation insurance costs.

Comprehensive overview of impacts (taxi and limousine industry)

Option 1: Status quo—Taxi and limousine drivers are not covered by the workers' compensation scheme and rely on voluntary personal accident insurance (not preferred)

Impact on bailee taxi and limousine drivers

Benefits

- Approximately 85-95 per cent of taxi and limousine drivers have a level of voluntary private personal accident insurance cover.

Impacts

- Nil additional costs. Some bailee taxi and limousine drivers must fund (and some may also be required to source) their own personal accident insurance.
- No impact on existing worker's compensation or other rights, responsibilities and entitlements.
- Lower personal accident insurance coverage compared to injured workers. For taxi and limousine drivers who obtain voluntary personal accident insurance, they will have less comprehensive and an overall lower standard of work-related compensation entitlements compared to workers covered under the workers' compensation scheme. Refer to **Attachment C** for a sample policy comparison.
- Uninsured taxi and limousine drivers are subject to a higher risk of delayed medical intervention for work-related injuries and are more likely to experience greater medical needs over longer periods of time. They are also at greater risk of not being able to achieve a durable return to work.
- As insurance is voluntary, there is the potential for inconsistency between taxi and limousine drivers in terms of the coverage and benefits available to them following a work-related injury.

Impact on bailor taxi and limousine operators

Benefits

- Uninsured taxi and limousine operators have a competitive cost advantage compared to operators who voluntarily insure and are required to factor premium costs into the cost of their business.
- For the same reason, uninsured taxi and limousine drivers also have a competitive cost advantage compared to operators in the personalised transportation industry that are employers and therefore required to pay premiums under the workers' compensation scheme.

Impacts

- No impact on existing worker's compensation or other rights, responsibilities and entitlements.

- The lack of involvement in rehabilitation and return to work outcomes for taxi and limousine drivers is likely to increase disruption to the business, decrease productivity, increase turnover and impact morale. Voluntary private accident insurance coverage and increased self-management of work-related injuries increases the risk that there will be a lack of prompt medical intervention in responding to work-related injuries. Evidence shows that there is a correlation between a lack of early intervention and poor recovery, increased time off work and poorer return to work outcomes for injured workers.84

- Higher risk of injury. Workers' compensation premium is directly linked to injury rates and work health and safety of the business; the safer a business's work - the lower their premium will be. This nexus between safety and premium is a significant motivator to encourage improved health and safety performance, and will contribute to safer work environments for gig workers. Taxi and limousine operators electing not to insure bailee taxi and limousine drivers will not be incentivised to improve work health and safety to reduce their premiums resulting in a higher risk of injuries occurring compared to workplaces subject to insurance. There will be no clear mechanism for 'lag' injury or claims data for the bailor taxi and limousine operator to inform the development of injury prevention strategies including policies and procedures, unique to their industry.

Impact on other operators in the personalized transportation industry

Benefits

- Nil.

Impacts

- No impact on existing rights and responsibilities for workers' compensation.

- Nil additional costs. Employers in the personalised transportation industry continue to pay premiums under the *Workers' Compensation and Rehabilitation Act 2003* and associated administration costs.

- Employers in the personalised transportation industry are at a competitive disadvantage to bailee taxi and limousine operators who do not insure their drivers, as they must factor the cost of workers' compensation insurance into their business costs.

84 Safe Work Australia. (2017). *Return to Work: A comparison of psychological and physical injury claims, analysis of the Return to Work Survey results*.

Impact on general accident and personal injury insurance providers

Benefits

- Providing personal accident insurance products to taxi and limousine operators.

Impacts

- Nil.

Impact on the community

Benefits

- Cost efficiencies in using the service of operators.

Impacts

- Increased use and costs of public health system, personal health insurance and the public welfare system. This option continues to cost-shift the cost of bailee taxi and limousine drivers' work-related injuries from the operator to the community, resulting in increased private health insurance costs, increased strain and inefficiencies to the public health system and increased dependence on the public welfare system.

Economic cost of work-related injury

Table 6 below shows the current cost distribution for bailee taxi and limousine drivers who are not entitled to workers' compensation recognising the industry's existing insurance arrangements.

