SHORT PARTICULARS OF CASES
APPEALS

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UBER AUSTRALIA PTY LTD v CHIEF COMMISSIONER OF STATE REVENUE (S170/2025)

Court appealed from: Supreme Court of New South Wales
Court of Appeal
[2025] NSWCA 172

Date of judgment: 1 August 2025

Special leave granted: 4 December 2025

Factual background

The respondent issued payroll tax assessments totalling $81,515,923 for the financial years 2015 to 2020 inclusive to the appellant (Uber), pursuant to the provisions of the *Payroll Tax Act 2007* ('PT Act'). On 24 April 2021, Uber objected to the assessments which were then disallowed by the respondent.

The PT Act imposes payroll tax on all taxable wages paid or payable by an employer, for or in relation to services performed by an employee. Division 7 s 32(1)(b) of the PT Act expands the scope of liability to pay payroll tax by capturing payments made by a person who, during a financial year, supplies services to another person under a relevant contract, under which the first person has supplied to the designated person the services of persons for or in relation to the performance of work. Section 35(1) then provides that if an amount is paid or payable by an employer during a financial year, for or in relation to the performance of work relating to a relevant contract, that amount is taken to be wages.

The appellant operates a rideshare system under its trading name, Uber. Uber uses two software applications; the 'Rider App' and 'Driver App' which connects riders and drivers respectively. A contract between Uber and the drivers facilitated access and use of the Driver App (Uber Contract). Under the Uber Contract, Uber collected the fares paid by the riders as the 'payment collection agent' and remitted the fare to the driver after deducting various service fees.

The respondent contends that Division 7 applies because the amounts collected by Uber are taken to be wages, as amounts paid or payable for or in relation to the performance of work relating to a relevant contract, that is, for the driving services provided by the drivers under the Uber Contract.

Procedural background

The primary judge (Hammerschlag CJ in Eq) found that payroll tax was not payable on almost all payments Uber made to its drivers and revoked the assessments issued by the respondent. His Honour considered that while the drivers supplied 'services' under the Uber Contract, the amounts paid by Uber were not 'for or in relation to the performance of work'. His Honour found that Uber is a mere agent who does not pay the driver for the 'service', instead, it is the rider who pays the driver, which is reflected in the agreement held under the Uber Contract. As for the relationship between Uber's payment and the work which the driver performed, his Honour found that 'there is no element of reciprocity or calibration between the driver and Uber or the rider and Uber with respect to the money paid by the rider', and therefore s 35(1) and the objects of Division 7 of the PT Act could not be satisfied in the context of the payments made by Uber to the driver.

The respondent appealed and Uber also cross-appealed from various orders made by Hammerschlag CJ. The respondent's appeal included challenging the findings of the primary judge that Uber was not liable to payroll tax under s 32(1)(b).

The New South Wales Court of Appeal (Ward ACJ, Mitchelmore JA, Kirk JA, Adamson JA and McHugh JA) unanimously allowed the appeal and dismissed the cross-appeal with costs. In respect of s 32(1)(b), their Honours held that the driving service is plainly a service to which the section applies, as it is the Uber Contract which governs and controls the driver's performance and allows the driver to receive its share of pay. However, their Honours held that Hammerschlag CJ erred in his construction of the words 'for in or in relation to the performance of work'. Contrary to the primary judge, their Honours found that there is no requirement for 'reciprocity or ascertainable calibration' between the money paid and the work done, and that there was no reason for s 35(1) to be read narrowly as such. Further, their Honours found that the fact that Uber has an accounting obligation to drivers does not change the nature of payments as being in relation to the performance of work. As to whether the Uber Contract is excluded from being a 'relevant contract' under s32(1)(b), their Honours held that exemption cannot apply as the driving service provided under the Uber Contract is not ancillary to the use of the drivers' cars.

This appeal

Uber submits that the Court of Appeal erred in its statutory interpretation of phrases in Division 7 of the PT Act and that Uber should not be liable for payroll tax. The respondent submits that whilst the Court of Appeal's conclusion was correct, the Court of Appeal should have found further grounds to satisfy s 32.

The grounds of appeal are:

1. The Court of Appeal erred in its construction of s 32(1)(b) of the PT Act by holding that the subsection was satisfied because the drivers' supply of their driving services to riders triggered Uber's rights or obligations to collect fares from riders on behalf of drivers; to deduct the service fee owed by drivers to Uber from those fares; and to remit the balance to drivers; and thus amounted to 'doing something that is necessary for Uber to derive service fees and to continue its business'.

