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20 July 2018

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By email: [REDACTED]
[REDACTED]
Australian Human Rights Commission

Contact
[REDACTED]
Email: [REDACTED]

Dear [REDACTED]

Response to NCYLC submission

We refer to the National Children's and Youth Law Centre's (**NCYLC**) submission dated 2 July 2018 in respect of Portier Pacific Pty Ltd, Uber Portier B.V. and their affiliates' (together, **Uber**) application for a temporary exemption from section 28 of the *Age Discrimination Act 2004* (Cth) (**Application**).

Thank you for the opportunity to respond to the NCYLC's submission. We set out below Uber's response.

Application is necessary

The NCYLC's submission is premised on the misunderstanding that Uber employs or engages delivery partners who use the Uber App. It does not. This was acknowledged by the Fair Work Commission in *Kaseris v Rasier Pacific V.O.F.* [2017] FWC 6610.

Uber is unable to make use of the provisions of *Age Discrimination Act* that would allow it to lawfully discriminate against persons based on the legal age of employment.

Uber is similarly unable to predicate a restriction based on the holding of a driver's licence. Delivery partners often use bicycles to complete orders for their customers.

Uber maintains that the Application is necessary.

Application is complete

Uber has not applied for an exemption from sections 18, 19 or 20 of the *Age Discrimination Act*, nor is it required to do so.

Delivery partners are not "employees", "commission agents" or "contract workers" for the purpose of the *Age Discrimination Act*. Sections 18, 19 and 20 are not relevant to the Application.

In any event, Uber's application has been for an exemption from section 28 of the *Age Discrimination Act*. Section 44 requires a party to make an application for an exemption in respect of "a provision" in Division 2 or 3 of the *Age Discrimination Act*. Uber has satisfied the requirements of section 44 of the *Age Discrimination Act*.

Application made in good faith

It is firmly rejected that the Application has been made in bad faith. Uber has made the Application to address the concerns it has in allowing minors to deliver using the Uber App.

This is a legitimate use of section 44 of the *Age Discrimination Act* and the Commission's processes.

Uber has not set out in the Application details of its safety systems and practices relevant to any of the delivery partners who use the Uber App, nor is it required to do so. Uber has identified the potential safety issues that are relevant to those that are the subject of its Application.

Summary

Uber rejects the numerous false statements contained in the third to last paragraph of the NCYLC's submission. In any event, the issues raised are not relevant to the serious matters that are the subject of the Application.

Uber submits that the matters raised in the NCYLC's submission do not accurately reflect how the Uber platform operates or the current state of the law. Uber maintains that the Application is appropriate in the circumstances.

Please do not hesitate to contact us if the Commission requires any further information before reaching its preliminary view.

Yours faithfully
Corrs Chambers Westgarth



Partner