



## HIGH COURT OF AUSTRALIA

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#### Details of Filing

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IN THE HIGH COURT OF AUSTRALIA  
SYDNEY REGISTRY

BETWEEN:

**Uber Australia Pty Ltd**  
Appellant

and

**Chief Commissioner of State Revenue**  
Respondent

**RESPONDENT'S OUTLINE OF ORAL SUBMISSIONS**

**Part I: CERTIFICATION**

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1. This outline of oral submissions is in a form suitable for publication on the internet.

**Part II: OUTLINE OF PROPOSITIONS****THE CONSTRUCTION OF S 32(1)(B) – GROUND 1**

2. **The purpose of the relevant contract provisions is broader than tax avoidance:**  
Uber attempts to limit the scope of s 32(1)(b) by reference to the alleged purpose of Div 7. But the purpose of the relevant contract provisions is broader than tax avoidance (cf AS [22]). It is also to prevent the erosion of the payroll tax base resulting from businesses (like Uber) using contractors, instead of employees, as an integral part of their operations (RS [10], [12]; JBA 5, p1085, 1102; CA [20], [24]).
3. **Section 32(1)'s role in Div 7 tells against Uber's narrow interpretation of its terms:** Uber seeks to read down key terms in s 32(1): "services", "supply" and "under which". However, doing so is contrary to the purpose of s 32(1). Its role is to cast a wide net and capture all contracts under which a person provides work-related services to a business. Sections 32(2) and 35 then limit the range of payments that are subject to payroll tax. The combined effect of those sections achieves the statutory purpose (JBA 5, p1078-9).
4. The broad reach of s 32(1) is confirmed by the expansive definitions it incorporates. The ordinary meaning of "services" is "an act of helpful activity" (*IW* at JBA 3, p375). Section 31 defines "services" to further include the "results... of work performed".
5. **The drivers supply services to Uber within the meaning of s 32(1)(b):** The drivers supply "services" to the riders and Uber. The drivers supply a service to Uber because the result of the work that the drivers perform is that (RS [17], [61]-[62]):
  - (a) Uber receives a financial benefit in the form of a service fee – those fees are the foundation of its business (ABFM, p6 (c11 8.2, 10); CA [54]-[58], [60]-[61]).
  - (b) Uber receives an intangible benefit, namely, that the reliability and attractiveness of the Uber Rider app is enhanced (Notice of Contention Ground 1; CA [41], [48] [59]).
6. There is a sufficiently direct connection between the drivers' work and these benefits to satisfy the requirement that the drivers' work is the "supply" of a service to Uber (CA [60], RS [21]-[22]; *Odco* at JBA 4, p662). Supply is defined to include "provide" or "confer": s 31.

7. **The phrase “a contract under which” in s 32(1) does not limit s 32 to contracts that oblige workers to provide services:** The Court of Appeal correctly interpreted s 32(1) to extend to a contract: (a) which is the source of the right or obligation to supply services; or (b) which expressly refers to, and governs or controls, the supply of the services; or (c) which confers a right to be paid for supplying the services (CA [104]; RS [25]-[32]).
8. Section 32(1) also extends to contracts in accordance with which, or pursuant to which, the services are supplied, or which is the source of the practical opportunity, or the practical requirement, to provide the services (CA [105]; Notice of Contention Ground 2; RS [63]-[66]).
9. **The drivers supply services “under” their contracts with Uber:** The contracts govern (or at least regulate) how the drivers provide the services, confer a right to be paid for the services and are the source of the practical opportunity to provide the services (CA [107]-[108]; ABFM cll 1, 2, 3, 6, 8.2 p4).

### THE CONSTRUCTION OF S 32(2)(a)– GROUND 3

10. **The Court of Appeal correctly construed the phrase “ancillary to” in s 32(2)(a):** The Court of Appeal correctly found that the supply of services is “ancillary to” the use of goods when: (a) the use of the goods is the principal or dominant characteristic of the relevant contract; and (b) the services tend to assist that use of goods “in the sense of being subsidiary, incidental, accessory or auxiliary” (RS [33]; CA [259]).
11. **The statutory context supports the CA’s finding:** Section 35 provides that, under a contract where payment is made for the supply of work-related services and other matters (including the use of goods), only the part attributable to the services is taxable. However, if s 32(2)(a) applies in such a case, the whole payment is exempt including the part attributable to the performance of work. That supports a finding that the exempting characteristic in s 32(2)(a) – in this case, the use of the goods – is of such significance that a complete exemption is warranted (CA [224]).
12. **The ordinary meaning of “ancillary to” supports the CA’s finding:** The term “ancillary to” ordinarily means something providing support to a central service (JBA 5, p1114).
13. **The extrinsic material supports the CA’s interpretation:** The material demonstrates that the exemption was intended to apply where the supply or use of goods was a dominant feature of the contract and the supply of labour was not the key ingredient:

- (a) In the second reading speech accompany the introduction of the original Victorian bill, the Treasurer explained the rationale for the exemption: the legislation was intended to apply where the object of the contract was to obtain the labour of the contractor; therefore, an exclusion is provided where the labour is *only incidental* to the supply of goods under the contract (JBA 5, p1086)
- (b) The exemption was originally drafted to exclude services that were “incidental only” to the use of goods. Although the term was replaced with “ancillary”, the meaning relevantly remained the same (RS [30]; JBA 5, p1091, 1095).
- (c) The EM for the Victorian bill gave two examples of the exemption. In both examples the supply/use of goods was the dominant feature (JBA 5, p1078).

14. **Two previous CA judgments support the CA’s interpretation:** The CA in both *Smith’s* and *Downer EDI* reached similar views (JBA 4, 982 [95], 695 [138]).

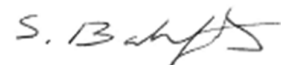
15. **In any event, Uber also failed on the other limb of the test:** The CA correctly found that the drivers’ services are not “subsidiary, incidental, accessory or auxiliary to the use of the car” because the driving services and the use of the car are one and the same. Uber’s notice of appeal does not challenge that finding (CA [261]; RS [33]; CAB 253).

#### **THE CONSTRUCTION OF S 35(1) OF THE ACT – GROUND 2**

16. **The payments Uber makes to drivers are “for or in relation to the performance of work”:** There is a close relationship between the drivers’ work and the payments (RS [52]; (CA [363]):

- (a) There is a causal relationship between the work and the payments. The drivers’ work causes Uber to pay the driver.
- (b) There is a direct relationship between the work and amount of the payment. The payment is calculated based on the distance and duration of the trip.

17. **Section 35(1) is not limited to payments that have the character of remuneration:** The words “in relation to” expand the scope of payments caught by s 35 beyond payments merely for remuneration (CA [358]; *Optical* at JBA 4, p727 [66]). In any event, the payments do have the character of remuneration (RS [53]).



Dated: 8 April 2026

Stefan Balafoutis SC