

Submission to the Transport and Public Works Committee on the Personalised Transport Ombudsman Bill 2019

1. The Transport Workers' Union of Australia, Queensland Branch (**TWU**) made a submission on the *Transport and Other Legislation (Personalised Transport Reform) Amendment Bill 2017* ("**the 1st Bill**"). So far as the TWU is aware, its submission (supported by the Queensland Council of Unions) was the only submission to seriously deal with driver conditions and dispute resolution.
2. The TWU is not aware of any other submissions made by any parties in the industry that dealt with these important issues.
3. The TWU was motivated to make these submissions because Driver conditions had been flagged at page 52 of the Opportunities for Personalised Transport ("**OPT**") review white paper.
4. For that reason, the TWU made extensive submissions about this issue.
5. Those submissions appear to have been largely ignored.
6. The proposal now being made concerning a "Personal Transport Ombudsman ("**PTO**") was not made or supported by any party making a submission on the Bill. It is a proposal of the Department of Transport and Main Roads. The TWU doesn't support the proposal for the following reasons:
 - The Industry does not have ownership of the proposal - the Department of Transport and Main Roads does. With respect, this is unlikely to auger well for the office if it does not have widespread industry support and is merely another public service SES position for some public servant to fill;
 - Not giving the PTO any statutory powers to arbitrate disputes is totally unsatisfactory. Large multi-national companies such as UberX and other local taxi entities are unlikely to make bone fide offers to settle matters if the PTO can be safely ignored once conciliation is over.

- The proposal is a miniscule response compared to the problems that exist in the industry. An exhaustive review of the conditions of “Bailee” taxi drivers was done in 2009/10 by the Queensland Workplace Rights Ombudsman, Mr. Don Brown. It disclosed a position described by the TWU, cited in the OPT review white paper at page 52 and included in the Committee’s report on the 1st Bill: *“The working conditions of taxi drivers are among the worst for any workers in Australia.”* With respect, this atrocious situation won’t be addressed by some Ombudsman with no power to arbitrate working conditions conciliating between parties who have notorious differences in bargaining power: Bailors and bailees.
- Clause 12 of the Bill is clearly directed at preventing the appointment of “outsiders” from the public service. In one egregious example, any union official, peak council representative or advocacy member involved in personalised public transport in the last 5 years is ineligible for appointment. A cursory glance down the rest of clause 12 reveals similar exclusions designed to inhibit a merit based appointment and promote public service cronyism.

Alternative measures for addressing personal transport workers’ conditions of engagement

7. It should be apparent from the above that the TWU sees no utility in creating the position of a PTO. Equally, there is no merit at all in referring what are mainly quasi industrial disputes to a non- specialist (in industrial matters) tribunal like QCAT.
8. The TWU puts again: the only means of addressing the malaise is to make provision for independent conciliation and arbitration of disputes, as well as the ability to set reasonable minimum conditions for rideshare and bailee taxi drivers.
9. Such a position is not without precedent. The passage of the *Road Safety Remuneration Act 2012* (Cth) and the establishment of the Road Safety Remuneration Tribunal (“**RSRT**”) demonstrated legislative acceptance of the nature of the road transport safety crisis and of the need to address the safety crisis. The explicit object of the Act was to promote safety and fairness in the road transport industry in various ways, including by removing remuneration-related incentives, pressures and practices that contribute to unsafe work practices.

10. That the RSRT and its underlying legislation was recently abolished does nothing to diminish the above points. That abolition was not motivated by academic or objective grounds. It was purely a political exercise.
11. Many workers in the transport industry are not employees and are engaged in a variety of non-traditional modes. Transport workers also perform a wide variety of tasks in a wide variety of environments using a range of vehicles. None of those matters prevented the RSRT from grappling with the issues. The Act and the RSRT demonstrated that it is possible to establish minimum labour standards designed to improve safety and fairness for all workers, regardless of the method of engagement or precise nature of the work.
12. There are also many State legislative equivalents. Western Australia has enacted the *Owner-Drivers (Contracts and Disputes) Act 2007* (W.A.). A recent review into the operation of the legislation stated:

