

Our reference: D21/1110263

Your reference: D21/066102

Mr Darren Parker  
Executive Director  
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By email: [PolicyDesignWHBCR-SIRA@sira.nsw.nsw.gov.au](mailto:PolicyDesignWHBCR-SIRA@sira.nsw.nsw.gov.au)

Dear Mr Parker

Thank you for your letter seeking ReturnToWorkSA's feedback on injury insurance arrangements for gig economy food delivery riders such as Deliveroo and Uber Eats.

ReturnToWorkSA's observation is that as the case law relating to gig economy workers continues to develop, it is more appropriate to take a watching brief before initiating any legislative change. With that in mind, I am of the view the employment provisions of the South Australian workers compensation legislation are currently sufficient to meet the needs of gig economy workers until the case law matures.

#### The South Australian legislation

The South Australian *Return to Work Act* 2014 (the RTW Act) and its regulations extend the concept of employment to certain groups of persons who may otherwise be considered to be independent contractors because of the ambiguity of their employment status. This is intended to ensure that the Return to Work scheme has the widest possible cover and includes workers in industries where changing employment arrangements and work patterns have eroded their status as 'workers'.

The compensability tests found in the RTW Act and its regulations apply equally to injuries suffered by persons engaged in the gig economy as they do to any other person. Each claim requires a detailed assessment of whether engagement constitutes employment or deemed work.

Among those employment arrangements for whom the cover of the RTW Act has been specifically extended are taxi drivers or drivers of similar motor vehicles for transporting members of the public and, under certain circumstances, owner-drivers transporting goods. I have attached the relevant regulations for your information (see attachment A).

#### South Australian significant cases

*Bemnet Tsegaye* (2019) – The worker disputed the determination of his average weekly earnings, arguing that it should take into account his earnings derived from work as an Uber driver. The issue was whether the worker's work as an Uber driver was employment pursuant to the RTW Act. The worker settled the matter shortly before the listed trial date.

*Ferenc Hever* (2020) – In a similar case to *Tsegaye*, the case of *Hever* is currently before the SA Employment Tribunal (the SAET) and has raised the issue of whether work as an Uber driver is employment under the RTW Act. A directions hearing before a judge of the SAET was held on 13 May 2021.

In both cases, ReturnToWorkSA notified Uber of the disputes before the SAET and the potential of a finding that these workers' engagement by Uber be regarded as employment either through a contract of service or the deeming provisions in regulation 5(1)(d) of the Return to Work Regulations 2015.

In the event the SAET finds that Uber driving constitutes employment or deemed work, ReturnToWorkSA will require Uber to provide declarations of all remuneration paid to Uber drivers in South Australia and then to pay premium based on this remuneration. The RTW Act enables us to take this action.

Thank you for the opportunity to provide feedback on this subject.

Yours sincerely



**Michael Francis**  
Chief Executive Officer

26 May 2021

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## Return to Work Act 2014

### Section 4—Interpretation

**Contract of service** means—

- (a) a contract under which 1 person (the worker) is employed by another (the employer); or
- (b) a contract, arrangement or understanding under which 1 person (the worker) works for another in prescribed work or work of a prescribed class; or
- (c) a contract of apprenticeship; or
- (d) a contract, arrangement or understanding under which a person (the worker)—
  - (i) receives on-the-job training in a trade or vocation from another (the employer); and
  - (ii) is during the period of that training remunerated by the employer;

## Return to Work Regulations 2015

### Regulation 5—Contract of service and other terms (section 4 of Act)

- (1) For the purposes of the definition of contract of service in section 4(1) of the Act (but subject to this regulation and regulation 6), the following classes of work under a contract, arrangement or understanding are prescribed classes of work:
  - (d) driving a taxi-cab or similar motor vehicle used for the purpose of transporting members of the public where the driver does not hold or lease a licence issued in relation to the vehicle and where—
    - (i) the work is performed by 1 person to the contract, arrangement or understanding (the worker) in the course of or for the purposes of a trade or business carried on by another person to the contract, arrangement or understanding (the employer); and
    - (ii) the work is performed personally by the worker (whether or not the worker supplies any tools, plant or equipment); and
    - (iii) the worker does not employ any other person to carry out any part of the work; and
    - (iv) the value of any materials supplied, or reasonably expected to be supplied, by the worker does not exceed \$120 (indexed);
  - (e) driving or riding for fee or reward a vehicle, other than a commercial motor vehicle, for the purpose of transporting by road goods or materials (including money) where the driver or rider does not simultaneously own or operate more than 1 vehicle for work purposes and where—
    - (i) the work is performed by 1 person to the contract, arrangement or understanding (the worker) in the course of or for the purposes of a trade or business carried on by another person to the contract, arrangement or understanding (the employer); and
    - (ii) the work is performed personally by the worker (whether or not the worker supplies any tools, plant or equipment); and
    - (iii) the worker does not employ any other person to carry out any part of the work; and

- (iv) the value of any materials supplied, or reasonably expected to be supplied, by the worker does not exceed \$120 (indexed); and
- (v) the goods or materials being transported are not owned (and have not been previously owned) by the driver or rider (as the case may be), or by the employer;