	Direct costs ($m)	*Indirect costs ($m)*	*Total cost ($m)*	*% of total cost*
Community	$1.10	$6.42	$7.52	49%
Bailee driver	$1.00	$4.28	$5.28	34%
Operators	$1.50	$1.19	$2.69	17%
TOTAL	**$3.60**	**$11.88**	**$15.48**	**100%**

Table 6: current cost distribution for injured taxi and limousine drivers who are *not* entitled to workers' compensation

Table 6 shows the community bears the largest amount of the total cost of a work-related injury (49 per cent), owing payments for medical related treatments, long-term compensation payments or welfare payments and foregone taxation revenue from the injured taxi and limousine driver.

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 the Department of Transport and Main Roads

Impact on workers

Benefits

- Consistent and equal coverage for bailee taxi and limousine drivers under personal accident insurance. All taxi and limousine drivers will have consistent and equal access to insurance coverage at a standard comparable to that provided under the workers' compensation scheme. It will ensure that the proportion of taxi and limousine drivers (approximately 5-15 per cent) not currently covered for personal accident insurance are afforded coverage.

- Improved compensation following a work-related injury compared to Option 1. This option will result in improved benefits for drivers compared to what is currently provided in the private market. For example, it will mean improved levels of income replacement and additional rehabilitation and return to work assistance. However, it would not include all benefits available under the workers' compensation scheme such as Medicare related medical costs, hospital stay costs, common law damages, lifetime care and support needs for seriously injured workers, or ongoing benefits to dependent children of deceased workers.

- Some improvement in achieving a durable return to work. This option will allow for early intervention, and the provision of appropriate rehabilitation, vocational and other return to work services and contribute to improvements in an injured worker's chance of achieving a durable return to work following their injury. Early medical intervention and enhanced benefits structures will also improve secondary psychological impacts on the worker and their family.

- Some improvement in safety of work environments. Workers' compensation premium is directly linked to injury rates and work health and safety of the business; the safer a business's work is the lower their premium will be. This nexus between safety and premium is a significant motivator to encourage improved health and safety performance and will contribute to safer work environments for gig workers.

- 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 coverage.

Impacts

- Disparate and lower level of work-related compensation entitlements compared to workers (for example, medical and treatment expenses, access to common law, life-time treatment, care and support, ongoing support for a deceased worker's dependents).

- As general insurers are legally prevented from insuring any Medicare medical expenses, the medical cost of injuries for taxi and limousine drivers under private insurance will continue to be shifted from the business to the bailee taxi or limousine driver.

- All other state workers' compensation jurisdictions, except for Western Australia, have specifically deemed taxi drivers engaged under a bailment to be eligible for workers' compensation. Adoption of this option would result in Queensland having a nationally inconsistent approach to workers' compensation arrangements for bailee taxi and limousine drivers.

Impact on bailor taxi and limousine operators

Benefits

- All taxi and limousine operators will be required to pay for personal accident insurance which would remove any competitive advantages for bailor taxi and limousine operators currently able to elect not to insure their bailee drivers and therefore avoid factoring these costs into their business.

Impacts

- Taxi and limousine operators will continue to be able to obtain insurance through existing private personal accident insurers and providers.

- The cost of personal accident insurance currently available in the market averages about $550 per vehicle. The estimated cost to increase the benefit level to a comparable level as workers' compensation is estimated to cost approximately between $800 and $1,250 per vehicle, resulting in a potential increase of $250 to $700 per vehicle for operators. It is noted that the estimated increase to costs through insurance premiums is difficult to quantify as it will be specific to the business/operator and their claims experience.

- No limits or restrictions placed on how taxi and limousine operators conduct their business or how they engage persons. New industrial relations rights or obligations will not be created.

- Administrative cost of reporting private accident insurance arrangements as part of the existing taxi and limousine licencing process.

- Flexibility in arrangements. 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 the arrangements for paying for the insurance product.

Impact on other operators in the personalised transportation industry

Benefits

- Employers in the personalised transportation industry will no longer be at a competitive disadvantage to bailee taxi and limousine operators who will also be required to factor the cost of workers' compensation insurance into business costs. Many operators currently purchase personal accident insurance for all drivers working with each vehicle. The lack of a mandatory requirement on operators to provide personal accident insurance for drivers results in a competitive cost advantage to operators that choose not to provide the insurance. The proposed change will ensure that all taxi and limousine operators will pay the same proportion of costs on workers' compensation, resulting in a level playing field between all taxi and limousine operators.