2. The Court of Appeal erred in its construction of s 35(1), by holding that the remittances by Uber to drivers of funds collected on their behalf from riders were amounts 'paid or payable' by Uber to the drivers 'for or in relation to the performance of work relating to a relevant contract'.

3. The Court of Appeal erred in its construction of the s 32(2)(a) exception for services 'ancillary … to the use of goods', by holdings that it would not apply unless the use of goods is 'the principal or dominant characteristic of what occurred under the contract in question'.

By notice of contention, the respondent seeks to raise the following grounds:

1. The Court of Appeal should have further found that s 32(1)(b) of PT Act was satisfied because the act of a driver transporting a rider fulfilled the request made by the rider for a trip, which in turn increased the reliability and attractiveness of Uber's platform.

2. The Court of Appeal should have further found that the words 'a contract under which …' in s 32(1) of the PT Act extended to (i) a contract in accordance with which, or pursuant to which, the services are supplied; or (ii) a contract which is the source of the practical opportunity, or the practical requirement, to supply the services.

COAL MINING INDUSTRY (LONG SERVICE LEAVE FUNDING) CORPORATION v ORICA AUSTRALIA PTY LTD (S161/2025)

Court appealed from: Full Court of the Federal Court of Australia [2025] FCAFC 65

Date of judgment: 17 July 2025

Special leave granted: 6 November 2025

Factual background

The appellant administers a portable long service leave scheme for employees in the black coal mining industry. The respondent conducted a business which involved the supply of shotfiring and explosive services at black coal mine sites in New South Wales and Queensland. 'Shotfiring' is part of the process of extracting coal, and in open cut black coal mining covers a collection of activities by which a black coal seam is exposed by the detonation in holes in the ground of high-powered explosives. The respondent employed a number of employees, referred to collectively as 'shotfirers', who were engaged in various roles involved in the shotfiring process.

In 2006, the respondent purchased a business ('Minova'), unrelated to the respondent's shotfiring and explosives business. In 2013, the respondent integrated the Minova business and the employees of Minova became employees of the respondent. In early 2022, the respondent divested itself of Minova. The appellant formed the view that when the respondent owned Minova, certain employees performing work in the Minova business were employed in the black coal mining industry and were 'eligible employees' covered by the scheme. It issued a notice to produce to the respondent to seeking information on the question of whether its shotfirers were caught by the scheme.

The legislative setting

The issue in this appeal is whether the respondent's shotfirer employees were 'eligible employees' under s 4(1) of the *Coal Mining Industry (Long Service Leave) Administration Act 1992* (Cth) ('the Act') and the interpretation of 'black coal mining industry' as defined in s 4 of the Act and in cl 4 of the Black Coal Mining Industry Award 2010 as in force on 1 January 2010 ('the Award').

Section 4 of the Act defines 'eligible employee' as including:

a. an employee who is employed in the black coal mining industry by an employer engaged in the black coal mining industry, whose duties are directly connected with the day to day operation of a black coal mine; or

b. an employee who is employed in the black coal mining industry, whose duties are carried out at or about a place where black coal is mined and are directly connected with the day to day operation of a black coal mine; or …

'Black coal mining industry' is defined in s 4 as having the same meaning as in the Award. Clause 4 of the Award lists several exceptions to the meaning of 'black coal mining industry' including cl 4.3(g) which provides: '*The black coal mining industry does not include: … (g) the supply of shotfiring or other explosive services by an employer not otherwise engaged in the black coal mining industry*."

Procedural background

In 2021, the respondent challenged the notice to produce in the Federal Court of Australia arguing that it was invalid as the shotfirers who worked for it were not 'eligible employees'.

The primary judge determined that shotfirers employed by the respondent were 'eligible employees' within the meaning of s 4(1) of the Act after concluding that Minova's only business in Australia was the provision of services to operators of black coal mines and the substantial character of the Minova business was in the black coal mining industry. His Honour considered the definition of 'eligible employee' had two limbs, which his Honour labelled 'the employer limb' and 'the location limb', which meant that it either requires an employer to have a particular quality (i.e. be engaged in the black coal mining industry) or require an employee work at or near a particular location (i.e. a black coal mine). He found that cl 4.3(g) of the Award had no application to the location limb, as the intention and structure of the definition in the Act demonstrated that it was intended that the qualities of the employer were irrelevant to the location limb. Therefore, his Honour concluded that the employees of the respondent who performed shotfiring services at black coal mines in New South Wales as and from 2013 were eligible employees and that the respondent had failed to pay the appellant the levies due.

