HIGH COURT OF AUSTRALIA

GAGELER CJ,
GORDON, EDELMAN, STEWARD, GLEESON, JAGOT AND BEECH-JONES JJ

UBER AUSTRALIA PTY LTD APPELLANT

AND

CHIEF COMMISSIONER OF STATE REVENUE RESPONDENT

Uber Australia Pty Ltd v Chief Commissioner of State Revenue
[2026] HCA 40
Date of Hearing: 8 April 2026
Date of Judgment: 4 November 2026
S170/2025

ORDER

Appeal dismissed with costs.

On appeal from the Supreme Court of New South Wales

Representation

N J Young KC, J R J Lockhart SC and C A Burnett SC with B Mostafa and D R Lewis for the appellant (instructed by Ashurst Australia)

S W Balafoutis SC with D H Mitchell and C J Chiam for the respondent (instructed by Crown Solicitor for NSW)

Notice: This copy of the Court's Reasons for Judgment is subject to formal revision prior to publication in the Commonwealth Law Reports.

CATCHWORDS

Uber Australia Pty Ltd v Chief Commissioner of State Revenue

Payroll tax – Relevant contracts – Taxable wages – Where Uber operated rideshare system – Where Uber and drivers entered into contracts ("Driver Contracts") – Where rider and driver entered into separate contract – Where drivers supplied driving services – Where contract between driver and rider made through Uber applications – Where Uber remitted fares to drivers – Where liability for payroll tax imposed on all taxable wages paid or payable by employer – Where liability for payroll tax depended on whether amounts were paid or payable for or in relation to work relating to "relevant contract" – Whether Driver Contracts are "relevant contracts" – Whether driving services ancillary to use of goods – Whether fares Uber remitted to drivers deemed to be wages – Whether Uber liable for payroll tax under *Payroll Tax Act 2007* (NSW).

Words and phrases – "amounts paid or payable", "ancillary services", "contractor", "contractor provisions", "contractual obligation", "delivery services", "designated person", "driving services", "independent contractor", "payroll tax", "performance of driving services", "performance of work", "relevant contract", "remitted fares", "rideshare system business", "services connecting drivers and riders", "supplied with services", "third party contractors", "transportation services", "use of goods", "wages paid or payable".

Payroll Tax Act 2007 (NSW), ss 32, 35.

1 GAGELER CJ. The *Payroll Tax Act 2007* (NSW) ("the Act") imposes payroll tax on "wages" and liability to pay payroll tax on an "employer" who pays "wages". "Contractor provisions" in ss 31 to 36 of the Act extend the meanings of those terms for the purposes of the Act.

2 The contractor provisions were introduced into payroll tax legislation first in Victoria[1] and then in New South Wales[2] towards the end of the last century to "capture several means of disguising the employer-employee relationship by contractual arrangements which [had then] been increasingly resorted to ... by persons seeking to defeat the objects" of that earlier legislation.[3] "[A]ccepting that the fixity or variability through time of the content of any statutory language is a question of interpretation",[4] the "indeterminate scope" and "high level of generality" of the contractor provisions combine with that object of preventing changes in workplace practices from eroding the payroll tax base to indicate a legislative intention that the "particular application" of the contractor provisions "may vary over time".[5] The contractor provisions as re-enacted in the Act have continued "always speaking in the present"[6] to participants in the gig economy which emerged in this century.

3 The ultimate question in this appeal is whether the Court of Appeal of the Supreme Court of New South Wales (Ward A-CJ, Mitchelmore, Kirk, Adamson and McHugh JJA)[7] was correct to conclude that the contractor provisions operated during the 2015 to 2020 financial years to render Uber Australia Pty Ltd ("Uber")

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1 *Pay-roll Tax (Amendment) Act 1983* (Vic), amending the *Pay-roll Tax Act 1971* (Vic).

2 *Pay-roll Tax (Amendment) Act 1985* (NSW), amending the *Pay-roll Tax Act 1971* (NSW).

3 New South Wales, *Pay-roll Tax (Amendment) Bill 1985*, Explanatory Note at 1. See *Downer EDI Engineering Pty Ltd v Chief Commissioner of State Revenue* [2019] NSWSC 743 at [101]-[106].

4 *R v A2* (2019) 269 CLR 507 at 552 [141]. See also *Forsyth v Deputy Commissioner of Taxation* (2007) 231 CLR 531 at 548 [39].

5 *Deputy Commissioner of Taxation v Clark* (2003) 57 NSWLR 113 at 145 [142].

6 *Paliflex Pty Ltd v Chief Commissioner of State Revenue (NSW)* (2003) 219 CLR 325 at 338 [9], quoting *Attorney-General for Queensland v Attorney-General for the Commonwealth* (1915) 20 CLR 148 at 174. See also *Port of Newcastle Operations Pty Ltd v Glencore Coal Assets Australia Pty Ltd* (2021) 274 CLR 565 at 594 [86].

7 *Chief Commissioner of State Revenue v Uber Australia Pty Ltd* (2025) 118 NSWLR 164.

an "employer" liable to pay payroll tax on "wages" constituted by so much of the amounts which Uber collected from riders pursuant to standard form Rider Contracts that Uber paid to drivers pursuant to standard form Driver Contracts as were determined by the Chief Commissioner of State Revenue to have been attributable to the performance of work by those drivers. Uber collected and paid those amounts in the operation of Uber's business of operating a digital "rideshare system".[8]

4 The conclusion reached by the Court of Appeal was correct. The contractor provisions, the standard form Rider Contract and the standard form Driver Contract being comprehensively described by Gordon, Edelman, Gleeson, Jagot and Beech-Jones JJ, I move immediately to explain my reasoning on the three specific issues raised by Uber's grounds of appeal.

The Driver Contract was a "relevant contract"

5 The first two issues concern whether the Driver Contract met the definition of a "relevant contract" in s 32 of the Act, so as to have resulted in Uber being taken pursuant to s 33 to be an "employer" and the driver being taken pursuant to s 34 to be an "employee" for the purposes of the Act, by reference to the "driving service" found by the primary judge (Hammerschlag CJ in Eq)[9] and accepted by the Court of Appeal[10] to have been provided by drivers to riders in the operation of Uber's digital rideshare system. The driving service was the service of a driver transporting a rider from a specified pick-up point to a specified destination by performing the work of driving using the driver's own motor vehicle.

6 This Court's decision in *Accident Compensation Commission v Odco Pty Ltd*,[11] concerning the construction of materially identical statutory language in the *Accident Compensation Act 1985* (Vic), makes plain that the fact that the driving service involved the performance of work by the driver is sufficient for the driving service to be characterised as having been "for or in relation to the performance of work" within the meaning of s 32 of the Act. *Odco*[12] also makes plain that the fact

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8 *Chief Commissioner of State Revenue v Uber Australia Pty Ltd* (2025) 118 NSWLR 164 at 176 [26].

9 *Uber Australia Pty Ltd v Chief Commissioner of State Revenue* [2024] NSWSC 1124 at [73], [88].

10 *Chief Commissioner of State Revenue v Uber Australia Pty Ltd* (2025) 118 NSWLR 164 at 178 [37], 181 [54].

11 (1990) 64 ALJR 606 at 612; 95 ALR 641 at 650-651.

12 (1990) 64 ALJR 606 at 613; 95 ALR 641 at 652. See also *Thomas and Naaz Pty Ltd v Chief Commissioner of State Revenue* [2023] NSWCA 40 at [41], [55].

that the driver provided the driving service to the rider did not mean that the driver did not simultaneously "provide" and therefore "supply" the same driving service "to" Uber.[13] In particular, *Odco* demonstrates that a work-related service can be provided "to" someone to whom the provider has a contractual obligation to provide the service and simultaneously "to" someone else who receives the physical benefit of the provision of the service.

7 The first issue is whether the Driver Contract answered the description in s 32(1)(b) of the Act of a contract "under" which the driver supplied the driving service to Uber. As the Court of Appeal recognised,[14] "under" is a "relational term" to which cautionary observations of French CJ in *R v Khazaal*[15] are apposite. Having made the point that "[t]he nature and breadth of the relationships they cover will depend upon their statutory context and purpose", his Honour observed that "[g]enerally speaking it is not desirable, in construing relational terms, to go further than is necessary to determine their application in a particular case or class of cases" lest "[a] more comprehensive approach ... be confounded by subsequent cases".[16]

8 Recognising "under" to have the potential to denote a variety of relationships between a "contract" (defined to include "an agreement, arrangement or undertaking, whether formal or informal and whether express or implied"[17]) and "services" (defined to include "results (whether goods or services) of work performed"[18]) in the context of the contractor provisions, it is unnecessary and accordingly undesirable for the purpose of applying the term to the relationship between the Driver Contract and the driving service to go beyond the narrowest of the potential denotations of the term identified by the Court of Appeal.[19] The narrowest denotation, which Uber does not dispute, is that a service is supplied

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13 See ss 31 (definition of "supply") and 32(1)(b) of the Act.

14 *Chief Commissioner of State Revenue v Uber Australia Pty Ltd* (2025) 118 NSWLR 164 at 191 [105].

15 (2012) 246 CLR 601.

16 (2012) 246 CLR 601 at 613 [31].

17 Section 31 of the Act (definition of "contract").

18 Section 31 of the Act (definition of "services").

19 *Chief Commissioner of State Revenue v Uber Australia Pty Ltd* (2025) 118 NSWLR 164 at 191 [104].

"under" a contract if the contract is the source of an obligation to provide the service.[20]

9 The Driver Contract answered the description of a contract "under" which the driver supplied the driving service to Uber according to that denotation by reason of the Driver Contract having obliged the driver to provide the driving service. It did this by obliging the driver to transport the rider from the specified pick-up point to the destination specified by the rider. The Driver Contract imposed no obligation on the driver to pick up any rider. Once the driver picked up a rider, however, an obligation on the part of the driver to transport the rider to the destination specified by the rider was encompassed in the express acknowledgement and agreement of the driver by the terms of the Driver Contract "that all [riders] should be transported directly to their specified destination, as directed by the [rider], without unauthorised interruptions or stops".[21] As a matter of "commercial efficacy or common sense",[22] the contractual obligation expressed in those words cannot be construed to have constrained the discretion of the driver as to the route to be taken to the specified destination yet to have left to the unconstrained discretion of the driver whether the rider was to be transported to the specified destination at all. It was plainly in the commercial interests of Uber to bind the driver to ensure that the transportation service, once started, was completed.

10 That the Driver Contract should be construed to have imposed such a contractual obligation on the driver to transport the rider is not inconsistent with the contractual description of the driver as "an independent provider of peer-to-peer passenger transportation services",[23] nor with the express acknowledgement and agreement of the driver that the driver's provision of the transportation services so described "create[d] a legal and direct business relationship between [the driver] and the [rider]" and that the driver was to "have the sole responsibility for any obligations or liabilities to [riders] ... arising from [the] provision of [such services]".[24] There is no reason in principle why the driver's transportation of the rider to the destination specified by the rider should not simultaneously have

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20 *Chan v Cresdon Pty Ltd* (1989) 168 CLR 242 at 249; *Federal Commissioner of Taxation v Sara Lee Household & Body Care (Australia) Pty Ltd* (2000) 201 CLR 520 at 539 [49]; *Chief Commissioner of State Revenue v Downer EDI Engineering Pty Ltd* (2020) 103 NSWLR 772 at 800-801 [123]-[124].

21 Clause 3 of the Driver Contract.

22 *Gollin & Co Ltd v Karenlee Nominees Pty Ltd* (1983) 153 CLR 455 at 464.

23 Clause 1 of the Driver Contract.

24 Clause 3 of the Driver Contract.

fulfilled the contractual obligation of the driver to Uber under the Driver Contract as well as any obligation to the rider that the driver may have assumed under any contract or arrangement between the driver and the rider as might be implied from their conduct. Further, there is no reason in principle why failure of the driver to transport the rider to the designated destination should not have rendered the driver in breach of distinct and concurrent obligations to Uber and to the rider.

11 The second issue is whether the Driver Contract nevertheless answered the description in s 32(2)(a) of the Act of a contract under which Uber was "supplied with services for or in relation to the performance of work that [were] ancillary to the ... use of goods [being a motor vehicle] which [were] the property of [the driver]" so as to have been excluded from the definition of a "relevant contract". The issue arises in circumstances in which the primary judge found[25] and the Court of Appeal accepted[26] that the performance of work by the driver and the use of the driver's motor vehicle were inseparable and equally essential elements of the provision of the driving service by the driver such that neither element could be characterised as ancillary to the other.

12 There is no error in that approach. Section 32(2)(a) of the Act must be interpreted, especially in light of s 35(2), as contemplating the performance of work being just one element of a service that is properly characterised as a service for or in relation to the performance of work. The legislative history recounted by Gordon, Edelman, Gleeson, Jagot and Beech-Jones JJ[27] demonstrates that the purpose of s 32(2)(a) was to ensure that payroll tax would be payable only where the performance of work was "the key ingredient of the contractual arrangement" and that the word "ancillary" was adopted in the drafting in preference to the word "incidental" to ensure that payroll tax would not be payable simply because the performance of work was an essential ingredient of the contractual arrangement.[28] The structure of s 32(2)(a) makes plain, however, that the exclusion it effects from the definition of a "relevant contract" has no application unless the performance of work is ancillary to another element of the contractual arrangement relevantly

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25 *Uber Australia Pty Ltd v Chief Commissioner of State Revenue* [2024] NSWSC 1124 at [127].

26 *Chief Commissioner of State Revenue v Uber Australia Pty Ltd* (2025) 118 NSWLR 164 at 222 [261], 223 [265].