- If option 3 for gig workers is not adopted, intermediaries in the personalised transportation industry who do not have personal accident insurance have a competitive advantage.

Impacts

- Nil additional costs. Employers in the personalised transportation industry continue to pay premiums under the *Workers' Compensation and Rehabilitation Act 2003* and associated administration costs.

- If option 3 for gig workers is adopted, an inconsistent regulation of compensation coverage for intermediaries and taxi/limousine operators in the personalised transportation industry.

Impact on general accident and personal injury insurance providers

Benefits

- Provision of personal accident insurance products to an increased (approximately 5-15 per cent) number of taxi and limousine operators.

Impacts

- Nil additional cost because the increased cost of additional entitlements is likely to be recovered in increases in operator premiums.

Impact on community

Benefits

- Nil.

Impacts

- Any increase in service costs could be passed onto consumers of taxi and limousine services. Option 2 will potentially impact the cost of service and business costs in the taxi and limousine industry. The Department of Transport and Main Roads does not impose any set rate for booked hire work unless the passenger is in a wheel chair or is a member of the taxi subsidy scheme. As the taxi sector will be subject to increased costs through the payment of insurance premiums, they would be able to pass the full cost of any increase onto the consumer/end users of taxi services. The Department of Transport and Main Roads does regulate maximum fare limits for all rank and hail work. These regulated maximum fares are revised by the Department of Transport and Main Roads using the Taxi Cost Fare Index (TCFI). The TCFI model considers the cost to the taxi operator in providing taxi services. Current components of the model include labour costs (driver and operator), CTP, comprehensive insurance, parts and panels, cleaning, leasing costs. If costs increase because of the proposal, the maximum fares could also be increased.

- Increased usage and costs of public health system, personal health insurance and public welfare system. Injured workers who can achieve a prompt return to work do not have to rely on the public welfare or health system to support themselves and their families during their period of incapacity and recovery. This has the potential to save costs to the community and all taxpayers. However, as general insurers are legally prevented from insuring any Medicare medical expenses, the medical cost of injuries for taxi and limousine drivers under private insurance will continue to be shifted from the operator to the public health system (which is currently estimated to be $7.23 million in direct and indirect costs).

- Administrative complexity for government. This option has the potential to be complex for the government to administer, given it will be a requirement imposed as a condition on a taxi or limousine licence. It will place administrative burden on the government, as part of the regulation of taxi and limousine licences, to ensure that insurance has been obtained and is in place for all taxi and limousine licenced vehicles

Economic cost of work-related injury

Using the methodology and factor detailed in section 1.6 of this Consultation RIS, and applying it to the higher estimated claims costs of $3.6 million for injuries suffered by bailee taxi and limousine drivers suggest that the total economic cost of these work-related injuries to the Queensland economy is around $15.48 million.

It is considered that the estimated $3.6 million of bailee taxi and limousine drivers direct claims costs are currently distributed almost evenly between the operator, community and the worker. Under option two, 100 per cent of operators will have purchased a private personal accident insurance policy for the benefit of their bailee drivers. The estimated direct cost of this private insurance is $1.8 million, resulting in an estimate of $1.8 million of uninsured direct claims costs.

Applying the distribution from the WorkCover Queensland Performance Report 2017-18 detailed in section 1.6 to the estimated $1.8 million of uninsured taxi and limousine driver claims costs:

