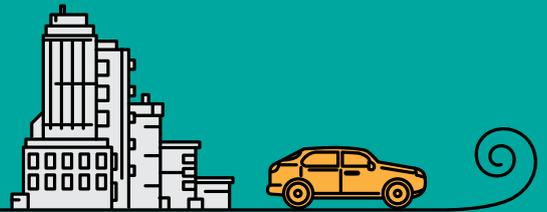


## IS REGULATION ENOUGH TO SATISFY PRUDENT EMPLOYERS WHOSE EMPLOYEES USE SHARE SERVICES?



**The share economy** has shaken traditional industries like taxis and hotels to the core. Failure to mobilise and move with the times has impacted these industries to their detriment, and created a media backlash against companies such as Airbnb and Uber, which have redefined the market.

What is quite apparent is that Australians are embracing these new services. Airbnb claimed in 2014 to have approximately 30,000 Australian host properties, according to a federal opposition discussion paper. Uber claims UberX (the company's low-cost option) now operates in seven cities across the nation and it celebrated its 10 millionth trip in Australia in October.

While the benefits of these shared services are fairly obvious—lower overheads, flexible employment, etc.—they currently exist in a regulatory grey area in many jurisdictions, with the self regulation side of the business providing a question mark over the level of work health and safety (WHS) these services provide for consumers using their services and for the workers operating the services.

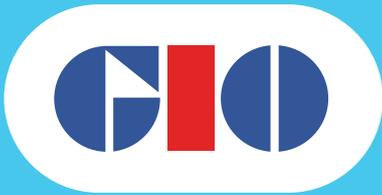
The sharing economy is described as the “rise of new business models (‘platforms’) that uproot traditional markets, break down industry categories, and maximise the use of scarce resources ...” according to the Institute of Public Affairs report ‘The Sharing Economy: How Over-regulation Could Destroy an Economic Revolution’.

“[It] coordinates exchanges between individuals in much the same way as a traditional market, but does so in a flexible, self-governing and potentially revolutionary way.”

At the moment the ride-sharing industry is unregulated in many jurisdictions—regardless, UberX and its drivers have safety responsibilities.

Uber in the US claims to have a \$1 million liability insurance and \$1 million underinsured/uninsured motorist policy for the passengers. So, passengers there are theoretically protected up to \$1 million—▶

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and possibly \$2 million depending on where the fault lies for the accident.

In Australia, however, every UberX trip is covered for up to \$20 million, says Uber Australia spokesperson Caspar Nixon.

Nixon says Australian UberX trips are underwritten by CGU, which provides cover for third party bodily injury and property damage, in addition to the driver's own insurance cover.

In addition to insurance, Sparke Helmore Partner Penny Stevens says the safety of passengers and drivers in Australia is covered under the *Model Work Health and Safety (WHS) Act*.

"The Model WHS Act in Australia is not just confined to employers—it applies to a person conducting a business or undertaking and they have an obligation to ensure the relevant safety policies and procedures are in place and adhered to," Stevens says.

Under the Act, a 'person conducting a business or undertaking' (PCBU) must meet certain safety standards and do what is 'reasonably practicable' to minimise the risks and ensure health and safety, whether that be UberX or its driver.

While most states have been slow to legislate specifically for sharing economy services, the ACT became the first Australian state or territory to regulate ride-sharing services at the end of October, with drivers now facing similar rules to the taxi industry. New South Wales followed in December. Other states are not far behind.

"[In the ACT] ridesharing vehicles and drivers will undergo accreditation and registration, including criminal and driving history checks—just like taxi drivers," according to the ACT Government. "Vehicles must be checked for safety and rideshare will be fully insured, ensuring safety for passengers, drivers and the community."

"Appropriate compulsory third-party (CTP) and property insurance would also be required to be in place. As well as having a zero blood alcohol level and being drug-free ... " says ABC News.

Customised CTP and property insurance for rideshare activity will also be introduced, the ACT Government adds.

In a letter to the transport ministers of Australia posted on its website, Uber promotes its own safety standards which state:

- "All Uber partner drivers must pass a rigorous criminal background and driving history review process to be able to use the platform.
- From request to drop-off, the entire Uber experience is geared towards ensuring reliability and safety. Upon requesting a ride, our technology provides the rider with their driver's name, photograph, licence plate, vehicle type and a contact number. The rider can see the vehicle approaching on a map and share their journey in real time with friends or loved ones using our Share My ETA feature.
- Every UberX trip is covered by our US\$5m contingency liability cover, in addition to each partner driver's own full insurance policies.
- Both riders and drivers must also provide feedback after each journey, which is reviewed on a continual basis by our local teams.
- As all of our transactions are cashless, drivers no longer need to fear being the target of thieves, with some cities seeing a 20 per cent reduction in taxi crime after Uber's arrival there."

Stevens says that while governments are clearly looking at how to regulate the industry, she questions whether regulation is enough to satisfy prudent employers whose employees use share services.

"I think employers should satisfy themselves that the provider is complying with OHS [occupational health and safety] legislation and obtain documented evidence that they have the systems and procedures in place to guarantee the safety of their employees. Employers should also seek insurance advice," she says. "Shared services have OHS obligations and they are required to comply with them under every state and territory's OHS Act so they need to demonstrate this to employers if employers are going to allow their employees to use these kinds of services."

Stevens views shared services as innovative and progressive, and a way to ▶





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increase competition in the market, and therefore says she wants shared services to be successful. "They do a very good job; they just need to fall into line with OHS legislation for an employer to be satisfied the shared services provider is as safe as reasonably practicable," she says. "It should be as easy as a simple checklist they run through themselves supported by any documentation that confirms insurance."

The rights of workers operating these services are also paramount. "Progress and change is a great thing for society but there needs to be protections to ensure that worker's rights, wages, safety and other conditions aren't decimated in the process," Australian Council of Trade Unions (ACTU) assistant secretary Scott Connolly says. "We can't be dazzled by new technologies and not protect the standards we value."

Union leaders held a symposium on the issue in November last year where it was agreed the current frameworks need to be remodelled. "We need to do more to rectify

this both from an industrial sense and equally from an OHS sense," Connolly says. "We need to explore what kind of regulatory frameworks or mechanisms we need to be able to ensure people's health and safety at work [because] what is currently there doesn't work and will not work going forward in these areas for people working in the shared economy."

However, Connolly says regulation is not the only solution. "I don't think it can just be a regulatory response because that is going to be latent in any effect that it is going to have on people working today or tomorrow in these areas. The capacity for the existing frameworks to respond and develop has a delay that isn't effective for people in work today to have any difference on their health and safety at work."

Connolly says union leaders will meet again in early 2016 for further discussions on the issue, including reframing the legal and regulatory mechanisms in the shared economy space. 



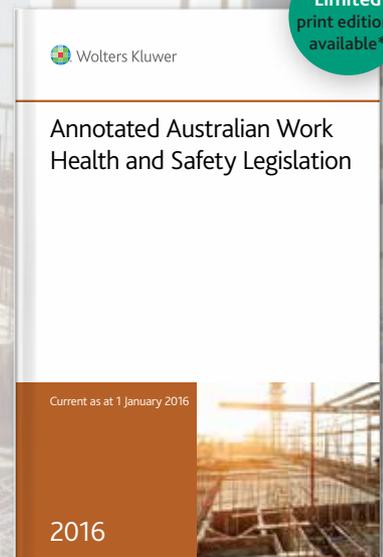
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