27 See [79]-[81]. See also *Chief Commissioner of State Revenue v Uber Australia Pty Ltd* (2025) 118 NSWLR 164 at 213-214 [225]-[227].

28 Victoria, Legislative Assembly, *Parliamentary Debates* (Hansard), 22 November 1983 at 2085.

constituted by the use of the goods which are the property of the person performing the work.

13 Inherent in the relationship between the performance of work and the use of property connoted by "ancillary" is that the use of property must be of greater contractual significance and correspondingly that the performance of work must be of lesser contractual significance. That may well be the case where the contract is for the hire of a crane with a crane driver or for the testing of certain machinery on equipment which needs to be operated by staff. It is not the case where the relevant contractual obligation is to transport a rider by driving the driver's own motor vehicle from one location to another: the use of the vehicle is not of greater contractual significance than the performance of the work of driving it.

The payments were "wages"

14 The final issue concerns whether so much of the amounts paid under the Driver Contract (being a relevant contract) by Uber (being a deemed employer) to the driver (being a deemed employee) as were attributable to the performance of work by the driver answered the description in s 35(1) of the Act of amounts "paid ... for or in relation to the performance of work relating to a relevant contract" so as to have been taken by that provision to have been "wages" for the purposes of the Act.

15 Uber's argument is that an amount attributable to the performance of work by a deemed employee under a relevant contract answers the description in s 35(1) of the Act only if the amount is in substance "remuneration attributable to the work performed by the deemed employee for the deemed employer". The underlying notion appears to be that the payment needs to be in the nature of a quid pro quo. The argument fails to accord with the generality of the statutory text of s 35(1) and fails to account for the variety of forms that a relevant contract might take within the scope of s 32.

16 The earlier decision of the Court of Appeal of the Supreme Court of New South Wales in *Thomas and Naaz Pty Ltd v Chief Commissioner of State Revenue*[29] illustrates, consistently with the decision of the Court of Appeal of the Supreme Court of Victoria in *Commissioner of State Revenue v The Optical Superstore*,[30] that payment by a deemed employer to a deemed employee within the scope of s 35(1) can be payment of an amount to which the deemed employee is beneficially entitled or to which the deemed employee has a contractual entitlement to be paid by someone other than the deemed employer. The payments in *Thomas and Naaz* were payments by a medical centre to doctors of a percentage of amounts of

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29 [2023] NSWCA 40 at [5], [7], [64].

30 (2019) 110 ATR 651 at 667-668 [64]-[67].

Medicare benefits assigned to those doctors by patients which were in practice collected by the medical centre on the doctors' behalf.

17 The point has already been made that there is no reason in principle why the contractual obligation of the driver to Uber under the Driver Contract to provide the driving service may not have coexisted with an obligation which the driver may have assumed to the rider under such contract or arrangement between the driver and the rider as might be implied from their conduct. Once that is accepted, there is no reason in principle why Uber's collection of the fare from the rider as designated agent for the driver should have disqualified the corresponding payment which Uber made to the driver after deducting its service fee from answering the description in s 35(1) of a payment by Uber to the driver of an amount for or in relation to the performance of work relating to the Driver Contract. The manner of calculation both of the fare to be paid by the rider (calculated in part by reference to distance) and of the service fee to be deducted by Uber (calculated as a percentage proportion of the fare) meant that there was, as the Court of Appeal pointed out, a "direct relationship between the performance of work and what was payable by Uber to drivers".[31]

Disposition

18 The appeal must be dismissed with costs.

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31 *Chief Commissioner of State Revenue v Uber Australia Pty Ltd* (2025) 118 NSWLR 164 at 241 [363].

19 GORDON, EDELMAN, GLEESON, JAGOT AND BEECH-JONES JJ. The appellant's business – Uber's business – is "a rideshare system".[32] That business puts a rider who wishes to be transported by motor vehicle in contact with a driver. Contact between a driver and a rider is made through Uber's digital platform and is achieved by Uber's applications: a "Driver App" and a "Rider App".[33] That contact requires, and is governed by, a contract between Uber and the driver ("the Driver Contract") and a contract between Uber and the rider ("the Rider Contract"). Each of the Driver Contract and the Rider Contract refers to and incorporates Uber's "Community Guidelines".[34]

20 If a driver using the Driver App accepts a rider's request, made through the Rider App, the driver drives to the rider's pickup point and, unless either party has cancelled the request in the meantime, takes the rider on board and drives them to their destination ("driving services"). Under the Driver Contract, a driver acknowledges and agrees with Uber that all riders "should be transported directly to their specified destination, as directed by the [rider], without unauthorised interruptions or stops".[35] At the end of a journey, the rider pays their fare electronically to Uber. The amount of the fare is a function of distance plus a base fare (subject to a minimum fare). Uber deducts a service fee and other fees charged by Uber from the rider's payment and pays (or remits) the balance to the driver.[36] Under the Driver Contract, Uber has the right at any time, in its sole discretion, to block a driver from using the Driver App for various reasons, including for breaching the Driver Contract and for breaching the Community Guidelines (which deal, among other things, with quality of service, cancellation rates, safety, discrimination and fraud).[37]

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32 *Uber Australia Pty Ltd v Chief Commissioner of State Revenue* [2024] NSWSC 1124 at [3]; *Chief Commissioner of State Revenue v Uber Australia Pty Ltd* (2025) 118 NSWLR 164 at 176 [26], 182 [54]. That description was not challenged in this Court.

33 The Rider App is referred to in some of Uber's contracts as the "Uber App".

34 Driver Contract, cl 4; Rider Contract, cl 1.

35 Driver Contract, cl 3.

36 Driver Contract, cll 8.1 and 8.2.

37 Driver Contract, cll 4 and 6.

21 The *Payroll Tax Act 2007* (NSW) ("the 2007 Act") imposes payroll tax on all taxable wages paid or payable by an employer.[38] Under Div 7 of Pt 3 of that Act, liability for payroll tax is expanded beyond employment relationships to capture certain amounts paid or payable for or in relation to the performance of work relating to a "relevant contract". Those amounts are deemed to be wages for the purposes of that Act.[39] A "relevant contract" is defined to include a contract under which "a person (the ***designated person***)", in the course of their business, has supplied to them "the services of persons for or in relation to the performance of work".[40] A "relevant contract" does not include a contract under which the designated person in the course of their business is supplied with services for or in relation to the performance of work that are "ancillary ... to the use of goods which are the property of" the person supplying the services.[41]

22 The respondent, the Chief Commissioner, assessed Uber as liable for payroll tax on fares remitted by Uber to drivers in the sum of approximately $81 million for the financial years ending 30 June 2015 to 30 June 2020 on the basis that the majority of amounts collected by Uber from riders and remitted to drivers was taken to be wages, as amounts paid or payable for or in relation to the performance of work relating to a relevant contract – the Driver Contract.

23 Uber's objections were disallowed by the Chief Commissioner. Uber then sought review in the Supreme Court of New South Wales pursuant to s 97 of the *Taxation Administration Act 1996* (NSW). The primary judge (Hammerschlag CJ in Eq) revoked the assessments. His Honour found, relevantly, that the Driver Contracts were relevant contracts because, under those contracts, drivers supplied Uber with services by "transporting riders, that is, driving to the pickup point, taking the rider on board and driving them to their destination", namely the driving services. His Honour went on to find, however, that the amounts collected by Uber and remitted to drivers were not deemed to be wages under the 2007 Act. The Chief Commissioner appealed against the finding that the amounts were not deemed to be wages; Uber cross-appealed against the finding that the Driver Contracts were relevant contracts. The Court of Appeal of the Supreme Court of New South Wales (Ward A-CJ, Mitchelmore, Kirk, Adamson and McHugh JJA)

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38 2007 Act, ss 6 and 7.

39 2007 Act, s 35(1).

40 2007 Act, s 32(1)(b).

41 2007 Act, s 32(2)(a).

relevantly allowed the Chief Commissioner's appeal and dismissed Uber's cross-appeal.

24 In this Court, Uber maintains that it is not liable to pay payroll tax on payments made to drivers "to the extent those payments represent amounts received from riders and remitted to those drivers" on three grounds. Uber contends that the Driver Contracts are not "relevant contracts" under s 32(1)(b) of the 2007 Act, *first*, because the driving services were neither supplied *to* Uber, nor supplied *under* the Driver Contracts and, *second*, because the driving services were "ancillary ... to the use of goods which are the property of" the drivers – namely, their cars – within the meaning of s 32(2)(a) of the 2007 Act. *Third*, Uber contends that the remittances by Uber to drivers were not amounts "paid or payable" by Uber to the drivers "for or in relation to the performance of work relating to a relevant contract" under s 35 of the 2007 Act.

25 For the reasons below, each of Uber's grounds of appeal is rejected. The Driver Contract is a contract under which Uber, in the course of its rideshare system business, has supplied to it the driving services of drivers, who agree with Uber to perform particular driving services, to particular standards. Uber is liable to pay payroll tax in respect of the remitted fares. The appeal should be dismissed with costs. It is unnecessary to determine the Chief Commissioner's notice of contention.

2007 Act

26 The 2007 Act was enacted to provide for a tax on employers in respect of certain wages, to harmonise payroll tax law with Victoria and to repeal the *Pay-roll Tax Act 1971* (NSW).[42] The 2007 Act imposes payroll tax on all "taxable wages"[43] paid or payable by an employer in the jurisdiction.[44] "Wages" means "wages, remuneration, salary, commission, bonuses or allowances paid or payable to an employee",[45] whether paid or payable at piece work rates or otherwise,

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42 2007 Act, long title.

43 2007 Act, s 3(1) definition of "taxable wages" read with s 10.

44 2007 Act, Pt 2, ss 6-7, 10(1) read with ss 11-11C. The relevant jurisdiction is "New South Wales and the coastal waters of the State": 2007 Act, s 3(1) definition of "this jurisdiction".

45 2007 Act, s 13(1).

and whether paid or payable in cash or in kind.[46] Wages are also defined, by s 13(1)(a)-(e), to encompass specific classes of amounts, including, relevantly, "an amount that is included as or taken to be wages by any other provision of [the] Act".[47] The 2007 Act applies in respect of wages referred to in s 13(1)(a)-(e) that are paid or payable to or in relation to a person who is not an employee in the same way as it applies to wages paid or payable to an employee.[48] Consistent with that expanded operation, Div 7 of Pt 3 of the 2007 Act, headed "Contractor provisions", expands liability for payroll tax to capture certain amounts paid or payable for or in relation to the performance of work relating to a "relevant contract", which are deemed to be wages for the purposes of the 2007 Act.[49]

27 The starting point for Div 7 is the definition of a "relevant contract" in s 32, which relevantly provides:

> "(1) In this Division, a ***relevant contract*** in relation to a financial year is a contract under which a person (the ***designated person***) during that financial year, in the course of a business carried on by the designated person –
>
> (a) supplies to another person services for or in relation to the performance of work, or
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> (b) has supplied to the designated person the services of persons for or in relation to the performance of work, or
>
> (c) gives out goods to natural persons for work to be performed by those persons in respect of those goods and for re-supply of the goods to the designated person or, where the designated person is a member of a group, to another member of that group.
>
> (2) However, a ***relevant contract*** does not include a contract of service or a contract under which a person (the ***designated person***) during

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46 2007 Act, s 13(2).

47 2007 Act, s 13(1)(e).

48 2007 Act, s 13(3).

49 2007 Act, s 35(1).

> a financial year in the course of a business carried on by the designated person –
>
> (a) is supplied with services for or in relation to the performance of work that are ancillary to the supply of goods under the contract by the person by whom the services are supplied or to the use of goods which are the property of that person, or
>
> ..."

A "contract" includes "an agreement, arrangement or undertaking, whether formal or informal and whether express or implied".[50] "Services" include "results (whether goods or services) of work performed".[51] "Supply" includes "supply by way of sale, exchange, lease, hire or hire-purchase, and in relation to services includes the providing, granting or conferring of services".[52]

28 Certain persons are then taken to be employers or employees for the purposes of the 2007 Act. Relevantly, a person "to whom during a financial year, under a relevant contract, the services of persons are supplied for or in relation to the performance of work" is taken to be an employer in respect of that financial year.[53] A person "who during a financial year ... performs work for or in relation to which services are supplied to another person under a relevant contract" is taken to be an employee in respect of that financial year.[54]

29 Finally, s 35 deems certain amounts paid or payable under a "relevant contract" to be wages. It relevantly provides:

> "(1) For the purposes of this Act, amounts paid or payable by an employer during a financial year for or in relation to the performance of work

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50 2007 Act, s 31 definition of "contract".

51 2007 Act, s 31 definition of "services".

52 2007 Act, s 31 definition of "supply".

53 2007 Act, s 33(1)(b).

54 2007 Act, s 34(a).

relating to a relevant contract ... are taken to be wages paid or payable during that financial year.

(2) If an amount referred to in subsection (1) is included in a larger amount paid or payable by an employer under a relevant contract during a financial year, that part of the larger amount which is not attributable to the performance of work relating to the relevant contract ... is as determined by the Chief Commissioner."

