

16 March 2021  
Ref: 00410/20

Ms Helen Hong  
A/Principal Council Officer  
Committees, Legislative Council  
Parliament of NSW  
FutureOfWork@parliament.nsw.gov.au

Dear Ms Hong

Please find attached icare's response to the outstanding Question on Notice taken during the hearing on 16 November 2020, for the Inquiry being conducted by the Select Committee into the impact of technological and other change on the future of work and workers in New South Wales.

Should you require any further information, please contact me directly on \_\_\_\_\_ or at \_\_\_\_\_

Yours sincerely

Clemency Morony  
Head of Ministerial and Parliamentary Support  
icare

**Encl**

### **Question**

**The efficacy or otherwise of clause 2 in Schedule 1, the deemed worker provision, in terms of covering people in the gig economy.**

### **Response**

The text of agreements considered for gig economy participants engaged via online digital platforms for Uber, Uber Eats, Deliveroo and Hungry Panda supports a finding that the participants are independent contractors, however, the practice of these business make the position less clear.

Because of this, any claim by a gig economy participant for workers compensation requires a detailed factual investigation to determine whether they are a worker or deemed worker for the purposes of the workers compensation legislation.

In these circumstances, Clause 2 of Schedule 1 of the *Workplace Injury Management and Workers Compensation Act 1998* might afford protection to a gig economy participant for an injury but this would depend on the circumstances of the individual claim.

No single factor would be determinative, and a range of discretionary factors would affect the assessment on a case by case basis. These factors are finely balanced and include:

- Whether the claimant is totally dependent on the principal;
- Whether the claimant has any other source of income;
- Whether the claimant advertised services to other customers;
- Whether the claimant presented independent existence from the principal (eg did they wear a uniform)
- The level of control exercised by the principal;
- The extent to which the agreement in question regulates the work in question and/or the business of the claimant
- Whether the claimant was precluded from providing services to other entities;
- If the claimant was required to invest in capital assets and/or have stock on hand;
- Whether the claimant could engage others to do the work in question;
- Insurance and other arrangements;
- The claimant's ability to negotiate fees