The respondent successfully appealed to the Full Court of the Federal Court arguing the primary judge erred by failing to apply cl 4.3(g) of the Award and determining that whether the respondent was 'otherwise in the black coal mining industry' was to be determined by reference only to the respondent's Minova business. The Full Court held that cl 4.3(g) operated to exclude the respondent's shotfirers from the black coal mining industry for the period that the Minova business was not integrated with the respondent's operations.

This appeal

In this appeal, the appellant argues that the structure of the definition in s 4(1) of the Act, specifically the distinct employer and location limbs, gives rise to a clear implication that the character of an employer was not intended to be relevant to the location limb. It says that the consequence of the Full Court's decision is that, contrary to the purposes of the portable scheme, employees who perform shotfiring (or related work) at black coal mines (in a manner directly connected with the day to day operation of that mine) may be excluded from the scheme by reason simply of their employer engaging in enterprises wholly unrelated to the work of their employees. It says this is inconsistent with the critical feature of the scheme which is intended to be portable, and an employee who meets the location limb should remain eligible regardless of a change in their employer (or character of their employer).

The respondent contends that the Full Court was correct to conclude that cl 4.3(g) applies because the Act defines eligible employees with reference to the scope of the black coal mining industry as defined in the Award. It argues cl 4.3(g) is essential to the definition and scope of the black coal mining industry, and the exclusion is consistent with the history and industrial context of the Award. It submits that there is nothing in the text, purpose or context of the Act to justify its exclusion in relation to the location limb.

The respondent seeks special leave to cross-appeal from the Full Court's conclusion that the respondent was 'otherwise engaged in the black coal mining industry' for the purposes of cl 4.3(g) of the Award by reason of the Minova business.

The Mining and Energy Union and Dyno Nobel have been granted leave to intervene in support of the appellant and respondent respectively.

The grounds of appeal are:

1. The Full Court erred in finding that an employee employed in shotfiring and related work at a black coal mine in a manner directly connected with the day to day operation of that mine will not satisfy the definition of 'eligible employee' in s 4(1)(b) of the Act, by reason of the operation of cl 4.3(g) of the Award 2010 (as in force on 1 January 2010), because of activities of their employer completely unrelated to that of the employee.

2. The Full Court should have held that, on its proper construction, the exclusion from the definition of 'black coal mining industry' of the supply by an employer of shotfiring services at cl 4.3(g) of the Award does not affect the enquiry at s 4(1)(b) of the definition of 'eligible employee' in the Administration Act, and in particular whether the employee is employed in the black coal mining industry, because:

    a. only s 4(1)(a) of the definition of 'eligible employee' requires the employer to be 'engaged in the black coal mining industry', whereas under s 4(1)(b), it does not matter who the employer is or the industry in which it is engaged; and

    b. the exclusion in cl 4.3(g) of the Award is directed to the question of whether an employer who is supplying shotfiring services is engaged in the black coal mining industry for the purposes of s 4(1)(a), not whether an employee is employed in that industry for the purposes of s 4(1)(b).

3. Alternatively, the Full Court should have held that the definition of 'black coal mining industry' in the Award does not apply if the contrary intention appears from the face of the statute, and the structure of the definition of 'eligible employee' gives rise to a clear implication that the character of an employer was not intended to be relevant to s 4(1)(b), with the consequence that the reference to 'black coal mining industry' in the phrase 'an employee who is employed in the black coal mining industry' in s 4(1)(b) should be read as having the same meaning as it bears in the Award, but without cl 4.3(g).

The ground of cross-appeal is:

1. The Full Court erred in determining that the Respondent was ‘otherwise engaged in the black coal mining industry’ for the purposes of cl 4.3(g) of the Award by reason of its ‘Minova’ business.