30 These "Contractor provisions" were one measure designed to "catch schemes designed to avoid liability for pay-roll tax by severing the employer-employee relationship",[55] including the "use of so-called contractors to replace wages staff".[56]

31 The Victorian equivalents to the "Contractor provisions" of the 2007 Act were introduced by the *Pay-roll Tax (Amendment) Act 1983* (Vic) ("the Victorian provisions"). It is relevant to consider and take account of the extrinsic materials to that Act in construing the "Contractor provisions" of the 2007 Act since these provisions were based on the Victorian provisions and are in comparable terms.[57] The Victorian provisions were intended to address "an accelerated erosion of the pay-roll tax base through the increased propensity of employers to engage new staff as contractors rather than as employees, and to convert existing employees to contractor status".[58] Relevantly, the Explanatory Memorandum

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55 New South Wales, Legislative Assembly, *Parliamentary Debates* (Hansard), 13 November 1985 at 9558.

56 New South Wales, Legislative Assembly, *Parliamentary Debates* (Hansard), 13 November 1985 at 9558. The amendments also confirmed that payments made by an employment agent in respect of the provision of services to a client of the agent, where the person whose services are provided is employed by neither the contract agent nor the client, were liable for payroll tax: New South Wales, Legislative Assembly, *Parliamentary Debates* (Hansard), 13 November 1985 at 9559.

57 See also New South Wales, Legislative Assembly, *Parliamentary Debates* (Hansard), 13 November 1985 at 9559; *Thompson v Judge Byrne* (1999) 196 CLR 141 at 155 [35].

58 Victoria, *Pay-roll Tax (Amendment) Bill (No 2) 1983*, Explanatory Memorandum at 1.

recorded that the amendments were to "provide for the taxation of payments to contractors where certain criteria are satisfied",[59] it having become "common in nearly all industries for contractors to be performing identical tasks to those being performed by employees, to be under the same amount of control and direction as employees and to have comparable length of service".[60]

32 The Explanatory Memorandum explained that the structure adopted to address those issues was that "[t]he definition of a 'relevant contract' is very wide in order to ensure that all the required transactions are caught and also to combat tax avoidance" and that the exclusions were then provided "in order to exempt transactions that are not intended to be caught by the legislation".[61]

33 The legislative history of the Victorian provisions also recorded that, putting "franchise schemes" to one side,[62] the "relevant contract" provisions dealt with:[63]

> "all other contracts involving the supply of labour where it is considered that the pay-roll tax legislation should apply. In essence, the legislation is intended to catch those relationships where the sub-contractor works exclusively or primarily for the one person and where the object of the contract between the parties is to obtain the labour of the sub-contractor. Therefore, an exclusion is provided where the provision of the sub-contractor's labour is ancillary to the supply of goods under the contract."

34 In relation to the exclusion for a contract under which a person in the course of their business had supplied to them "services for or in relation to

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59 Victoria, *Pay-roll Tax (Amendment) Bill (No 2) 1983*, Explanatory Memorandum at 1.

60 Victoria, *Pay-roll Tax (Amendment) Bill (No 2) 1983*, Explanatory Memorandum at 1-2.

61 Victoria, *Pay-roll Tax (Amendment) Bill (No 2) 1983*, Explanatory Memorandum at 2.

62 Victoria, Legislative Council, *Parliamentary Debates* (Hansard), 24 November 1983 at 1255-1256.

63 Victoria, Legislative Council, *Parliamentary Debates* (Hansard), 24 November 1983 at 1256.

the performance of work that are ancillary to the supply of goods under the contract by the person by whom the services are supplied or to the use of goods which are the property" of the supplier,[64] two examples were provided, namely:[65]

> "[I]f A enters into a contract with B for B to supply the use of a crane in A's business and B also insists on supplying the crane driver, the contract would be regarded primarily as one for the supply of the crane and any payment attributable to the crane driver's labour would not be caught. Equally, if A in the course of his business sent certain machinery to B for testing on B's equipment, the labour involved by B's staff in operating B's equipment would be regarded as incidental and not caught."

Uber's contracts

35 Given the central importance of the Driver Contract and the Rider Contract, it is necessary to consider, in some detail, the terms of those contracts. Where relevant, findings by the primary judge on operational or non-documentary aspects of the two contracts are also included. None of those findings were challenged in the Court of Appeal or this Court.

36 The differences between the forms of contract over time are not material to the present dispute; nor does anything turn on the fact that the specific Uber entity that was party to the contracts was not always the same. References to clauses of the Driver Contract are references to those clauses in the Driver Contract dated 1 December 2017. References to clauses of the Rider Contract are references to those clauses in the Rider Contract dated 10 June 2020.

Driver Contract

37 The Driver Contract, an agreement between Uber and a driver, recites[66] that Uber will "procure and facilitate the provision of lead generation services, being on-demand intermediary and related services rendered via a digital

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64 *Pay-roll Tax (Amendment) Act*, s 7, inserting s 3C(1)(d) into the *Pay-roll Tax Act 1971* (Vic). See also Victoria, *Pay-roll Tax (Amendment) Bill (No 2) 1983*, Explanatory Memorandum at 2.

65 Victoria, *Pay-roll Tax (Amendment) Bill (No 2) 1983*, Explanatory Memorandum at 2.

66 Driver Contract, cl 1.

technology application that enable transportation providers to seek, receive and fulfil on-demand requests for transportation services", defined as "Uber Services". The Driver Contract defines "Transportation Services" as "peer-to-peer passenger transportation services". The recitals also record: that Uber licenses to a driver the Driver App to enable the driver to "access and receive the Uber Services"; that the Uber Services and the Driver App enable a driver to "seek, receive and fulfill requests for Transportation Services" from authorised users (namely, riders) of the application provided by Uber (namely, the Rider App); and that in order "to use the Uber Services and Driver App", a driver "must agree to the terms and conditions" set out in the Driver Contract.

38 Of critical importance is that, under the Driver Contract, the driver acknowledges and agrees with Uber that all riders "should be transported directly to their specified destination, as directed by the [rider], without unauthorised interruptions or stops";[67] and unless consented to by a rider, the driver "may not transport or allow inside [their] vehicle individuals other than [the rider] and any individuals authorised" by the rider during the performance of Transportation Services for that rider.[68] Under the Driver Contract, Uber also imposes a range of other requirements on a driver. This appeal can be determined on the basis that the obligation owed by the driver to Uber to transport the rider "directly to their specified destination" arises, at the latest, at the point that the driver takes the rider on board to start the journey to the rider's destination.

39 The Driver Contract records that a driver acknowledges and agrees with Uber that they: have a citizenship, residency or visa status that allows them the right to work in Australia; may be subject to certain background, driving record and other checks from time to time; and "shall hold and maintain a valid driver's license and all other required licenses, permits, work entitlements, approvals and authority to provide passenger Transportation Services in the city or metro areas within Australia" in which they are enabled to receive requests.[69] A driver also acknowledges and agrees with Uber that they: must provide Uber with "written copies of all such licenses, permits, work entitlements, approvals, authority, registrations and certifications (including renewals)" prior to and during

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67 Driver Contract, cl 3.

68 Driver Contract, cl 3.

69 Driver Contract, cl 6.

their provision of Transportation Services;[70] must complete tax registration obligations and calculate and remit all tax liabilities relating to their provision of Transportation Services as required by applicable law;[71] and must provide relevant tax information to Uber, including a valid Australian Business Number and/or Goods and Services Tax registration number, if required.[72]

40 In addition, a driver acknowledges and agrees with Uber that: the driver's vehicle must meet Uber's then-current requirements for a vehicle to provide the Transportation Services, must be authorised by Uber for that use, must be kept in a clean and sanitary condition, and must be maintained in good operating condition consistent with industry safety and maintenance standards;[73] and the driver must maintain motor vehicle liability insurance (including any minimum motor vehicle liability insurance that Uber requests they hold).[74]

41 To initiate the Transportation Services, the Driver Contract records that when the Driver App on the Uber platform is active, rider requests may appear in the Driver App if the driver is available and in the vicinity of the rider. If a driver accepts a rider's request for Transportation Services, the driver will be provided with the rider's first name and pickup location via the Driver App and the driver acknowledges and agrees that the Rider App may provide the rider with certain information about the driver, including their first name, contact information, photo, location, and their vehicle make, model and "license plate" number.[75] Where a rider makes a trip request through the Rider App on the Uber platform, it is passed on to a driver (usually, but not always, the nearest one) via the Driver App.[76] A driver is shown the rider's rating, the distance and estimated time to the pickup

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70 Driver Contract, cl 7.

71 Driver Contract, cl 12.1.

72 Driver Contract, cl 12.1.

73 Driver Contract, cl 6.

74 Driver Contract, cl 21.1.

75 Driver Contract, cl 2.

76 *Uber Australia Pty Ltd v Chief Commissioner of State Revenue* [2024] NSWSC 1124 at [32].

point, and any applicable "surge" pricing[77] multiplier applied by Uber. Although riders input their destination in the Rider App on the Uber platform when requesting a trip, the driver is only given the rider's destination once they pick up the rider and commence the trip.[78]

42 The Driver Contract also includes requirements with which the driver must comply when providing the Transportation Services. The driver acknowledges and agrees with Uber: that the driver "alone will choose the most effective and safe manner to perform each instance" of Transportation Services and provide at their own expense "all necessary equipment, tools and other materials" to perform Transportation Services;[79] that the driver must provide the Transportation Services with due skill, care and diligence and maintain high standards of professionalism, service and courtesy;[80] and that the driver is "solely responsible for taking such precautions as may be reasonable and proper", including maintaining adequate insurance, regarding any acts or omissions by a rider or third party.[81] A driver also acknowledges and agrees with Uber not to contact the rider or use the rider's personal information other than for the purposes of fulfilling Transportation Services.[82]

43 Each of the identified clauses[83] records a positive obligation imposed by Uber on a driver which concerns and affects a driver's performance of the driving services. Each clause reflects an agreement between Uber and the driver that, when a driver accepts a trip request and takes the rider on board in their vehicle, not only will the driver provide driving services to a rider but that those driving services will be of a particular standard. While some of these obligations are

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77 Surge pricing is an algorithmic tool used by Uber which is designed to increase marketplace reliability when demand significantly outstrips supply: *Uber Australia Pty Ltd v Chief Commissioner of State Revenue* [2024] NSWSC 1124 at [33].

78 *Uber Australia Pty Ltd v Chief Commissioner of State Revenue* [2024] NSWSC 1124 at [38].

79 Driver Contract, cl 2.

80 Driver Contract, cl 6.

81 Driver Contract, cl 3.

82 Driver Contract, cl 2.

83 See, eg, [38]-[40], [42] above.

expressed in terms of the driver's duty to a rider, these obligations were owed by a driver to Uber under their contract with Uber.

44 Under the Driver Contract, Uber has the right, at any time at its sole discretion, to restrict the driver from "using the Uber Services" or to "deactivate or otherwise restrict" the driver's access to the Driver App for various reasons, including: if the driver violates the Driver Contract or any relevant Uber policy, including the Community Guidelines, disparages Uber or its affiliates, or by act or omission causes harm to Uber's or its affiliates' brand, reputation or business and, most significantly, "for any other reason at the sole and reasonable discretion" of Uber.[84]

45 As the Driver Contract refers to and incorporates Uber's "Community Guidelines",[85] a driver can be blocked by Uber from using the Driver App for breaching those Guidelines, which deal, among other things, with quality of service, cancellation rates, safety, discrimination and fraud. The Community Guidelines explain that the reasons a driver can lose access to Uber include: the driver's average rating being below the "minimum average rating" for their city;[86] the driver's average cancellation rate being above the "maximum cancellation rate" for the city;[87] fraudulent activity (such as deliberately increasing the time or distance of a trip); either multiple complaints, or a single serious complaint, of poor, unsafe or distracted driving; accepting illegal street hails; discouraging riders or drivers from using the Uber platform; and soliciting payment outside the Uber system. The Community Guidelines also provide that, if a driver is not

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84 Driver Contract, cl 4.

85 Driver Contract, cl 4.

86 At the end of a trip, the driver and rider are asked or prompted to rate each other: Driver Contract, cl 5; Rider Contract, cl 4. A driver's average rating is calculated based on the driver's last 500 rated trips, or from the total number of rated trips the driver has taken if less than 500. The "minimum average rating" is not stated in the Community Guidelines.

87 Before the driver reaches the pickup location, either party can cancel the trip. A driver's cancellation rate is based on the number of trips cancelled out of the total number of trips accepted. The "maximum cancellation rate" is not stated in the Community Guidelines, but the Community Guidelines note that high-quality drivers "typically have a low cancellation rate less than 5%".

"consistently accepting trip requests" while "logged in" to the Driver App, the driver may be "logged out" for a limited period of time.

46 The Driver Contract also addresses Uber's fare calculation and service fee. Uber calculates a recommended fare, based on a base fare amount plus distance, determined by Uber using location-based services for the applicable territory.[88] A driver has the right to charge a fare less than Uber's recommended fare.[89] A driver may also charge the rider for any applicable tolls or fees.[90] If the rider cancels their request prior to a driver's arrival, Uber may charge a cancellation fee on the driver's behalf, including a service fee that will be payable to Uber.[91] A driver appoints Uber as their "limited payment collection agent" solely to accept the fare, applicable tolls and other taxes and fees from the rider on the driver's behalf, and agrees that the rider's payment to Uber shall be considered the same as payment made directly by the rider to the driver.[92]

47 Uber also reserves the right to "adjust payment in relation to a particular [f]are for reasons such as inefficient routes, failure to properly end a particular instance of Transportation Services in the Driver App, or technical error in the Uber Services". In "more serious situations", including fraud or rider complaints, Uber may cancel a fare entirely or, if it has already been paid to the driver, require it to be reimbursed. Uber also reserves the right, "in its sole discretion", to seek reimbursement from the driver if it discovers payment processing errors.[93] Uber agrees to remit to the driver on at least a weekly basis the fare less the applicable service fee and any other fees Uber charges.[94] A driver pays the service fee in consideration of Uber's provision of the Uber Services.[95]

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88 Driver Contract, cl 8.1.