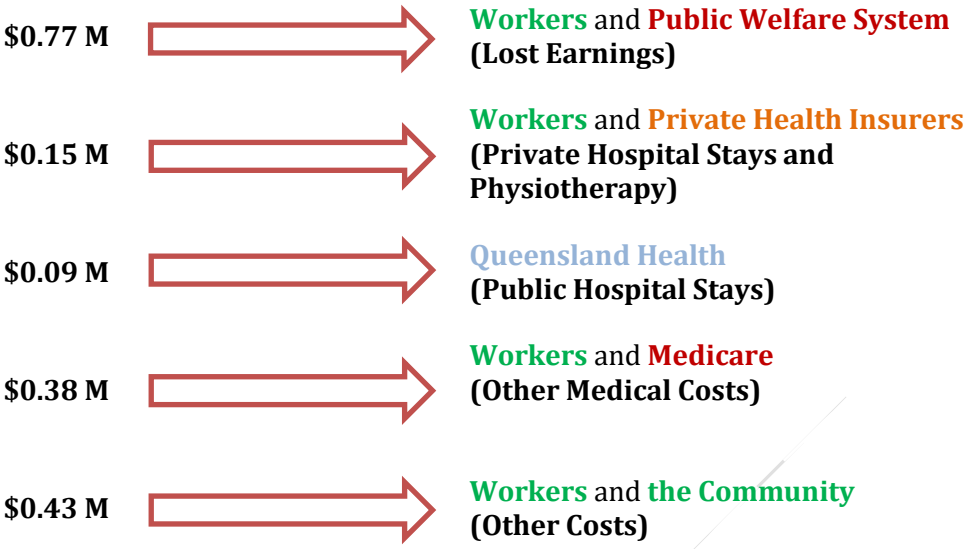


***Figure 3**: $1.8M of direct costs of work-related injuries borne by gig workers and the community*

Based on the methodology detailed above and the current distribution of gross statutory claims costs, Table 7 below shows the current cost distribution for gig workers who are not entitled to workers' compensation.

	Direct costs ($m)	Indirect costs ($m)	Total cost ($m)	% of total cost
Community	$0.90	$6.42	$7.32	47%
Bailee Driver	$0.90	$4.28	$5.18	33%
Operators	$1.80	$1.19	$2.99	19%
TOTAL	**$3.60**	**$11.88**	**$15.48**	**100%**

Table 7: current cost distribution for bailee taxi and limousine drivers who are not entitled to workers' compensation

Table 7 shows that if bailee taxi and limousine drivers are covered by mandatory private personal accident insurance then only 47 per cent of the total economic cost of work-related injuries is borne by the community (compared to 49 per cent under option 1) and the workers; proportion is also reduced from 34 per cent under option 1 to approximately 33 per cent of the total cost.

Operators bear the remaining 19 per cent of total economic cost, up from 17 per cent under option 1.

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 a bailment arrangement

Impact on bailee taxi and limousine drivers

Benefits

- Fair and equal access to workers' compensation and entitlements for work-related injuries. Bailee taxi and limousine drivers will have access to the same level of entitlements as other Queensland workers, including access to no-fault statutory compensation, return to work and rehabilitation support and access to common law damages.

- Improved benefits and entitlements. The level of coverage and benefits available under the workers' compensation scheme is of a much higher standard than insurance policies currently available in the private market. **Attachment C** outlines a comparison between a policy currently available in the private market for the taxi and limousine industry and a standard WorkCover policy. Some of the key differences between current private insurance and the workers' compensation scheme include:

    - level of income replacement is far less in the private market

    - private insurance generally excludes psychological or psychiatric injuries (e.g. PTSD)

    - level of benefits or dependency payments in the event of a worker passing away is far less in the private market

    - rehabilitation and return to work assistance is capped under private insurance policies while WorkCover does not have any limit to these costs.

- No direct cost of work-related injury.

- Improved timeliness of medical intervention for work-related injuries. This option eliminates the need for bailee taxi and limousine drivers without private health insurance to rely on the public health system and support early medical treatment and support for work related injuries.

- Improved durable return to work outcomes. This option will allow for early intervention, and the provision of appropriate rehabilitation, vocational and other return to work services, and contribute to improvements in an injured worker's chance of achieving a durable return to work following their injury.

- Improved work health and safety outcomes. Workers' compensation premium is directly linked to injury rates and work health and safety of the business; the safer a business's work is the lower their premium will be. This nexus between safety and premium is a significant motivator to encourage improved health and

safety performance and will contribute to safer work environments for bailee taxi and limousine drivers.

- Early medical intervention and enhanced benefits structures will also improve secondary psychological impacts on the worker and their family.

Impacts

- No impact on industrial relations rights or entitlements. Workers' compensation legislation is beneficial in nature and is designed to cover the majority of workers in traditional employment relationships. However, as traditional employment relationships have fragmented since the mid-1980s, deeming provisions have allowed government to extend coverage to specific classes of workers who do not fit into a traditional contract of service, e.g. commission only salespersons or certain contractors who perform work personally. Such deeming provisions are limited in nature and generally have no effect on industrial rights beyond the workers' compensation scheme.

Impact on bailor taxi and limousine operators

Benefits

- Improved work health and safety outcomes, as operators will be incentivised through workers' compensation premiums or self-insurance arrangements to improve performance.