THE KING v HCZ (B44/2025)

Court appealed from: Supreme Court of Queensland Court of Appeal [2025] QCA 147

Date of judgment: 15 August 2025

Special leave granted: 4 December 2025

Background

On 11 March 2024, the respondent pleaded guilty to four charges including burglary by breaking, in the night, while armed and in company, murder, malicious act with intent and assault occasioning bodily harm while in company arising out an incident that took place on 26 December 2022. Late that night, the respondent, then aged 17 years and eight months, entered a home armed with a knife. The occupants in the house awoke to find the respondent and his accomplice. A struggle ensued with the husband and wife which spilt out onto the front lawn. The respondent stabbed the wife in the chest and her husband in the back, forcing him to the ground where the respondent kicked him several times before fleeing. The wife was left unconscious and not breathing when emergency services arrived. She died later that morning in hospital.

The legislative setting

Pursuant to s 176(3) of the *Youth Justice Act* (Qld) ('the Act') a child may be detained for no longer than 10 years, unless the offence for which they are to be sentenced is an offence for which a person sentenced as an adult would be liable to life imprisonment, and the court considers the offence to be a particularly heinous offence, having regard to all the circumstances. Under s 227(1) of the Act a child sentenced to a period of detention must be released after serving 70 per cent of the period, while s 227(2) empowers a court to order that a child be released from detention after serving less than 70 per cent if the court considers there are 'special circumstances'.

Procedural background

The sentencing Judge (Sullivan J) determined that the offence of murder committed by the respondent was 'particularly heinous' and sentenced the respondent to 14 years' detention. His Honour acknowledged that there had been an early plea of guilty, that the respondent had a deprived upbringing, that he had expressed remorse and that there were positive signs of rehabilitation, however, his Honour found there were no special circumstances that warranted a reduction in the time that the respondent would have to spend in detention taking into account his background of repeated offending, that the plea of guilty had been made in the face of an overwhelmingly strong case, and that the respondent was at the upper end of the age where he would be treated as a child.

The respondent appealed against his sentence on various grounds, including that the sentencing discretion has miscarried and the sentence was manifestly excessive.

By majority, the Court of Appeal (Boddice JA, with Freeburn J agreeing) found that the sentence of 14 years was not manifestly excessive, but having the respondent serve 70 per cent of that sentence (pursuant to s 227(1) of the Act) did render the sentence manifestly excessive. The majority found the sentencing judge 'ought' to have found that there were special circumstances based on the early plea, his genuine remorse and prospects of rehabilitation. Justice Bond dissented on the basis he was unable to conclude that the outcome imposed by the sentencing judge was so unjust or plainly unreasonable to infer any error. The Court of Appeal altered the respondent's sentence so that he would be released after having been detained for 60 per cent (rather than 70 per cent) of his sentence.

This appeal

The issue in this appeal is whether the correct appellate standard was applied and whether in this case it was reasonably open to the sentencing judge to have found that there were no special circumstances. This appeal raises the question of whether the 'correctness standard' applies to the review of a sentencing judge's state of mind as to the existence, or lack, of special circumstances within the meaning of s 227(2) of the Act, with only one correct outcome, or whether the principles stated in *House v The King* (1936) 55 CLR 499 apply, which limits the circumstances in which an appellate court can intervene to correct errors in the exercise of sentencing discretion and does not permit interference with a sentence just because an appellate court would prefer a different conclusion.

The appellant submits the majority erred by treating the sentencing judge's finding that there were no 'special circumstances' as an error because they applied the correctness standard, i.e. finding that there was only one legally permissible outcome, when they should have applied the *House v The King* standard, which tolerates a range of outcomes. The appellant argues that the question of whether there were special circumstances is one that involves the exercise of discretion, and specifically part of the sentencing discretion, that does not demand a unique outcome but rather empowers a judge to depart from a default statutory rule if that judge forms a particular opinion. It argues there is no fixed rule that dictates the outcome and that such a decision could only be successfully challenged on appeal if it was shown that the discretion was not exercised correctly.

The respondent counters that the majority in the Court of Appeal did not apply the correctness standard. He submits that the use of the word 'ought' by Boddice JA in its proper context did not indicate the application of the correctness standard, and rather the reasoning of the majority demonstrates the error inferred was that the sentencing judge had allowed the seriousness of the offending to overwhelm the relevant mitigating factors.

The grounds of appeal are:

1. The Court of Appeal erred by applying the wrong standard of review to the issue of whether the learned sentencing judge had erroneously reached a state of satisfaction that there were special circumstances within the meaning of s 227(2) of the Act.

2. The Court of Appeal ought to have held that it was open to the sentencing judge to have reached a state of satisfaction that there were no special circumstances within the meaning of s 227(2) of the Act.