89 Driver Contract, cl 8.2.

90 Driver Contract, cl 8.1.

91 Driver Contract, cl 8.1.

92 Driver Contract, cl 8.1.

93 Driver Contract, cl 8.2.

94 Driver Contract, cl 8.2.

95 Driver Contract, cl 10.

The service fee is calculated as a percentage of Uber's recommended fare, regardless of any (lower) fare negotiated between the driver and the rider.[96]

48 There are clauses in the Driver Contract which seek to address the nature of the legal relations between Uber, the driver and a rider. The Driver Contract addresses a driver's relationship with Uber in a number of parts. It records, for example, that: the driver is an "independent provider" of Transportation Services;[97] Uber shall not "be deemed to direct or control [the driver] generally or in [their] performance under this Agreement, including in connection with [the driver's] provision of Transportation Services, [their] acts or omissions, or [their] operation and maintenance of [their] vehicle";[98] the driver retains the sole right to determine when and for how long they utilise the Driver App or Uber Services, and the driver alone decides when to try to accept, decline or ignore a rider request;[99] Uber acts as the limited payment collection agent solely for the purpose of collecting payment from riders, except as otherwise expressly provided in the Driver Contract;[100] and the agreement is not an employment agreement, and does not create an employment, independent contractor or worker relationship, joint venture, partnership or agency relationship.[101] The Driver Contract also addresses a driver's relationship with a rider in a number of parts. A driver acknowledges and agrees with Uber: that their provision of Transportation Services to riders "creates a legal and direct business relationship" between the driver and the rider; that Uber is not responsible or liable for the actions or inactions of a rider in relation to the driver, the driver's activities or the driver's vehicle; and that the driver has the sole responsibility for any obligations or liabilities to riders or third parties arising from their provision of Transportation Services.[102]

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96 Driver Contract, cl 10.

97 Driver Contract, cl 1.

98 Driver Contract, cl 4.

99 Driver Contract, cl 4.

100 Driver Contract, cl 28.1.

101 Driver Contract, cl 28.1.

102 Driver Contract, cl 3.

Rider Contract

49 The Rider Contract, similar to the Driver Contract, establishes that Uber provides "Services". Under the Rider Contract, those "Services" constitute the provision of a technology platform that enables a rider to: (a) arrange and schedule transportation services with independent "Third Party Providers" of those services (namely, drivers), who have an agreement with Uber or its affiliates; and (b) facilitate payments to drivers for the services and receive receipts for those payments.[103] A rider acknowledges that "Uber does not provide transportation or delivery services or function as a transportation carrier and that all such transportation or delivery services are provided by independent third party contractors who are not employed by Uber or any of its affiliates".[104]

50 Clauses of the Rider Contract operate in parallel to clauses of the Driver Contract, in that they address the operation of Uber's platform from the rider's perspective. For example, under the Rider Contract, the rider "understand[s]" that use of Uber's Services may result in charges to them for the services received from a driver (namely, the fare).[105] The Rider Contract also provides that Uber will "facilitate" payment of the applicable charges on behalf of the driver as the driver's limited payment collection agent, and payment in such manner shall be considered the same as payment made directly by the rider to the driver.[106] The Rider Contract expressly stipulates that the payment structure "is intended to fully compensate the [driver] for the services or goods provided".[107] The rider retains a right to request lower charges from the driver, and Uber will respond to any request from a driver to modify the charges.[108] As between the rider and Uber, Uber reserves the right to establish, remove and/or revise charges in its sole discretion.[109]

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103 Rider Contract, cl 2.

104 Rider Contract, cl 2.

105 Rider Contract, cl 4.

106 Rider Contract, cl 4.

107 Rider Contract, cl 4.

108 Rider Contract, cl 4.

109 Rider Contract, cl 4.

51 Uber may restrict a rider from accessing or using its Services, "or any part of them", where it reasonably suspects that the rider has breached, or is likely to breach, the Rider Contract, or the rider does not, or is likely not to, qualify, under applicable law or Uber standards and policies, to access and use the Services.[110] In such circumstances, Uber may terminate the Rider Contract or any Services, or cease offering or deny access to the Services "or any portion thereof" immediately. Uber may also terminate the Rider Contract or any Services, or cease offering or deny access to the Services "or any portion thereof" on 30 days' written notice, where Uber, "acting reasonably", does so "for any legitimate business, legal or regulatory reason".[111]

52 Uber also may immediately restrict or deactivate a rider's access to the Services if the rider breaches the Community Guidelines.[112] The Community Guidelines stipulate that a rider can lose access to Uber if they: damage drivers' or other passengers' property; make physical contact with the driver or fellow riders; use inappropriate and abusive language or gestures; make unwanted contact with the driver or a fellow passenger after the trip is over; break the local law while using Uber; breach Uber's terms; discriminate against drivers or other riders; or engage in fraud or illegitimate behaviour.

Decisions below

53 The primary judge concluded that the Driver Contracts were relevant contracts for the purposes of s 32(1)(b). His Honour found that driving is a service and is in relation to the performance of work: therefore, by performing the driving services, drivers supplied "services ... for or in relation to the performance of work".

54 His Honour also found that the driving services were supplied to Uber "under" the Driver Contracts, for the purposes of s 32(1)(b), because the Driver Contracts were the source of the drivers' right, if and when they drove, to use the Driver App, and to obtain all the entitlements and benefits stemming from its use, and were also the source of obligations when the drivers availed themselves of those opportunities. His Honour considered that the driving services were not ancillary to the use of the driver's vehicle for the purposes of s 32(2)(a),

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110 Rider Contract, cl 1.

111 Rider Contract, cl 1.

112 Rider Contract, cl 1.

because driving meant "driving a car"; there was no room to separate the two into elements, one of which could be ancillary to the other.

55 However, the primary judge did not consider that the amounts paid or payable by Uber to drivers were relevantly "for or in relation to the performance of work relating to a relevant contract" for the purposes of s 35(1). His Honour considered that, under the Driver Contracts (having regard also to the Rider Contracts), it was not Uber who paid the driver, but the rider. Uber was a mere "payment collection agent", notwithstanding it had to account to the driver for what it received as agent from the rider. There was 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; those elements existed only between the driver and the rider.

56 The Court of Appeal upheld the primary judge's conclusions that the Driver Contracts were relevant contracts within the meaning of s 32(1)(b) and were not excluded by s 32(2)(a). The Court of Appeal considered that the transportation of riders to their destination (namely, the driving services) was not merely of assistance to Uber in some indirect or collateral way, but "clearly generates a financial benefit for Uber in the form of a service fee and is the foundation of Uber's business insofar as it concerns ridesharing". The Court of Appeal found that central to Uber's business was the collection of money directly from riders on a per-trip basis and keeping a service fee, and the driver's performance of the driving services was what engaged Uber's legal rights to do so. Thus, "drivers clearly 'supply' a service to Uber by doing something that is necessary for Uber to derive service fees and to continue its business".

57 The Court of Appeal considered that the purpose of Div 7 favoured a wider construction of "under" the contract not limited to cases where the contract confers the legal right, or imposes a legal obligation, to supply the services. On the Court of Appeal's construction, the words "a contract under which" in s 32(1) therefore extend to a contract: which is the source of the right or obligation to supply the services;[113] which expressly refers to, and governs or controls, the supply of the services;[114] or which confers a right to be paid for supplying the services. The Court of Appeal concluded that the Driver Contracts were contracts under

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113 Using the language of this Court in *Federal Commissioner of Taxation v Sara Lee Household & Body Care (Australia) Pty Ltd* (2000) 201 CLR 520.

114 Adapting the language of the Court of Appeal in *Inghams Enterprises Pty Ltd v Hannigan* (2020) 379 ALR 196.

which Uber had the driving services supplied to it, particularly within the second of those meanings, identifying a list of ways in which the Driver Contracts govern or control the driver's performance of the driving services.

58 The Court of Appeal agreed with the primary judge that the driving services were not ancillary to the use of the driver's vehicle, because they were one and the same as the use of the vehicle. On the other hand, the Court considered the primary judge had erred in finding there needed to be some reciprocity or ascertainable calibration between the money paid and the work done, which put an "unsupportable gloss" on s 35(1) of the 2007 Act. Their Honours considered the primary judge's approach to be inconsistent with intermediate appellate court decisions in *Commissioner of State Revenue v The Optical Superstore*[115] and *Thomas and Naaz Pty Ltd v Chief Commissioner of State Revenue*,[116] which establish that where the designated person pays or is liable to pay amounts under the relevant contract to the other party, the fact that the other party may have some contractual or beneficial entitlement to the money does not preclude the application of s 35(1).[117]

Are Driver Contracts "relevant contracts" under s 32(1)(b)?

59 Under s 32(1), a "relevant contract" is "a contract under which a person (the ***designated person***)", "in the course of a business carried on by the designated person", does one of three things: supplies to another person services for or in relation to the performance of work;[118] has supplied to them the services of persons for or in relation to the performance of work;[119] or gives out goods to natural persons for work to be performed by those persons in respect of those goods and

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115 (2019) 110 ATR 651.

116 [2023] NSWCA 40.

117 See *Optical Superstore* (2019) 110 ATR 651 at 667-668 [66]-[68]; *Thomas and Naaz* [2023] NSWCA 40 at [63].

118 2007 Act, s 32(1)(a).

119 2007 Act, s 32(1)(b).

for re-supply of the goods to the designated person (or, where the designated person is a member of a group, to another member of that group).[120]

60 The phrase "a contract under which", in the context in which it appears in s 32(1), directs attention to the source of the obligation:[121] it identifies that the source of the obligation must be a "contract"[122] and that one of the three obligations listed in s 32(1) must be created by, in accordance with, pursuant to or under the authority of that contract.

61 This appeal is concerned with s 32(1)(b) of the 2007 Act.[123] Under s 32(1)(b), a "relevant contract" is "a contract under which a person (the ***designated person***)" (in this case Uber), "in the course of a business carried on by the designated person" (namely, Uber's rideshare system business), relevantly "has supplied to the designated person the services of persons for or in relation to the performance of work". There is no dispute that Uber's business is "a rideshare system". That characterisation is consistent with the Driver Contract and the Rider Contract, which stipulate that Uber provides access to its services connecting drivers and riders.[124] The question then under s 32(1)(b) is whether in the course of that business – Uber's rideshare system – there is "a contract under which" Uber has supplied to it the services of persons – the drivers – for or in relation to the performance of work? The answer is yes.

62 In the course of Uber's rideshare system business, the Driver Contract is the contract that governs the relationship between Uber and those drivers authorised by Uber to access its rideshare system business.[125] Absent a Driver Contract between Uber and a driver, a driver cannot access Uber's rideshare system business and Uber has no drivers for its rideshare system. Once a driver is approved by Uber and enters into a Driver Contract with Uber, a driver obtains access to

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120 2007 Act, s 32(1)(c). "[C]ontract", "services" and "supply" are defined in s 31 of the 2007 Act: see [27] above.

121 See, by way of analogy, *Sara Lee* (2000) 201 CLR 520 at 537 [42] and *Chan v Cresdon Pty Ltd* (1989) 168 CLR 242 at 249.

122 2007 Act, s 31 definition of "contract".

123 It was common ground that s 32(1)(a) was not engaged.

124 See [37] and [49] above.

125 See [37]-[48] above.

the Driver App and thereby to Uber's rideshare system business and, under that Driver Contract, a driver acknowledges and agrees with Uber that all riders "should be transported directly to their specified destination, as directed by [the rider], without unauthorised interruptions or stops" and without any additional passengers that the rider has not authorised.[126] It is the Driver Contract that imposes an obligation on a driver to transport riders to their specified destination – or, in other words, to perform the driving services in the course of the rideshare system business carried on by Uber.

63 It may be accepted that the Driver Contract does not oblige the driver to pick up any particular rider: to the contrary, the driver retains the sole right to determine when and for how long they will use the Driver App, and when to try to accept, decline or ignore a rider's trip request.[127] The Driver Contract, however, imposes obligations on that driver that are owed to Uber, including once a driver has accepted a trip request, picked up the rider, and the trip has begun.

64 The driver's agreement to transport the rider "directly to their specified destination, as directed by the [rider], without unauthorised interruptions or stops" is an agreement with Uber. Any breach of that requirement is a breach of cl 3 of the Driver Contract, a contract between Uber and the driver (whether or not it was also a breach of any agreement with a rider). Uber's contention that, under cl 3, the driver had an obligation to Uber to drive directly to the rider's destination, but was not under any obligation to arrive at the destination, must be rejected. That construction is absurd. The consequence of that construction would be that the driver could not take a circuitous route without breaching the Driver Contract, but could stop the journey halfway and require the rider to exit the car. Uber's construction is also contrary to the express words in cl 3, which provide that a driver agrees with Uber that "all [riders] should be transported directly to their specified destination". Those express words contemplate that a driver agrees with Uber that a rider should be transported to their specified destination, and the transportation should be direct.

65 That the Driver Contract obliges drivers to perform the driving services in the course of Uber's rideshare system business is reinforced by and applies equally to other clauses of the Driver Contract[128] which contain an agreement between

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126 Driver Contract, cl 3. See also [38] above.