- Rehabilitation and return to work obligations are likely to reduce disruption to the workplace, increase productivity, reduce gig worker turnover, and improve gig worker morale. There is evidence that employer involvement in rehabilitation and return to work outcomes for workers reduces disruption to the workplace, increases productivity, reduces staff turnover and improves staff morale and workplace relations. Further, workers' compensation premium is directly linked to injury rates and work health and safety of the business; the safer a business's work is the lower their premium will be. This nexus between safety and premium is a significant motivator to encourage improved health and safety performance. Safer workplaces lead to less injuries and greater worker productivity.

Impacts

- Bailor taxi and limousine operators would be required to have a workers' compensation insurance policy with WorkCover Queensland or self-insure. This insurance would only cover the bailee, and other insurance would be required to cover a bailor driver. Total cost of premium is $3.6 million.

- The actual premium will vary from business to business depending on the business's predominant industry and the claims experience observed for each business. There is also the potential for an offset against any current personal accident insurance the business is currently purchasing as these insurance products will no longer be required. Business costs will increase:

- The cost of personal accident insurance currently available in the market averages about $550 per vehicle (which includes coverage for operator drivers). The estimated premium cost for taxi and limousine operators per vehicle/licence as a result of extending the workers' compensation scheme to taxi and limousine drivers is estimated at approximately $1,400 per year (equivalent to $1.751 per $100 of wages). It is noted that there are a large number of assumptions that have been made to determine this estimated figure, including the average earnings per vehicle and the work arrangements within the industry. There is also very limited information about claims experience in Queensland within the taxi and limousine industry, which makes it difficult to estimate a likely premium cost. It is also noted that the policy will only cover bailee drivers, which will result in the operator being required to purchase the mandatory WorkCover policy (for bailees) and potentially purchase a personal accident insurance for other drivers (i.e. owner operator driver).

- Most taxi and limousine operators also purchase public liability insurance that includes an indemnity for common law damages costs associated with injuries sustained by drivers. As the WorkCover policy will also indemnify for this cost there could be a further cost offset reduction available to the operator. Due to the wide availability of public liability insurance, and that this insurance provides indemnity for more than just common law damages associated with injuries to drivers, it is difficult to estimate the potential cost saving.

- Administrative costs of declaring remuneration and maintaining a workers' compensation insurance policy.

- There is a requirement for businesses to engage a RRTWC when a wages threshold has been exceeded, the threshold equates to approximately 50 full time workers for high risk industries and 100 full time workers for other industries. A business that exceeds these thresholds would already be a large sophisticated business with extensive human resource services to support the business. Further, the requirement to appoint a RRTWC is not a requirement to engage a new person to undertake this function as a current appropriately qualified person can be appointed by the business to undertake this function.

Impact on other operators in the personalized transportation industry

Benefits

- All Employers in the personalised transportation industry would be required to pay workers' compensation insurance premiums and factor these costs into their business, therefore removing any competitive advantage currently able to be gained by bailee taxi and limousine operators which elect not to obtain private accident insurance for bailee taxi and limousine drivers.

- If Option 2 for gig workers is adopted, Intermediaries in the personalised transportation industry would similarly not have a competitive advantage compared to bailee taxi and limousine operators as all would be required to factor mandatory premium costs into their business costs.

- Conversely, if Option 2 for gig workers is not adopted, Intermediaries in the personalised transportation industry would have a competitive advantage.

Impacts

- Nil additional costs. Employers in the personalised transportation industry continue to pay premiums under the *Workers' Compensation and Rehabilitation Act 2003* and associated administration costs.

- If Option 2 for gig workers is not adopted, there would be an inconsistent regulatory approach to compensation coverage for Intermediaries and taxi/limousine operators in the personalised transportation industry.

Impact on general accident and personal injury insurance providers

Benefits

- Nil.

Impacts

- 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 products and could provide personal accident insurance to operators.

Impact on community

Benefits

- The total cost of work-related injuries on the public health and private insurance schemes, and the public welfare system will be reduced to 41 per cent of the estimated total work-related injury costs would be transferred to the community (compared to 49 per cent under Option 1 and 47 per cent under Option 2).

- As drivers will not be reliant on private insurance and will be guaranteed a high standard of workers' compensation coverage, there is expected to be benefits to the community through cost savings to the public health system, private insurance schemes and the public welfare system.