“Insofar as the RFT Tribunal is concerned, the Review noted that “preliminary consultation with Stakeholders has indicated that the WA Tribunal has a high level of credibility and is valued by the Road Freight Transport Industry.” The review further stated that “even though many disputes are resolved without reference to the Tribunal, it is widely considered that the Tribunal is operating effectively and that it plays an important role in settling disputes between owner-drivers and hirers. The decline in the number of cases referred to the Tribunal since 2010 also suggests that it has value in contributing to self-regulation of disputes between those parties.”

(Chief Commissioner 2014:33)
13. Victoria has enacted broadly similar legislation: *Owner Drivers and Forestry Contractors Act 2005* (Vic.). In New South Wales, Chapter 6 of the *Industrial Relations Act 1996* (NSW) is a raft of legislative provisions analogous to the *Road Safety Remuneration Act 2012* (Cth). It essentially allows for the fixing of minimum remuneration for contractors providing services. It also allows for dispute resolution between parties by the means of conciliation. Under this legislative model, a determination for owner driver truck operators and taxi drivers has been made.
14. The rideshare and taxi industry are relatively homogenous by comparison to the general road transport industry. Establishing minimum remuneration standards for rideshare and taxi drivers, and thereby improving safety and fairness in the rideshare and taxi industry, is a more straightforward task than that facing the Road Safety Remuneration Tribunal. All that is required is an acknowledgement of the problem and a preparedness to deal with it.

15. As a salient example, in NSW the TWU administers the *Taxi Industry (Contract Drivers) Contract Determination 1984*, an industrial instrument made under Chapter 6 of the *Industrial Relations Act 1996* (NSW). As submitted above, there is no reason why similar legislation allowing such regulation in Queensland cannot be introduced.
16. There appears much precedent for (and little justification for opposing) giving the QIRC similar powers. To deny taxi drivers in Queensland such benefits is to treat them as second class citizens simply due to the State they reside in. Equally, it would naturally follow that the rideshare sector should be regulated by the same or a separate determination.
17. It is a draconian system where a rideshare driver can have their earnings and livelihood stripped from them without any evidence other than an allegation they have no opportunity to respond to. This bespeaks much of the need for an independent dispute tribunal for this sector.
18. The *Industrial Relations Act 2016* (Q.) should be amended to include provisions broadly analogous to Chapter 6 of the *Industrial Relations Act 1996* (N.S.W.), the *Owner Drivers and Forestry Contractors 2005* (Vic.) and the *Owner-Drivers (Contracts and Disputes) Act 2007* (WA). These State based Acts operate despite the *Independent Contractors Act 2006* (Cth.)¹ and there is no reason why a Queensland equivalent cannot be given the same status.
19. This would allow the QIRC to fix minimum terms of bailment contracts, rideshare contracts and conduct dispute resolution, by conciliation or by arbitration.
20. In a comprehensive review of the Taxi industry, Mr Don Brown's recommendations (referred to earlier in this submission) called for empowering a tribunal with dispute resolution functions "like the QIRC" to deal with disputes in the industry. Considering the manner that the NSW IRC has exercised its conciliation and arbitration powers under Chapter 6 of its legislation, there appears no reason why the QIRC cannot be similarly empowered.
21. If the Queensland government were to introduce legislation identical to Chapter 6 of the *Industrial Relations Act 1996* (NSW) into the *Industrial Relations Act 2016* (Q.), it would allow regulation to be made ensuring that these workers received fair and reasonable benefits. It would also allow the QIRC, as an "independent umpire" to examine and potentially arbitrate a

¹See s.7(2)(b) of the *Independent Contractors Act 2006* (Cth) and r.6(g) of the *Independent Contractors Regulations 2016* (Cth.)

raft of issues identified by Mr. Brown's report that, in the opinion of the TWU, have not been dealt with satisfactorily by the Queensland Government.

