

**INQUIRY INTO APPLICATION OF THE CONTRACTOR
AND EMPLOYMENT AGENT PROVISIONS IN THE
PAYROLL TAX ACT 2007**

Organisation: Uber
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Submission to the inquiry into application
of the contractor and employment agent
provisions in the Payroll Tax Act 2007

NSW Legislative Council
Portfolio Committee No. 1 - Premier and Finance

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Introduction

Uber welcomes the opportunity to make a submission to the Premier and Finance Committee's Inquiry into application of the contractor and employment agent provisions in the Payroll Tax Act 2007. The terms of the Inquiry are of significant interest to Uber and are framed to consider the challenges associated with applying outdated tax laws to the contemporary business landscape.

The inquiry focuses specifically on the application of the contractor and employment agent provisions in the Payroll Tax Act 2007. In introducing the inquiry, the Committee Chair noted:

"If there is complexity or ambiguity in applying these provisions, this inquiry seeks to shed light on the reasons why." Jeremy Buckingham MLC, 16 December 2024

This submission aims to convey the complexity and ambiguity inherent in applying contractor provisions designed in the 1980s to modern digital platform businesses operating in a significantly different landscape, both in terms of what constitutes a 'relevant contract' and how exclusions are applied to deemed 'relevant contracts'.

We are pleased that the Committee has taken an interest in understanding these challenges. Tax certainty is critical to the efficient operation of any business, and moving goalposts (in the absence of legislative change) have led to confusion and made achieving compliance challenging. This, coupled with a punitive tax penalty regime, is problematic for well-intentioned taxpayers.

As outlined below, Uber recommends that any reform contemplated to payroll tax settings is informed by extensive consultation with digital platform businesses to ensure a nuanced understanding of the many models under which these platforms operate, how current provisions may apply to platforms, and the potential impacts of changes to settings, including competitive neutrality. Further, we ask that revenue agencies engage with digital platform businesses with these same considerations in mind.

At the time of writing Uber is awaiting the outcome of its special leave application to the High Court in respect of the NSW Court of Appeal decision in *Chief Commissioner of State Revenue v Uber Australia Pty Ltd* [2025] NSWCA 172. Accordingly this submission does not directly comment on the case or the earlier Supreme Court decision on this matter.

About Uber and digital platform work

Uber is a digital platform that connects people

The first ride on the Uber platform in Australia was taken in Sydney in 2012, and ever since we have played a significant role in transforming the way Australians move. Over the past 13 years, Uber has connected millions of Australians to reliable and safe on-demand transport, from urban centres right across regional Australia.

Uber connects people needing to get from A to B with drivers who provide transportation services. Through the Uber app, riders can request a trip, get fare estimates, track their driver's arrival in real time, share their live trip status with friends and family, and pay electronically. Uber operates under point-to-point regulations in NSW, administered by the NSW Point-to-Point Transport Commissioner. These regulations capture taxis, limousines, rideshare services, airport transfers and other hire vehicles.

Digital platform work meets a growing desire for flexibility and independence for many working Australians

Digital platform work helps hundreds of thousands of Australians earn extra income. For a growing number of people, flexibility and independence in work are increasingly important priorities.

Flexible work allows individuals to fit work around other commitments such as full-time or other part-time jobs, other business ventures, studies, family responsibilities or medical care. Uber data shows that a majority of drivers use the platform fewer than 20 hours a week.

Drivers are not engaged by Uber. Drivers who choose to source work from riders through Uber's platform operate as independent contractors, a status recognised across various legislative and regulatory frameworks. For instance, in New South Wales, gig workers were recently incorporated into Chapter 6 of the Industrial Relations Act 1996 (IR Act), which is the primary legislation governing transport contractor arrangements in the state.

Drivers have the ability to choose when, where, and for how long to work. A driver can go 'online' at any time of their choosing, and are free to accept or reject the trips offered to them by riders. Relevantly, drivers work freely across different digital platforms (referred to as 'multi-apping'), including within the same day or even the same hour. A

driver can be 'online' simultaneously across competitor platforms and choose to accept one trip from a rider via the Uber app, and then immediately after, undertake a trip from another rider via a competitor platform. This becomes important when considering the exemptions from payroll tax in NSW.

Challenges of applying contractor provisions to digital platform businesses

Relevant contracts provisions

The 'relevant contracts' provisions were introduced in the 1980s to capture disguised employer-employee relationships.¹ The concept of a "**relevant contract**" extends the payroll tax liability beyond common law employees to certain contractors for payroll tax purposes.