127 Driver Contract, cl 4.

128 See [39]-[43] above.

Uber and the driver that there will be driving services of a particular kind provided to the rider, namely: that the driver must perform the driving services with due skill, care and diligence while maintaining high standards of professionalism, service and courtesy,[129] and must perform the driving services in an effective and safe manner (albeit of the driver's choosing);[130] and that, at all times, the driver must also adhere to requirements as to the vehicle used to perform driving services[131] and must maintain any minimum motor vehicle liability insurance requested by Uber.[132] Those clauses are directed to the driver's obligation to Uber, in cl 3, to transport the rider to their specified destination. Without some of the clauses, the rider might not reach their destination at all: an example is the requirement that the driver must maintain their vehicle in good operating condition.[133]

66 That a driver may be blocked from using the Driver App for breaching the Community Guidelines, which include requirements as to "quality" (namely, average rating, acceptance rate and cancellation rate requirements),[134] is another way in which the Driver Contract contemplates the driver providing driving services of a particular standard. Moreover, requiring drivers to adhere to certain standards helps to improve the reliability and attractiveness of Uber's rideshare system business. The standards imposed by Uber do not assist riders to inform their choice of driver; for example, riders cannot select higher-standard drivers from a pool of drivers.[135] It is drivers who have the opportunity to try to accept or decline a trip request; once a driver accepts a trip request, the most the rider can do is cancel the trip.[136] Rather, the standards imposed on the drivers' performance of the driving services contribute to riders' perception of Uber's

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129 Driver Contract, cl 6.

130 Driver Contract, cl 2.

131 Driver Contract, cl 6.

132 Driver Contract, cl 21.1.

133 Driver Contract, cl 6.

134 Driver Contract, cl 4; Community Guidelines.

135 See, similarly, *Uber BV v Aslam* [2021] 4 All ER 209 at 235 [99]; *Rasier Operations BV v E Tū Inc* [2025] 1 NZLR 848 at 868 [57], 879 [102].

136 Driver Contract, cll 2 and 4. See also [41], fn 87 above.

platform, which is necessary for the maintenance and growth of the goodwill associated with Uber's rideshare system business.

67 In sum, by those clauses in the Driver Contract, a driver agrees with Uber to perform particular driving services, to particular standards, for the benefit of Uber in the sense that the driving services are done for the purposes of Uber's rideshare system business, from which Uber derives a fare from a rider which enables Uber to pay the driver for the driving services.

68 Two results follow from the preceding analysis. The first is that, contrary to Uber's contentions, the driving services are supplied by the driver *to* Uber (albeit the driving services are also supplied by the driver to the rider). Under the Driver Contract, the driver has a contractual obligation *to* Uber to supply those services. That is in and of itself sufficient to render the driver's discharge of that obligation a supply of a service to Uber. Uber properly accepted that the fact that the drivers provide driving services to the riders does not, as a matter of principle, preclude a finding that the drivers also supply those services to Uber.[137] Additionally, the driver's performance of their contractual obligation to drive the rider is necessary for the generation of the driver's payment and Uber's fees.

69 It may be accepted that the mere generation of a financial benefit to Uber is not sufficient for the driver's driving services to be "supplied to" Uber under the Driver Contract. In one part of its reasons, the Court of Appeal concluded that "[t]here is a sufficiently direct connection between the service of driving and the benefits generated by it to satisfy the requirement that the service be supplied to Uber".[138] Of itself, a direct connection between the performance of a service and the generation of benefits to a person will not amount to the supply of that service to that person. A shopkeeper may derive benefits from a bus stopping on its regular route outside the store, but that will not amount to the delivery of services to the shopkeeper.

70 However, the driver's contractual obligation to Uber to supply particular driving services, to a particular standard, means that the driving services do more than merely generate a financial benefit. The driving services are an essential component of Uber's rideshare system business. And, as has been explained,

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137 See also *Accident Compensation Commission v Odco Pty Ltd* (1990) 64 ALJR 606 at 612-613; 95 ALR 641 at 652.

138 *Chief Commissioner of State Revenue v Uber Australia Pty Ltd* (2025) 118 NSWLR 164 at 183 [60].

Uber also has substantial control over drivers under the Driver Contract.[139] Uber's imposition of those standards and requirements on drivers' performance of the driving services reinforces the centrality of the driving services to Uber's rideshare system business.

71 The driving services are also supplied to Uber "for or in relation to the performance of work". As explained by this Court in *Accident Compensation Commission v Odco Pty Ltd*, that expression qualifies the content or scope of the word "services", by stipulating that the "services" must be work-related.[140] It is not a necessarily distinct and separate concept. What is supplied to Uber is the performance of a driver's work – the driving services.

72 The second result is that, contrary to Uber's contentions, the driving services are supplied to Uber "under" the Driver Contract. The source of the obligation owed by the driver *to Uber* to transport the rider, upon picking up the rider, is the Driver Contract (specifically, cl 3). That the Driver Contract does not oblige a driver to pick up any particular rider does not mean the driving services were not supplied "under" the Driver Contract. The position of a driver, *prior* to picking up a rider, may be likened to that of a casual employee: the driver is under no express obligation to work on any particular occasion (in other words, the driver is not obliged to accept any particular trip request), but once work commences, they are under certain obligations imposed by the Driver Contract, including an obligation to drive that rider to their destination.[141] Uber's contention that there was some form of "implied contract" by conduct, formed directly between the driver and rider, does not advance its case. Whether or not there existed an "implied contract" between the driver and rider,[142] the driver had an obligation to Uber, under their contract with Uber, to perform the driving services. Even if an implied contract did exist, it arose no earlier than the commencement of the trip – in other words, the driver also had no obligation to the rider to pick them up.

73 Uber submitted that the imposition of liability for payroll tax could not turn on Uber's collection of fares from riders, and remittance to drivers (after deduction

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139 See [39]-[40], [42]-[47], [65]-[66] above.

140 (1990) 64 ALJR 606 at 612; 95 ALR 641 at 650-651.

141 See, eg, *WorkPac Pty Ltd v Rossato* (2021) 271 CLR 456 at 470-471 [32]-[33], 485-487 [88]-[92].

142 cf *Rasier Operations* [2025] 1 NZLR 848 at 878-880 [100]-[107].

of the service fee). Doing so, in Uber's submission, resulted in payroll tax being imposed on the basis of mere administrative payment arrangements. However, the application of s 32(1)(b) to the Driver Contract does not turn only on Uber's payment collection arrangements, but on the proper characterisation of the parties' rights and obligations under the Driver Contract as a whole. Further, as Senior Counsel for the Chief Commissioner observed, Uber's collection of fares from riders is not a mere administrative arrangement. Uber calculates the recommended fare, which is effectively the required fare. While a driver may negotiate a *lower* fare, the service fee imposed by Uber is calculated based on its recommended fare.[143] Consequently, the driver's right to negotiate any lower fare is properly described as a "notional freedom ... of no possible benefit to drivers, as any discount offered would come entirely out of the driver's pocket".[144] Moreover, before the money is remitted to the driver, Uber can not only deduct the service fee, but can also change the fare, adjust payment to the driver or cancel the fare entirely.[145]

74 Uber also submitted that the application of s 32(1)(b) to it is inconsistent with *Odco* and other authorities[146] because Uber has no obligation to supply the driver's services to riders. In *Odco*, this Court considered the application of a different statutory scheme, the *Accident Compensation Act 1985* (Vic), to a labour agency ("TSA") which contracted with tradesmen for those tradesmen to work at building sites at the direction of builders.[147] Provisions of the *Accident Compensation Act* extended the concepts of "employer" and "worker" in terms similar to s 32 of the 2007 Act. In finding that the tradesmen supplied services to TSA, the Court stated:[148]

> "Once it is accepted that there was (1) an agreement between TSA and the builder for the supply of a tradesman to the builder to do certain work

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143 Driver Contract, cl 10.

144 *Uber BV* [2021] 4 All ER 209 at 233-234 [94].

145 Driver Contract, cl 8.2.

146 *Optical Superstore* (2019) 110 ATR 651; *Thomas and Naaz* [2023] NSWCA 40; *Loan Market Group Pty Ltd v Chief Commissioner of State Revenue* (2024) 119 ATR 156.

147 (1990) 64 ALJR 606 at 606, 607-608; 95 ALR 641 at 642-645.

148 *Odco* (1990) 64 ALJR 606 at 612-613; 95 ALR 641 at 652.

> on terms that the builder was to remunerate TSA for supplying the tradesman and for the work which he did, and (2) an agreement between TSA and the tradesman whereby the tradesman agreed to perform work at the site at the builder's direction for remuneration to be paid by TSA, it follows as a matter of plain language that the tradesman supplies services to TSA by attending at the site and doing work there. By attending there and doing work, he supplies services to TSA for the purposes of its business, notwithstanding he also at the same time supplies the same services to the builder for the purposes of its business."

75 First, notwithstanding the similarity between the terms of the provisions of the *Accident Compensation Act* and the 2007 Act, the Court in *Odco* was concerned with a different statutory scheme with a different purpose. Second, contrary to Uber's contentions, nothing in *Odco* indicates that the Court intended to confine the application of the provisions of the *Accident Compensation Act* to cases where an agreement between the intermediary (eg, the TSA or Uber) and the "recipient" (eg, the builder or the rider) required the intermediary to supply the services of the "worker" (eg, the tradesman or driver). Ultimately, what emerges from *Odco* is consistent with the approach taken in this case: it is necessary to examine the contractual relationships between the parties to determine to whom the services are supplied.

76 Once it is understood that under the Driver Contract, properly construed, the driver agrees with Uber to supply the driving services to Uber, it is not necessary for this Court to determine the outer bounds of s 32(1)(b).

77 One further matter from the extrinsic materials may be observed. When the "Contractor provisions" were drafted, it is unlikely that Parliament foresaw the development of the "gig economy" or the types of working arrangements that Uber's rideshare system business exemplifies today. However, aspects of the extrinsic materials reinforce the conclusion that, in the course of Uber's rideshare system business, Uber has supplied to it the services of drivers for or in relation to the performance of work under the Driver Contract, namely the driving services. The first aspect is the observation that independent contractors can perform identical tasks to those performed by employees, under the same amount of control and direction as employees.[149] Under the Driver Contract, Uber imposes specific requirements and directions on drivers. The second aspect is that the definition of "relevant contract" is intentionally wide, with exclusions to exempt transactions not intended to be

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149 See [31] above.

caught.[150] There is consequently no reason to limit or restrict aspects of that definition in order to comply with any conceived or identified purpose of the "Contractor provisions" or payroll tax more generally.

Are drivers' driving services "ancillary ... to the use of goods" under s 32(2)(a)?

78 A "relevant contract" does not include a contract under which services supplied are "ancillary ... to the use of goods which are the property of" the person supplying the services.[151] Uber contends that the driving services were "ancillary ... to the use of goods which are the property of" the drivers – namely, their cars. That contention should also be rejected.

79 The word "ancillary" may be understood in its ordinary meaning of "subsidiary, incidental, accessory, auxiliary".[152] Services may be "ancillary" to the use of a person's goods where, for example, they are supplied under a contract in which the primary object, or the principal matter, is the use of goods.[153] The extrinsic materials reinforce that the object of the exception in s 32(2)(a) is where the "principal matter" or "primary object" of a contract is the use of goods. Relevantly, the draft of the Victorian provisions referred to services "only incidental", rather than "ancillary", to the use of goods. The amendment to use the word "ancillary" instead of "only incidental" was explained in these terms:[154]

> "The primary objective of the contract between the parties is to obtain the labour of the sub-contractor rather than the supply of goods. In those circumstances, pay-roll tax would be imposed. However, it has been

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150 See [32] above.

151 2007 Act, s 32(2)(a).

152 *Smith's Snackfood Co Ltd v Chief Commissioner of State Revenue (NSW)* (2013) 97 ATR 904 at 926 [96]. See also *Chief Commissioner of State Revenue v Downer EDI Engineering Pty Ltd* (2020) 103 NSWLR 772 at 803 [138].

153 See, eg, *Smith's Snackfood Co* (2013) 97 ATR 904 at 926 [95].

154 Victoria, Legislative Assembly, *Parliamentary Debates* (Hansard), 17 November 1983 at 2064, 2065. See also Victoria, Legislative Assembly, *Parliamentary Debates* (Hansard), 22 November 1983 at 2085-2086; Victoria, Legislative Council, *Parliamentary Debates* (Hansard), 24 November 1983 at 1256.

> pointed out ... that 'incidental' may mean, on a reasonable interpretation, that labour is not essential to either the service or the activity being provided. ... The aim is to specify, as precisely as possible, the fact that, if the major reasons for the contract is [sic] to use labour services, it will be caught by the proposed legislation and be subjected to pay-roll tax."

80 The primary object of the Driver Contract is the supply of driving services, rather than the use of a car. The Driver Contract is expressly concerned with "Transportation Services", and the ability of a driver to "seek, receive and fulfill requests for Transportation Services".[155] What is sought by Uber (and by the rider) is the driver's driving services, using a car. The driving services are not ancillary, in the sense of being "incidental" or "subsidiary" to the use of the car. Not only is the driver necessary to use the car, but it is the driver's *driving services* that are central to Uber's rideshare system business, as reflected in a driver's obligation to transport the rider to their specified destination, and the imposition of specific standards and requirements on the driver's performance of the driving services.[156] That makes the Driver Contract different from a contract *for the use of a car* (such as, for example, a car-sharing service). Uber's submission that the use of a driver's vehicle was merely enabled and assisted by the driver's personal services is misconceived.