22. The taxi industry is not altogether unique in its combination of poor levels of remuneration and consequential safety concerns. In some respects, the problems facing the taxi industry are those facing the ridesharing industry generally, which is similarly affected by poor working conditions including low rates of pay, poor safety standards, operators unilaterally reducing fares with the effect of lowering driver's income and some drivers being deactivated from the system with no recourse or appeal.
23. Ridesharing undoubtedly represents a new challenge to an already dysfunctional industry. Rideshare drivers are not guaranteed any level of income. They do not receive any of the protections traditionally extended to employees and some other workers. They bear the entirety of the risk associated with their work both in terms of contingency of income and the absence of any security in work.
24. The precarious nature of the engagement of rideshare drivers is likely to aggravate rather than improve the industry's existing failures. But it is not the cause of the industry's problems. It simply represents a further step down the path already travelled by the industry.
25. A remarkable example of this is the catalyst for the class action litigation against UberX in California. Part of it concerns the litigants, as putative employees, recovering outlays. More startlingly, the other part concerns the putative employees recovering tips paid by passengers who clearly expected the tip to go to their driver. UberX rather arrogantly claimed these tips and did not pass them onto the individual drivers. It is an example of what can happen when greed goes unchecked due to the power imbalance in independent contracting.
26. Rideshare drivers and bailee taxi drivers should enjoy some minimum level of protection. The current malaise is directly attributable to the lack of any minimum levels of engagement conditions. There is no apparent reason for the unconscionable mistreatment of workers in the personal transport industry. Whether the current position is the result of historical accident, the determination of the industry to maximise profits or something in the nature of the work done is not important. What is important is the recognition of the problem and a determination to address it.

A. Lack of Blue Card training

27. It has been established by several reviews of the industry that taxi driving is a dangerous occupation. There is no reason to expect that rideshare drivers fare any better. Like the construction and transport industries, there is a strong case that rudimentary OHS “blue card” training ought to occur as a mandatory requirement before commencing work.

28. For example:

“Taxi drivers continue to experience threats to their personal safety, especially when driving late at night and many believe that drug and alcohol-fuelled behaviour is making their jobs more difficult than ever. Taxi customers are concerned about unsafe driver practices (such as driving while talking on the phone)”.

(Fels 2012:8)

29. The TWU conducts blue card training in the heavy transport industry under the auspices of the Transport Education Audit Compliance Health Organisation (“TEACHO”). It has the track record and experience to conduct blue card training for the taxi and rideshare sectors.

B. Summary and responses

30. The position of the industry may be summarised as follows:

- (a) The taxi industry is in crisis. Drivers suffer from very low pay and unsafe working conditions.
- (b) Because of poor working conditions the industry is unable to retain skilled drivers, which in turn contributes to poor safety and service outcomes. Low levels of pay are directly linked to low safety and service outcomes.
- (c) The position is complicated by the atypical work arrangements in the industry, most commonly the prevalence of bailment arrangements for engagement.
- (d) The arrival of rideshare and its attendant independent contracting is not the cause of the industry’s problems nor does it represent some fundamental change. Rather it involves the potential for even further decline in standards of safety and fairness, placing further downward pressure in a race to the bottom.

- (e) The introduction of a PTO is unlikely to make any headway into the problems facing the industry.
- (f) Legislation identical to Chapter 6 of the *Industrial Relations Act 1996* (NSW) into the *Industrial Relations Act 2016* (Q.) This would allow regulation to be made ensuring that these workers received “fair and equitable” conditions of engagement, as well as allowing conciliation of disputes.
- (g) Whatever arrangements are struck, new employees to the industry ought to be required to receive training blue card training on OHS issues in the industry. The TWU should be authorised to conduct this training, given its track record in successfully delivering blue card training under the auspices of TEACHO.

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References

- Brown, D. 2010 *Report on Investigation into the Taxi Industry in Queensland by the Queensland Workplace Rights Ombudsman*
- Fels, A. 2012 *Customers First: Service, Safety, Choice. Taxi Industry Inquiry*