Recognising the public policy intent of these provisions, it is important to note the 'relevant contracts' provisions were drafted prior to the existence of the modern digital platform economy, including the intermediary model used by Uber and other platforms. This model has been recognised by many courts and tribunals in Australia - the relationships involved are not disguised employer-employee relationships, but facilitate a new way of working. Under this model, the platform business does not engage contractors. Instead, the platform business acts as an intermediary between service providers (that is in Uber's case, rideshare drivers) seeking to provide services and customers seeking those services. The platform acts as an online marketplace, with the platform business charging a fee to the service provider wishing to access that marketplace.

The disconnect between the framing of these provisions and the operation of modern businesses like Uber creates significant uncertainty. To date, businesses have been left to rely on ad hoc guidance created by revenue authorities without industry engagement.

Accordingly, Uber recommends that:

- Revenue agencies engage with digital platform businesses to understand the operation of contemporary business models (including the intermediary model) and the application of the 'relevant contracts' provisions to these models, and
- Any reform contemplated to these provisions is informed by extensive consultation with digital platform businesses to ensure a nuanced

¹ Explanatory Note to the *Pay-Roll Tax (Amendment) Bill 1985 (NSW)*

understanding of the many models under which these platforms operate, how current provisions may apply to platforms, and the potential impacts of changes to settings, including competitive neutrality.

Application of exemptions

Another area of significant interest for Uber is the application of exemptions to the relevant contracts provisions and how best to ensure exemptions are fit-for-purpose for contemporary ways of working, including digital platform businesses. We suggest the exemptions should be modernised, and greater guidance given to platforms, to promote certainty and ease of compliance.

For example, the “services to the public” exemption was included in the relevant contracts provisions to exclude genuine independent contractors who provide services to multiple “principals” (i.e. “the public”) from taxation. From limited information available, we understand the taxi industry relies on this exemption to be exempt from payroll tax liability.

As outlined above, the ability for rideshare drivers to source work freely across multiple platforms (multi-apping) is one of the pillars of digital platform work and a key difference between digital platform work and both traditional employment and forms of contracting that are more aligned to a traditional employer - employee relationship (i.e. where the contractor works solely for one principal). It is widely acknowledged that it is common for platform workers to use more than one platform to source work and that the prevalence of multi-apping has increased over time². A 2023 survey by the Queensland University of Technology’s Centre for Decent Work and Industry (CDWI)³ recently cited by the Fair Work Commission⁴ found that nearly 70% of gig workers accessed work through more than one platform.

However, as Uber does not seek to restrict or control the ability of gig workers to source work across multiple platforms, Uber does not require gig workers that use our platform to provide information on their use of other platforms to source work.

² Fair Work Commission Economic Analysis Team, 2025. Information note — Data on digital platform and road transport workers in Australia.

³ Williams P et al, 2024. Digital Platform Work in Australia: Findings from a 2023 National Survey. Queensland University of Technology Centre for Decent Work and Industry.

⁴ Fair Work Commission Economic Analysis Team, 2025.

It is clear that sourcing work across multiple digital platforms is a contemporary application of providing services to multiple “principals” and that the “services to the public” exemption should apply for drivers that multi-app. However, to date there has been no tailored guidance on the application of the “services to the public” exemption to digital platform businesses. Platforms do not have access to Federal or state government data sources that may be available to revenue authorities to determine the extent of multi-apping.

The lack of clarity in relation to the interaction between multi-apping and the “services to the public” exemption also risks undermining competitive neutrality between rideshare operators and the traditional taxi industry given the application of the “services to the public” exemption to taxi arrangements.

Accordingly, Uber recommends that:

- Any proposed reform give greater legislative definition to the “services to the public” exemption specifically in relation to digital platform businesses, and in particular persons who use multiple digital platforms, and
- In the interim, revenue authorities develop criteria or guidance specific to the application of the “services to the public” exemption to digital platform businesses, and in particular persons who use multiple digital platforms.

Conclusion

Uber appreciates the opportunity to make a submission to this Inquiry and thanks the Committee for its interest and consideration.

Our submission outlines the need for modern tax provisions and guidance that acknowledge the complexities of the digital platform economy and the challenges posed by applying outdated contractor provisions to contemporary business models.

We strongly recommend that revenue agencies and governments engage closely with digital platform businesses to address these challenges and ensure that any reforms are informed by extensive consultation to ensure clarity and certainty in taxation.