81 That the primary object of the Driver Contract is the supply of driving services also distinguishes this case from the second example given in the Explanatory Memorandum to the Victorian provisions: "if A in the course of his business sent certain machinery to B for testing on B's equipment, the labour involved by B's staff in operating B's equipment would be regarded as incidental and not caught".[157] In that example, the clear "object" of the contract is to obtain the benefit of B's equipment, and the labour of B's employees in operating that equipment may be necessary but is "incidental" to the need for the equipment. Here, neither Uber nor the rider seeks the benefit of the driver's car without the driver (nor the driver without their car). Both are central to the service required. Neither can be described as incidental.

82 Uber's submission that the core target of the second limb of s 32(2)(a) is where the service is the person operating their own goods also casts the net too

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155 Driver Contract, cl 1. See also [37] above.

156 See [62]-[67] above.

157 See [34] above.

widely. The provision makes clear that the service must be "ancillary" to the use of goods, rather than the service *being* the use of goods itself. For those reasons, the Driver Contract is a relevant contract under which Uber in the course of its rideshare system business has supplied to it the services of drivers for or in relation to the performance of work, namely driving services, within the meaning of s 32(1)(b) of the 2007 Act.

Are remitted fares amounts "paid or payable ... for or in relation to the performance of work relating to a relevant contract" under s 35(1)?

83 Uber contends that, even if s 32(1)(b) was satisfied because the Driver Contract is a relevant contract, the remittances by Uber to drivers were not amounts "paid or payable" by Uber to the drivers "for or in relation to the performance of work relating to a relevant contract" under s 35(1) of the 2007 Act. That contention is rejected.

84 Section 35 deems certain amounts paid or payable under a relevant contract to be wages. Relevantly, sub-s (1) provides that "amounts paid or payable by an employer during a financial year for or in relation to the performance of work relating to a relevant contract ... are taken to be wages paid or payable during that financial year".

85 First, as a matter of statutory construction, s 35 is a deeming provision in Div 7 of Pt 3 of the 2007 Act that creates its own concept of "wages". Ordinary expectations of what constitutes wages are of limited relevance in determining whether amounts are captured by s 35(1).[158] And, it must be recalled, even where an employment relationship exists, "wages" are defined widely in s 13 of the 2007 Act to include "commission, bonuses or allowances".

86 Next, the phrase "for or in relation to the performance of work" in s 35(1) specifies that there must be a connection between the amount provided and the performance of work.[159] In this case, the fares remitted to the driver are connected to the driver's provision of driving services – the more driving services provided by the driver to both the rider and Uber (either as a function of distance, or number of trips, or both), the more that Uber remits to the driver.

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158 *Optical Superstore* (2019) 110 ATR 651 at 667 [63].

159 *Optical Superstore* (2019) 110 ATR 651 at 667 [65].

87 Uber's contention that, because Uber had an obligation to account for payments received from riders and remit them to drivers, those amounts were not within the scope of s 35(1) should be rejected. Uber disclaimed any contention that the amounts it received from riders were held on trust for drivers. Uber nevertheless contended that the money it received from riders belonged to the driver or that the driver was entitled to that money, and that Uber was authorised to set off against that money the amount owed by the driver to Uber – namely, the service fee. That contention is, at least, an incomplete description of the Driver Contract.

88 The Court has repeatedly cautioned against ascribing too much weight to "labels" used by parties to describe their relationship:[160] while those labels may be relevant, they are not determinative.[161] The nature of the legal relations between the parties to a contract turns upon the identification of the nature and content of the rights created by the contract and the identity of those parties which enjoyed those rights.[162] Contrary to the labels used in the Driver Contract, Uber is not a mere "limited payment collection agent". Under a Driver Contract, Uber has rights to unilaterally adjust a fare calculation or cancel a fare entirely.[163] These rights are inconsistent with the contention that the driver has any entitlement to the rider's fare on Uber's receipt of it, separate from the driver's contractual rights against Uber to account for money due by Uber to the driver. Absent any finding

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160 See, eg, *Curtis v Perth and Fremantle Bottle Exchange Co Ltd* (1914) 18 CLR 17 at 25-26; *Hollis v Vabu Pty Ltd* (2001) 207 CLR 21 at 38 [36], 45 [58]; *Sweeney v Boylan Nominees Pty Ltd* (2006) 226 CLR 161 at 167 [13], 169 [19], 172 [29]; *Construction, Forestry, Maritime, Mining and Energy Union v Personnel Contracting Pty Ltd* (2022) 275 CLR 165 at 194 [63], 214 [127], 235 [184].

161 *Hollis* (2001) 207 CLR 21 at 45 [58]. See also *Australian Mutual Provident Society v Allan* (1978) 52 ALJR 407 at 409-410; 18 ALR 385 at 389-390; *Rossato* (2021) 271 CLR 456 at 488 [97]; *Personnel Contracting* (2022) 275 CLR 165 at 194-195 [63]-[66], 214 [127], 235 [184].

162 See *R v Foster; Ex parte The Commonwealth Life (Amalgamated) Assurances Ltd* (1952) 85 CLR 138 at 151; *Allan* (1978) 52 ALJR 407 at 409-410; 18 ALR 385 at 389-390; *Rossato* (2021) 271 CLR 456 at 488 [97]; *Personnel Contracting* (2022) 275 CLR 165 at 194 [63], 235 [184].

163 See [47] above.

that the driver had any rights to the fares Uber received, this is a different case from that considered in *Optical Superstore*[164] and *Thomas and Naaz*.[165]

89 Uber also relied on *Mutual Acceptance Co Ltd v Federal Commissioner of Taxation*, in which this Court considered whether certain amounts were "wages" as defined by s 3 of the *Pay-roll Tax Assessment Act 1941* (Cth).[166] That definition included "any wages, salary, commission, bonuses or allowances paid or payable ... to any employee as such".[167] In considering the meaning of that definition, Latham CJ made the following observations:[168]

> "[T]he payment must be made '*to any employee*.' If money is given to an employee in order to enable him to make a payment to a third person on behalf of his employer, such money cannot be regarded as paid to the employee – as in the case already mentioned of providing an employee with money for the purpose of purchasing a railway ticket. Money is paid to an employee only when he, after receiving it, becomes the owner of the money, having the complete disposition and control of it. Money which is held by an employee on behalf of his employer cannot be regarded as paid to the employee within the meaning of the definition. Such money remains the money of the employer and is not 'paid' by him when it is placed in the hands of an employee who holds it on his employer's account."

90 Those observations are inapposite in this case. As explained, Uber did not contend that Uber held the amounts it received from riders on trust for the drivers. Uber has structured its rideshare system business so that payments from riders are funnelled through it. That gives Uber substantive control over the fares before they are remitted to drivers, allowing Uber to deduct its service fee, or change or cancel the fare entirely. Indeed, a driver can be blocked by Uber from using the Driver App for soliciting payment outside the Uber system in breach of the Community Guidelines.[169] When a driver receives the amounts "remitted" by

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164 (2019) 110 ATR 651 at 667 [64], 667-668 [67]-[68].

165 [2023] NSWCA 40 at [7].

166 (1944) 69 CLR 389 at 394-395.

167 *Mutual Acceptance* (1944) 69 CLR 389 at 394.

168 *Mutual Acceptance* (1944) 69 CLR 389 at 396 (emphasis in original).

169 See [45] above.

Uber, that driver has complete disposition and control of the money.[170] At no point does the driver hold the money on behalf of anyone. Rather, the money is a payment contributing to or forming part of the gains of the driver, and is paid to them by Uber in relation to their performance of work.[171] That consequence arises from the express intention of Div 7 of Pt 3 of the 2007 Act to bring into tax amounts paid or payable beyond ordinary expectations of what constitutes wages. That Uber might have structured its rideshare system business so that the payments might have been made directly by the rider to the driver (and it did not) does not bear on the proper construction of s 35(1).

91 For those reasons, the remitted amounts from Uber to a driver are paid or payable for or in relation to the performance of work (driving services) relating to a relevant contract (the Driver Contract) within the meaning of s 35(1) and are therefore deemed to be wages for the purposes of the 2007 Act.

Conclusion and orders

92 For those reasons, the appeal must be dismissed with costs.

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170 Notwithstanding that Uber may obtain reimbursement of amounts owed by the driver to it by debiting the driver's card or bank account: Driver Contract, cl 8.2.

171 cf *Mutual Acceptance* (1944) 69 CLR 389 at 404.

93 STEWARD J. I very much regret that I am unable to agree with my colleagues. I otherwise gratefully adopt the description of the applicable facts and the legislation set out in the reasons of Gordon, Edelman, Gleeson, Jagot and Beech-Jones JJ.

94 When legislation uses vague or indeterminate language to fix a nexus between particular concepts or notions, purpose and legislative history assume a greater prominence. The very function of the legislation must be understood correctly. The task of a judge is not – in all cases – to give the broadest possible meaning to the language enacted; nor is it to expand the reach of an enactment because such language is not readily controllable.

95 This appeal concerns the scope of operation of Div 7 of Pt 3 of the *Payroll Tax Act 2007* (NSW) ("the Payroll Act"). That Division uses the language of "under", "to", "for" and "in relation to" in order to connect supplies of "services" to a "person for or in relation to the performance of work" and to connect "amounts paid or payable" to the "performance of work".[172] This language exhibits a "chameleon-like quality" and thus must be given a meaning that reflects the functional context in which it appears.[173] It is in that context that it is well to remember the words of Dixon J when describing generically the subject of "pay-roll" when taxed:[174]

> "The figure of speech 'pay-roll' used to describe the tax and supply a title to the Acts gives some indication of the subject taxed."

96 What is that subject taxed? Payroll tax is "a tax upon wages".[175] The reach of most payroll tax enactments turns upon how the term "wages" is defined. But howsoever widely "wages" is defined, the "whole context and subject matter" remains the same: the Payroll Act "is dealing with the emoluments of employment paid in money or made over in kind to an employee by an employer".[176]

The Payroll Act

97 The relevant structure of the Payroll Act bears out the foregoing. Part 2 of the Payroll Act provides for the imposition of the tax. Pursuant to s 6 "[p]ayroll

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172 Payroll Act, ss 32 and 35.

173 *Technical Products Pty Ltd v State Government Insurance Office (Q)* (1989) 167 CLR 45 at 47.

174 *Mutual Acceptance Co Ltd v Federal Commissioner of Taxation* (1944) 69 CLR 389 at 403.

175 O'Neill, *Pay-roll Tax in Australia* (1946), preface.

176 *Mutual Acceptance* (1944) 69 CLR 389 at 403.

tax is imposed on all taxable wages". Pursuant to s 7 the employer who pays taxable wages is liable to pay payroll tax "on the wages". Division 2 of Pt 2 of the Payroll Act specifies what are "taxable wages". Principally, they are "the wages" paid by an employer "for or in relation to services performed by an employee".[177] The meaning of the word "wages" is then set out in Pt 3 of the Payroll Act. "[W]ages" means "wages, remuneration, salary, commission, bonuses or allowances paid or payable to an employee".[178] "[W]ages" includes fringe benefits,[179] superannuation contributions,[180] the grant of shares and options[181] and termination payments.[182] Division 7 of Pt 3, which is headed "[c]ontractor provisions", and which is the subject of this appeal, is addressed below. Section 35 is the operative provision in that Division and relevantly provides that amounts paid or payable by an employer for or in relation to the performance of work relating to a "relevant contract" are taken to be wages. It is unnecessary to describe the other Parts of the Payroll Act any further.

Origin and purpose of Div 7 of Pt 3 of the Payroll Act

98 Division 7 of Pt 3 of the Payroll Act has its origin in s 3A of the *Pay-roll Tax Act 1971* (NSW), inserted by the *Pay-roll Tax (Amendment) Act 1985* (NSW). According to the Explanatory Note which accompanied that amending Act, the then definition of "relevant contract" in s 3A(1) was:[183]

> "directed to capture several means of disguising the employer-employee relationship by contractual arrangements which have been increasingly resorted to in recent years by persons seeking to defeat the objects of the [*Pay-roll Tax Act 1971* (NSW)]. The definition contains appropriate exclusions, so that the parties to genuine service contracts will not be prejudiced."

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177 Payroll Act, s 11(1)(a).

178 Payroll Act, s 13.

179 Payroll Act, s 14(1).

180 Payroll Act, s 17(1).

181 Payroll Act, s 18(1).

182 Payroll Act, s 28.

183 New South Wales, *Pay-roll Tax (Amendment) Bill 1985*, Explanatory Note at 1.

99 The relevant Minister described the amendment in the Second Reading Speech as follows:[184]

> "I turn now to the subject of tax avoidance. It is a most unfortunate fact that in every walk of life there is a small minority of people who, by their unscrupulous behaviour, spoil things for everyone else. Thus it is that there has been a significant increase over the years in the use of artificial schemes and contrived arrangements by taxpayers attempting to avoid their liabilities to taxation. This has occurred in the area of pay-roll tax, just as it has in other more celebrated fields such as income tax.
>
> This bill includes a number of measures which will catch schemes designed to avoid liability for pay-roll tax by severing the employer-employee relationship. ... Bona fide independent contractors will not be caught by the legislation."

100 Division 7 of Pt 3 is thus an anti-avoidance regime. It targets arrangements which seek to disguise what are in substance and reality, in the words of Dixon J, "emoluments of employment paid in money or made over in kind to an employee by an employer".[185] In that respect the operative provision of Div 7 of Pt 3 is s 35. Section 35(1) provides:

> "For the purposes of this Act, amounts paid or payable by an employer during a financial year for or in relation to the performance of work relating to a relevant contract or the re-supply of goods by an employee under a relevant contract are taken to be wages paid or payable during that financial year."