- The workers' compensation scheme is able to achieve prompt injury intervention to facilitate an efficient and durable return to work after injury. In contrast, workers unable to access prompt medical and rehabilitation intervention are more likely to experience greater medical services needs over a longer period of time and are at greater risk of not being able to achieve a durable return to work, leading to greater medical and welfare costs being imposed on the public systems and in turn the community.

- The impact of work-related injury on families and the community will be reduced.

Impacts

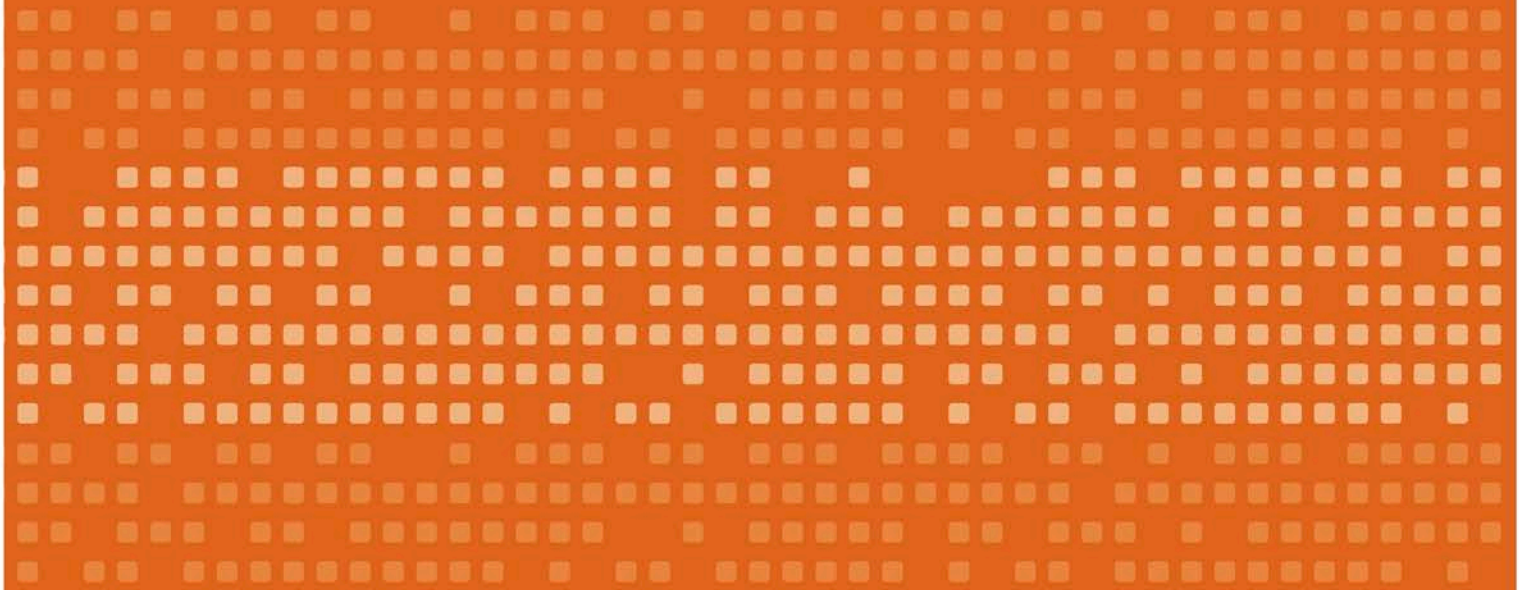
- No direct cost of work-related injury. In particular, lost earnings transferred to the public welfare system, private hospital stays and physiotherapy transferred to private health insurers, public hospital stays and other medical costs.

- The cost of taxi and limousine services may increase to accommodate insurance premiums and increased business costs. This cost is expected to be minimal.

Economic cost of work-related injury

	Direct costs ($m)	*Indirect costs ($m)*	*Total cost ($m)*	*% of total cost*
Community	$0.00	$6.42	$6.42	41%
Bailee Driver	$0.00	$4.28	$4.28	28%
Operators	$3.60	$1.19	$4.79	31%
TOTAL	**$3.60**	**$11.88**	**$15.48**	**100%**

Table 8: cost distribution for injured bailee taxi and limousine drivers if they were entitled to workers' compensation.



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