



## HIGH COURT OF AUSTRALIA

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#### Details of Filing

File Number: S170/2025  
File Title: Uber Australia Pty Ltd v. Chief Commissioner of State Revenue  
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FORM 27F

IN THE HIGH COURT OF AUSTRALIA  
SYDNEY REGISTRY

BETWEEN:

Uber Australia Pty Ltd  
Appellant

and

Chief Commissioner of State Revenue  
Respondent

### APPELLANT'S OUTLINE OF ORAL SUBMISSIONS

**Part I:** This outline of oral submissions is in a form suitable for publication on the internet.

**Part II:** Outline of appellant's oral submissions:

1. The Court of Appeal's decision to subject Uber to payroll tax runs counter to the integers of statutory construction: text and context; statutory purpose and mischief; and relevant decided cases. Uber is not, and was not, a party to any contract under which it is supplied, or has a right to be supplied, with the work-related services of drivers, and thus does not satisfy a basic statutory requirement.
2. Uber is in the business of providing, for reward from the driver, an electronic platform through which prospective riders and drivers are given the opportunity to engage with one another in order to arrange transportation services among themselves: Rider Contract, cl 2; Driver Contract, cl 1. Those contracts do not oblige drivers to drive or riders to ride. Nor do they oblige Uber to supply transportation services. Rather, this digital marketplace enables riders and drivers to make their own direct contract for the transportation of the rider in the driver's car: Driver Contract, cl 3.
3. Sections 32 to 35 form part of an integrated scheme in which the operative provision is s 35. The preceding provisions are definitional and are thus construed as if incorporated into s 35, having regard to the extrinsic material that illuminates the targeted mischief and the statutory purpose of s 35.
4. The extrinsic material shows that Pt 3 is aimed at contractor arrangements that are, in substance, disguised employment relationships where "the object of the contract is to obtain the labour of the subcontractor".

5. Each of these sections depends on a contractual requirement that “the services of persons for or in relation to the performance of work” be supplied to the deemed employer. The natural, contextual meaning of the words “under the relevant contract” are that the contract must be the source of the relevant right or obligation of the designated person to supply, or be supplied with, the “services of persons...”. That reading is confirmed by the authorities. The fact that riders and drivers are obliged by their contracts to adhere to standards of conduct if they wish to continue to use the platform does not satisfy this statutory requirement: cf AJ [104(2)] and [108].
6. The phrase, “services of persons...” means work-related services, and it embraces two cases: where all that is supplied is the performance of work; alternatively, where both work-related and other associated services are supplied: *Odco* at 612 (JBA 662). Here, under their direct contract, the driver supplied riders with the use of a car and their work in driving it. The driver did not supply those services to Uber.
7. None of the decided cases that have considered tripartite arrangements under Pt 3 support the Court’s interpretation of s 32(1)(b), or Pt 3 more generally. In each of *Odco*, *Thomas v Naaz*, *Optical* and *Loan Market*, there were contractual obligations by the worker in favour of the designated person to secure the supply of the worker’s services to the third party. There is no such obligation on the part of drivers in favour of Uber. Unlike Uber, the designated person in those cases used the workers’ contractual commitment to it to conduct a business that involved supplying the workers’ services to its customers.
8. The proposition at the heart of the Court’s construction of s 32(1)(b), and subsequently s 35, is that drivers supply services to Uber because, by driving, they enliven their separate obligation to pay for Uber’s services (see AJ [54] and [57]). Even more anomalously, the structure of the payment arrangements are central to that finding—if a rider were to pay a driver directly then “Division 7 would not apply” (AJ [62]). That construction is wrong for numerous reasons: it construes the sections in an isolated way; it ignores the explicit requirement that the services of persons must be supplied to Uber; it confuses two different payment flows that run in different directions; it makes liability for payroll tax turn on administrative payment arrangements, regardless of the fact that exactly the same services are supplied by drivers to riders whether the fare is paid directly or via the hands of Uber as a limited payment collection agent.
9. The Court’s approach to section 35 is untethered from its context and purpose. Properly construed, s 35 (1) and (2) identify a capacity and reason for the payment; that is, it must be in substance remuneration attributable to the work performed by the deemed

employee for the deemed employer. In contrast, the Court's errant approach has resulted in payroll tax being levied upon the amount of the fare paid by the rider to the driver, less Uber's platform fee, which has no relationship with any ordinary concept of remuneration paid by an employer to an employee for work done for the employer.

10. Alternatively, if supplied to Uber, the driver's services are within the exclusion in the second limb of s 32(2)(a) as they are services "ancillary... to the use of goods which are the property of that person [the driver]".
11. "Use" connotes utility. The rider uses the driver's vehicle as they obtain the utility of the vehicle (transportation to their chosen destination). The rider physically uses the vehicle, can select the vehicle class and can veto any specific vehicle by cancelling the ride: AB15 [36], [37], AB17 [51]; Rider contract p 13.
12. The Court accepted at AJ [233], [241], [245] that "ancillary to" has a range of meanings depending on context, including auxiliary, accessory and supplemental; it need not connote subordinate or subservient. In s 32(2)(a), "ancillary to" includes two bound up and equally essential items, as the Court found the driving service and use of car to be at AJ [261]. The purpose of the second limb is to exclude contracts for the operation of the contractor's own goods when personal services are inextricably bound up in their use and equally essential to their combined objective. However, the Court illogically leapt from an extrinsic statement at AJ [225] that the tax is intended to apply where labour is "key" to a conclusion at AJ [265] that the use of goods must have "primacy".
13. The Court erred in finding at AJ [261] that the driving is not ancillary to the use of the vehicle because they are the same. Being "inseparable and practically intertwined" does not connote that two things are identical.
14. The Court's superadded requirement that the use of goods must be the primary or dominant feature of the overall contract has no foothold in the section, which is directed to the connection between two identified things. It is also inconsistent with the Court's findings at AJ [233], [243] and [245].

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Neil Young KC  
Telephone: (03) 9225 7078  
Email: njyoung@vicbar.com.au