101 Determining what is "for or in relation to the performance of work" should be controlled both by the subject matter and function of payroll tax and by the anti-avoidance purpose of Div 7. That approach also controls the meaning of "relevant contract" as defined in s 32 and those persons "taken" to be employers and employees in ss 33 and 34.

The grounds of appeal

102 In summary, there were three grounds of appeal. The first was that no services had been supplied to Uber for or in relation to the performance of work by drivers for the purposes of s 32(1)(b) of the Payroll Act. Uber's business is described below. The second was that, in any event, the moneys collected by Uber

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184 New South Wales, Legislative Assembly, *Parliamentary Debates* (Hansard), 13 November 1985 at 9558.

185 *Mutual Acceptance* (1944) 69 CLR 389 at 403.

from riders as the drivers' agent and remitted by Uber to drivers were not amounts "paid or payable" by Uber to drivers "for or in relation to the performance of work relating to a relevant contract" for the purposes of s 35(1) of the Payroll Act. The third was that such services of drivers were "ancillary ... to the use of goods" – here a car – by drivers for the purposes of the exclusion in s 32(2)(a) of the Payroll Act.

103 For the reasons given below, grounds 1 and 2 should be upheld.

Section 32(1)(b) of the Payroll Act

104 In order to determine the merits of the grounds of appeal, one must commence with the language of s 32(1)(b) and its words of nexus. It provides:

> "In this Division, a ***relevant contract*** in relation to a financial year is a contract under which a person (the ***designated person***) during that financial year, in the course of a business carried on by the designated person –
>
> ...
>
> (b) has supplied to the designated person the services of persons for or in relation to the performance of work ..."

"[U]nder which"

105 The first phrase of nexus to be considered is the term "under which" in s 32(1). That term fixes a connection between a "relevant contract" and a supply by a person of services "for or in relation to the performance of work". For the purposes of s 32(1)(b), the relevant relationship is more particularly a contract "under which" the "designated person" has supplied to the designated person the "services of persons for or in relation to the performance of work". The legislative focus is evidently on a particular type of contract – namely the contract pursuant to which relevant services are supplied to Uber. As the plurality of this Court observed in *WorkPac Pty Ltd v Rossato*, the nature of the legal relationship between the persons to the contract can only be determined by reference to "the legal rights and obligations which constitute that relationship";[186] the concern is not with "amorphous, innominate" things.[187]

106 This approach is consistent with the decision of this Court in *Federal Commissioner of Taxation v Sara Lee Household & Body Care (Australia) Pty Ltd*.[188] That case concerned the identification, for capital gains tax purposes, of the

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186 (2021) 271 CLR 456 at 477 [57].

187 (2021) 271 CLR 456 at 478 [61].

188 (2000) 201 CLR 520.

year of income in which assets were sold "under a contract". Former s 160U(3) of the *Income Tax Assessment Act 1936* (Cth) ("the 1936 Act") prescribed the time at which the disposal was taken to occur. It provided:

> "Where the asset was acquired or disposed of under a contract, the time of acquisition or disposal shall be taken to have been the time of the making of the contract."

107 Gleeson CJ, Gaudron, McHugh and Hayne JJ said that the phrase "under a contract" directed attention "to the source of the obligation which was performed by the transfer of assets which constituted the relevant disposal".[189] To similar effect, in *Chan v Cresdon Pty Ltd*,[190] Mason CJ, Brennan, Deane and McHugh JJ observed that the word "under" in the phrase "under this lease" referred to "an obligation created by, in accordance with, pursuant to or under the authority of, the lease".[191]

108 The question thus posed by s 32(1) of the Payroll Act is whether there is a contract that is the source of an obligation to supply the services for or in relation to the performance of work. The term "contract" is defined in s 31 to include "an agreement, arrangement or undertaking, whether formal or informal and whether express or implied". In that respect, and in the context of a payroll tax impost, the definition of a "contract" in s 31 is, as a matter of construction, necessarily concerned with enforceable obligations to perform work, whether formal or informal. The definition does not employ language such as "whether or not enforceable".[192]

109 For that reason, with great respect, I cannot agree with the conclusion of the Court of Appeal of the Supreme Court of New South Wales that the phrase "under which" in s 32(1) also refers to a contract which expressly refers to, and governs or controls, the supply of services, or which confers a right to be paid for supplying the services.[193] That interpretation of the term "under which" in s 32(1) is too loose and indirect for the purposes of a correct application of s 32(1) and in the context of a tax which is imposed on wages.

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189 (2000) 201 CLR 520 at 537 [42].

190 (1989) 168 CLR 242.

191 (1989) 168 CLR 242 at 249.

192 Contrast, by way of example, the definition of a "scheme" in s 177A of the 1936 Act.

193 *Chief Commissioner of State Revenue v Uber Australia Pty Ltd* (2025) 118 NSWLR 164 at 191 [104].

Has "supplied to" the designated person the services of persons "for or in relation to the performance of work"

110 The first words of connection in s 32(1)(b) are "supplied to". Those words direct attention to the supply of a service or services to the designated person – here Uber. In s 31, the definition of "supply" in relation to services includes "the providing, granting or conferring of services". That supply must occur "under" a contract, in the sense that there is either an express or implied contractual obligation, or an enforceable arrangement or undertaking, to provide the service to the person. The term "services" is defined to include "results" of "work performed".[194] That definition does not refer to any result or outcome, but one which is the product of work that is performed. In other words, the word "services" requires the performance of work and it must be work which is required by the relevant contract (or arrangement or undertaking) and which is provided to the designated person.

111 In the context of an Act imposing payroll tax, the work must be of some tangible kind. The usual example would be the provision of labour. Thus, as Mr O'Neill recognised in his book on payroll tax, "those industries where the cost of production is mainly in the cost of labour suffer a heavier burden" of paying payroll tax.[195] It follows that a mere outcome – such as financial gain – which is not the product of work supplied, provided, granted or conferred here to the designated person would not constitute the supply of a service.[196]

112 The services must be the services of persons "for or in relation to the performance of work". Again, this highlights the Payroll Act's primary connection to wages paid to employees (including deemed employees). Recently, in *Federal Commissioner of Taxation v PepsiCo Inc* this Court was required to consider when a payment is "consideration for" the use of intellectual property for the purposes of the definition of a royalty in s 6(1) of the 1936 Act.[197] The majority observed:[198]

> "the word 'for' connotes a causal connection between the making of a promise to pay or confer some other benefit and the receipt of a right to use the intellectual property. That connection will be satisfied when the giving of the promise can be seen to be the basis for, or a condition of, that receipt."

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194 Payroll Act, s 31.

195 O'Neill, *Pay-roll Tax in Australia* (1946), preface.

196 See Payroll Act, s 31 (definition of "supply").

197 (2025) 99 ALJR 1211; 424 ALR 294.

198 (2025) 99 ALJR 1211 at 1246 [161]; 424 ALR 294 at 338-339.

113 The foregoing passage would be applicable to the meaning of the word "for" in the phrase "for or in relation to the performance of work" in s 35 of the Payroll Act (as to which see below). However, the word "for" bears a different connotation in the context of s 32(1)(b). In s 32(1)(b), "for" is being used to ensure that the services are of a particular kind or type, namely "the performance of work". Again, given the wider statutory context, and the exclusions in s 32(2), that conclusion is compelling. In that respect, on this occasion, the phrase "in relation to" adds little to the work done by the word "for". A service "in relation to" the performance of work will be a service "for" the performance of that work.

Ground 1 – did drivers supply, under a contract, services for or in relation to the performance of work to Uber?

114 The answer to this question can only be resolved by an examination of the terms of the standard contract that drivers enter into with Uber ("the Driver Contract").[199] Whilst some of the nomenclature used in this contract may be mistaken or inaccurate, no-one suggested that any particular term was a sham. The terms of the Driver Contract thus must take effect in accordance with the language they contain. I am unable to discern any clause in that Driver Contract which imposes an obligation on drivers to supply to Uber services for or in relation to the performance of work. That is unsurprising.

115 The Driver Contract, together with the standard contract that riders enter into with Uber ("the Rider Contract"),[200] establishes an arrangement which may be summarised as follows.[201] Drivers are independent businesspeople who acquire lead generation services from Uber to enable them to conduct their businesses of carrying riders. The service is provided through the Uber "Driver App", which enables drivers to connect with riders and fares to be collected. Drivers pay a "Service Fee" to Uber for the benefit of this service. And Uber then pays drivers the fares it has collected, less the applicable Service Fee and any other fees. No contract for the supply of carriage is entered into between Uber and any rider. Nor do drivers promise to supply carriage services to Uber. Instead, the only contract of carriage is that entered into between riders and drivers. This contract is implied from all the applicable circumstances. That includes the fact that invoices issued to riders contain the driver's Australian Business Number, not the number of Uber's Australian subsidiary. It is, with respect, unrealistic to contend that no legally

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199 References to the Driver Contract in these reasons are to the Driver Contract dated 1 December 2017.

200 References to the Rider Contract in these reasons are to the Rider Contract dated 10 June 2020.

201 In these reasons, references to "Uber" include where relevant its Australian subsidiary.

enforceable arrangement exists to supply a carriage service as between a driver and a rider. That is especially so, given no legally enforceable promise to supply a carriage service exists in either the Driver Contract or Rider Contract.

Driver Contract

116 The Driver Contract is consistent with the foregoing.

117 Clause 1 refers to the provision by Uber to drivers of the lead generation services, being "on-demand intermediary and related services ... that enable transportation providers to seek, receive and fulfil on-demand requests for transportation services". These are called "Uber Services" and are provided via the Uber Driver App. Drivers are licensed under cl 19 to use this Driver App. The driver is "an independent provider of peer-to-peer passenger transportation services" ("Transportation Services").

118 Pursuant to cl 2, a driver may accept a rider's request for Transportation Services "if you [the driver] are available and in the vicinity" of the rider. Drivers acknowledge and agree that they will "choose the most effective and safe manner" to perform the Transportation Services and that they will provide all the necessary equipment, tools and other materials, save for the "Uber Services" and the licence granted by Uber to use the Uber Driver App.

119 Pursuant to cl 3, drivers acknowledge and agree that the provision of Transportation Services creates a "legal and direct business relationship between" the driver and the rider and that the driver has "sole responsibility" to riders or third parties for any obligations or liabilities arising from the provision of Transportation Services. As such, drivers must arrange, for example, to maintain adequate insurance. Clause 3 also contains the following last sentence:

> "You [the driver] acknowledge and agree that all [riders] should be transported directly to their specified destination, as directed by the [rider], without unauthorised interruptions or stops."

120 It was suggested by Senior Counsel for the Chief Commissioner of State Revenue that this was a promise made to Uber which constituted the supply of a service to it. I cannot agree. This promise forms part of a number of clauses in the standard Driver Contract whereby Uber seeks to maintain the quality of Transportation Services. It is in Uber's interest to do this because it ensures that riders will seek to use Uber drivers, thus enhancing Uber's revenues, and assisting in building Uber's goodwill. It is also in the interests of Uber drivers. But the last sentence of cl 3 does not constitute the supply to Uber of the services of drivers "for or in relation to the performance of work". The supply of services in question is one of transportation; the "performance of work" is driving a car (or other vehicle). This is provided to the rider and not to Uber. It is the rider, and not Uber, who may direct the route to be used.

121 Nor can it be concluded that the last sentence of cl 3 contains any promise to Uber by a driver to undertake the Transportation Services once the driver has accepted a request from a rider, or indeed once the driver has picked up a rider. The language used cannot sensibly bear that meaning. Instead, the last sentence is a promise to Uber about the manner in which the Transportation Services are to be delivered; it compels no driver to drive. More compellingly, and in any event, once a driver has accepted a request to drive, the implied contract between the driver and the rider would, by necessary implication, contain a term to similar effect.

122 Clause 4 provides that Uber is not deemed to direct or control drivers in the provision of Transportation Services; drivers retain the sole right to determine when and for how long they will utilise the Driver App and the Uber Services. It states:

> "You alone decide when, where and for how long you want to use the Driver App, and when to try to accept, decline or ignore a [rider] request."

123 Clause 8 addresses the fare calculation and the driver's payment. It states that the driver can charge a fare for each instance of completed Transportation Services. It provides that Uber will calculate a recommended fare; this is said to be a "default [f]are" in the event that the driver does not negotiate a different fare. It also provides that each driver will appoint Uber as "your limited payment collection agent" to accept the fare on behalf of each driver using Uber's "payment processing functionality" and each driver agrees that payment to Uber by a rider "shall be considered the same as payment made directly by the [rider] to [the driver]". Clause 8 further provides that if a rider cancels a request for Transportation Services, Uber may charge a cancellation fee on "behalf" of the driver. Uber agrees in this clause also to remit on at least a weekly basis to each driver the fares it collects less the applicable Service Fee and any other fees (described below). The words of cl 8.2 that constitute this promise are important and are as follows:

> "[Uber] agrees to remit, or cause to be remitted, to you [the driver] on at least a weekly basis, (a) the Fare less the applicable Service Fee and other fees charged by [Uber]; (b) the Tolls (excluding applicable airport charges, which [Uber] may pay to the airport on your [the driver's] behalf); (c) any incentive payments made under clause 13; and (d) depending on the region, certain taxes and ancillary fees (where applicable)."

124 Uber also reserves the right in cl 8.2 to adjust a fare "for reasons such as inefficient routes", "failure to properly end" the Transportation Services, or "technical error" in the Uber Services. Again, this level of control is directed at enhancing Uber's business; it does not evince the provision of any service to Uber by a driver.

125 Pursuant to cl 10, in consideration of the provision of Uber Services, drivers agree to pay Uber a Service Fee "on a per Transportation Services transaction basis".

126 Pursuant to cl 19, Uber grants a driver "a non-exclusive, royalty-free, non-transferable, non-sublicensable, non-assignable license, during the term of this Agreement, to use the Driver App in connection with the provision of the Uber Services by [Uber]".

127 Clause 28 regulates the relationship between Uber and the drivers. Whilst some of its language is arguably self-serving, in my view, it nonetheless accurately articulates a relationship which is one whereby Uber is a collection agent for each driver and is the supplier to each driver of the Uber Services and the licence. Clause 28.1 provides:

> "[Uber] is acting as the limited payment collection agent solely for the purpose of collecting payment from [riders] on your behalf, except as otherwise expressly provided herein. This Agreement is not an employment agreement, and does not create an employment, independent contractor or worker relationship (including from a labour law, tax law or social security law perspective), joint venture, partnership or agency relationship. You have no authority to bind ... Uber and/or their affiliates, or hold yourself out as an employee, independent contractor, worker, agent or authorized representative of ... Uber and/or their affiliates."

Uber Community Guidelines

128 As described in the reasons of Gordon, Edelman, Gleeson, Jagot and Beech-Jones JJ, Uber has also issued the "Uber Community Guidelines" ("the Guidelines"). It was not in dispute that they have contractual force. The Guidelines contain a series of standards seeking to ensure that the Transportation Services which are facilitated by the Uber Services take place at a high standard. Some of the Guidelines might be characterised as aspirational statements, such as proclamations that riders and drivers should respect each other and give each other personal space, and that drivers are expected to drive safely. Again, it may be accepted that the Guidelines involve drivers making promises to Uber which enhance the quality of a given instance of the Transportation Services, and which require standards of honesty and probity. Performance of these promises enhances Uber's business and demonstrates a degree of control by Uber over how drivers are to undertake their carriage business. But again, none of this involves a driver supplying to Uber a service for or in relation to the performance of work. There is a critical distinction between, on the one hand, receiving the supply of a service and, on the other, benefiting from the supply of a service to another person. The direct taker of these high standards of commercial behaviour is the rider during the course of each particular instance of the Transportation Services. Riders are the

obvious recipients of the high standard of the performance of work mandated by the Guidelines.

Rider Contract

129 The terms of the standard contract entered into between a rider and Uber are consistent with the standard terms of the Driver Contract. Those terms are expressed to govern the provision of services to riders. Those services are described in cl 2 as follows:

> "Uber will provide the Services to you [the rider] under this Agreement. The Services constitute the provision of a technology platform that enables you, as a user of Uber's mobile applications or websites (each, an '**Application**') to: (a) arrange and schedule transportation services or delivery services with independent third party providers of those services, who have an agreement with Uber or its affiliates ('**Third Party Providers**' [ie the drivers]); and (b) facilitate payments to Third Party Providers [the drivers] for the services and receive receipts for those payments."

130 It is not in dispute that the "technology platform" referred to in cl 2 is provided by the use of the "Rider App".

131 Again, consistently with cl 8 of the Driver Contract, cl 4 of the Rider Contract, titled "Payment", provides for Uber to be a limited payment collection agent for and on behalf of drivers. Clause 4 relevantly provides:

> "After you [the rider] have received services or goods obtained through your use of the Service, Uber will facilitate your [the rider's] payment of the applicable Charges on behalf of the Third Party Provider [the driver] as such Third Party Provider's [the driver's] limited payment collection agent. Payment of the Charges in such manner shall be considered the same as payment made directly by you [the rider] to the Third Party Provider [the driver]."

Disposition

132 The foregoing explains a business in which Uber, through its Uber Services, the Driver App and the Rider App, facilitates business connections between third-party drivers and third-party riders. By the Service Fee, Uber charges the driver for the benefit of these Uber Services. The method of charging that Service Fee is dependent upon the provision of the Transportation Services by the driver, for example, it is dependent on the length of the carriage service supplied. There is thus a connection between the supply of such Transportation Services and Uber's business model; without drivers, Uber makes no profit. But, as explained above, this connection, and this dependency, do not include the provision by drivers, or for that matter by riders, of any service for or in relation to the performance of work to Uber. Instead, correctly and orthodoxly characterised, Uber benefits from

the supply of Transportation Services by drivers to riders. But the securing of this financial advantage does not involve the supply, provision, grant or conferral of any service comprising the performance of work to Uber; nor does it involve the supply, provision, grant or conferral of any result of work provided to Uber. Uber is not a taker or recipient of any Transportation Service, as distinct from being better off because one is supplied to a rider.

133 The fact that a person may supply the same service to different persons at the same time compels no contrary conclusion. That was the result which was reached by this Court in *Accident Compensation Commission v Odco Pty Ltd*.[202] That case concerned an arrangement whereby a business – called Troubleshooters Available ("TSA") – provided tradesmen to builders. Tradesmen were not obliged to accept offers of work, but such an offer, once accepted, obliged the tradesman to remain at a relevant building site, for as long as the builder required or the tradesman wished. This Court said:[203]

> "Once it is accepted that there was (1) an agreement between TSA and the builder for the supply of a tradesman to the builder to do certain work on terms that the builder was to remunerate TSA for supplying the tradesman and for the work which he did, and (2) an agreement between TSA and the tradesman whereby the tradesman agreed to perform work at the site at the builder's direction for remuneration to be paid by TSA, it follows as a matter of plain language that the tradesman supplies services to TSA by attending at the site and doing work there. By attending there and doing work, he supplies services to TSA for the purposes of its business, notwithstanding he also at the same time supplies the same services to the builder for the purposes of its business."

134 There is no analogy between the labour-hire arrangement in *Odco* described above and the position here. Drivers – by driving – supply a service for or in relation to the performance of work to riders, but do not at the same time also supply that same service to Uber. Nothing is supplied, provided, granted or conferred to Uber. All that relevantly occurs is that Uber has an agreement with riders to collect their fare and a separate agreement with drivers to remit their fare, less the Service Fee and any other fees described in cl 8.2, which Uber retains. All of this is then facilitated by Uber's technology platform.

135 Nor is there any suggestion that the Driver Contract is some form of disguised employment. Drivers undertake their own individual businesses, supply their own cars, maintain and insure those cars, and decide when and from where they will undertake Transportation Services (although the choice to refuse to

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202 (1990) 64 ALJR 606; 95 ALR 641.

203 (1990) 64 ALJR 606 at 612-613; 95 ALR 641 at 652.

supply a Transportation Service is qualified by the fact that drivers are unaware of a rider's proposed destination before accepting a request to make such a supply). Some drivers might barely use the Uber Services; some may use those services a great deal. It is a matter for them. Nor can the amounts paid to drivers by Uber be seen as consideration for the receipt by Uber of some service. What is paid to drivers are the fares collected from riders. The consideration which is paid goes the other way. Drivers make payment to Uber as consideration for the use of the Uber Services – the Service Fee – and this is paid when Uber retains the fee from the fare collected.

136 For the foregoing reasons the Driver Contract is not a "relevant contract" for the purposes of s 32(1)(b) of the Payroll Act.

Ground 2 – section 35 of the Payroll Act

137 The question posed by ground 2 is whether the amounts paid by Uber, as employer, are paid or payable for or in relation to the performance of work relating to a relevant contract for the purposes of s 35 of the Payroll Act. In that respect, s 33(1)(b) treats as an employer a person to whom during a financial year, under a relevant contract, the services of persons are supplied for or in relation to the performance of work. In what follows, and contrary to the conclusion reached above, it is assumed that the Driver Contract is a relevant contract.

138 Not every payment of money made between a deemed employer and a deemed employee is caught by s 35. The payment must relevantly be one "for or in relation to the performance of work relating to a relevant contract". That point is illustrated by the decision in *Mutual Acceptance Co Ltd v Federal Commissioner of Taxation*.[204] In that case, Latham CJ considered the phrase "to any employee" in the definition of "wages" under the *Pay-roll Tax Assessment Act 1941* (Cth). Relevantly, that definition stated that "wages" meant "any wages, salary, commission, bonuses or allowances paid or payable (whether at piece work rates or otherwise and whether paid or payable in cash or in kind) to any employee as such".[205] Latham CJ observed:[206]

> "Further, the payment must be made '*to any employee*.' If money is given to an employee in order to enable him to make a payment to a third person on behalf of his employer, such money cannot be regarded as paid to the employee – as in the case already mentioned of providing an employee with money for the purpose of purchasing a railway ticket.

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204 (1944) 69 CLR 389.

205 *Pay-roll Tax Assessment Act 1941* (Cth), s 3 (definition of "wages").

206 (1944) 69 CLR 389 at 396.

> Money is paid to an employee only when he, after receiving it, becomes the owner of the money, having the complete disposition and control of it. Money which is held by an employee on behalf of his employer cannot be regarded as paid to the employee within the meaning of the definition."

139 There is no doubt that when the fares, less applicable fees, are remitted to drivers by Uber, the drivers obtain "complete disposition and control of" that money. But in my view that is not the case with the money – the fare – paid by riders to Uber. In argument, King's Counsel for Uber denied that such money was held by Uber on trust for drivers; he merely suggested that Uber was subject to a fiduciary obligation to collect the fares and remit the money directly to drivers. Nonetheless, it could not be said that Uber has "complete disposition and control" of the fares it collects. Uber collects those fares in a particular legal capacity: as the limited payment collection agent of the driver. Clause 4 of the standard Rider Contract set out above makes that very clear: it states that Uber will facilitate the payment of the fare "on behalf of" the driver as a "limited payment collection agent". In the same vein, cl 8.1 of the Driver Contract provides that the driver appoints Uber as their "limited payment collection agent".

140 In the context of the Payroll Act, which taxes wages, the words "amounts paid or payable by an employer" in s 35 must refer to the payment of amounts over which the employer has complete domain, and the reference to a payment made "for or in relation to the performance of work" must be a reference to a payment made in consideration of that work. There must be a relationship of exchange between the deemed employer and the deemed employee, and that relationship must subsist in the "relevant contract".

141 Here the payment that Uber makes to a driver is not "for or in relation to the performance of work". In this context, the word "for" bears the meaning expressed in *PepsiCo* and described earlier: it "connotes a causal connection between the making of a promise to pay or confer some other benefit and the receipt of" services under a relevant contract.[207] The phrase "in relation to" connotes the same *type* of connection, although the *degree* of connection it requires may be looser or less direct. In either case, a causal connection must inhere between the promise to pay or the payment itself and the performance of work. That connection is not present when Uber pays a driver. What Uber is doing when it remits a fare less applicable fees to a driver is fulfilling its promise to riders. That promise is to remit the fare less applicable fees to drivers as collected from riders "in such manner [as] shall be considered the same as payment made directly" by the rider to the driver.[208] Fares collected from riders are not necessarily held on trust, but they are impressed

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207 (2025) 99 ALJR 1211 at 1246 [161]; 424 ALR 294 at 338-339. See [112]-[113] above.

208 Clause 4 of the Rider Contract.

with the obligation of collection and payment as set out in the Rider Contract and the Driver Contract. Uber has a fiduciary obligation in respect of the collection and remittal of the fares. Uber's discharge of that promise to collect and remit fares, less certain applicable fees, is not the type of payment that s 35 is concerned with.

142 The decision of the Court of Appeal of the Supreme Court of Victoria in *Commissioner of State Revenue v The Optical Superstore*[209] compels no contrary conclusion. That case concerned an arrangement for remunerating optometrists who undertook eye tests for members of the public at certain stores. Customers paid the taxpayer, who held the moneys on trust for the optometrists for distribution in accordance with a formula based on the number of hours worked and the number of consultations the optometrist was prepared to provide. One question was whether the moneys distributed from the trust to the optometrists had been "paid or payable" for the purposes of former s 3C(2)(c) of the *Pay-roll Tax Act 1971* (Vic) or s 35(1) of the *Payroll Tax Act 2007* (Vic) (the equivalent to s 35 of the Payroll Act) when the optometrists were already beneficially entitled to those amounts.

143 The Court of Appeal held that it did not matter that the taxpayer was not beneficially entitled to the money it paid the optometrists; payroll tax was thus payable. The correctness of that conclusion may be put aside. Importantly, the Court properly recognised the need for a causal connection between the payment of amounts and the performance of work by a person. The Court said:[210]

> "The words 'for or in relation to the performance of work' specify that it is a connection between the amount provided and the performance of work which provides the criterion by which the provision of that amount is, or is not, taken to be wages. No other test is posited."

144 On the facts of that case, the necessary connection existed; but that connection does not exist here for the reasons given.

145 I would otherwise doubt another observation made by the Court of Appeal in that case. It was:[211]

> "It is not pertinent to ask whether the amounts resemble wages in the ordinary sense, because the term as used in the [*Pay-roll Tax Act 1971* (Vic) and *Payroll Tax Act 2007* (Vic)] is a statutory creation whose content is explicitly set out in detailed provisions."

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209 (2019) 110 ATR 651.

210 (2019) 110 ATR 651 at 667 [65].

211 (2019) 110 ATR 651 at 667 [66].

146 With very great respect, that question is pertinent precisely because the Payroll Act deploys general words of flexible meaning to delineate necessary connections or relations. The content of those connections and relations can only be accurately fixed having regard to legislative history, context and purpose, and to the very function of the impost in question – a tax on wages.

Ground 3 – supply of services ancillary to the use of goods

147 It is unnecessary to decide this ground of appeal.

Disposition

148 This appeal should be allowed with costs.