Submission No 11

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

Organisation: Loan Market Group Pty Ltd

Date Received: 6 February 2025

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Portfolio Committee No. 1 - Premier and Finance
Parliament of New South Wales

Dear Committee,

Subject: Submission to the NSW Payroll Tax Inquiry

I appreciate the opportunity to contribute to the inquiry into the contractor and employment agent provisions of the New South Wales (NSW) *Payroll Tax Act 2007 (NSW) (***the Act**). As an organisation deeply embedded in the mortgage aggregation industry, Loan Market Group (**LMG**) has firsthand experience navigating the complexities of payroll tax law and its application to independent contractors.

Our submission highlights key concerns arising out of our legal proceedings with the Chief Commissioner of State Revenue of Revenue NSW (**RNSW**), which underscore the unintended consequences of the current legislation.

Specifically:

- Independent mortgage brokers are being unfairly impacted: the Court affirmed that brokers run independent businesses, yet the tax provisions fail to adequately exclude them from payroll tax obligations.
- The current provisions cast too wide a net: payroll tax was never historically enforced on broker commissions, yet recent interpretations have created uncertainty, which particularly impacts smaller brokers.
- The compliance burden is unreasonable: mortgage aggregators like LMG face significant administrative challenges in proving exemptions, often relying on information not in their control.
- The law is inconsistent with its original intent: the provisions were introduced to prevent tax avoidance, not to penalise legitimate independent contractors.

To address these concerns, we recommend:

1. A new exclusion should be introduced which exempts bona fide independent contractor arrangements;
2. Alternatively, the current exemptions should be amended so that they carve out types of genuine independent contracting arrangements that are not intended to be caught; of which mortgage aggregation / broking arrangements should be amongst in light of the commercial relationships between brokers, consumers, aggregators and lenders;
3. Alternatively, an amnesty should be introduced to provide aggregators and other businesses who have prepared their payroll tax returns on the basis of reasonable technical positions, absent contemporaneous judicial guidance to the contrary, and who are subsequently found to have a tax liability. The amnesty could:

a. afford a ‘prospective only’ application of the law (as is the case for General Practitioners in certain States), or
b. limit historic application to a lesser number of financial years than five; or
c. impose no interest and penalties on historic periods.

We believe the recommendations will help align the provisions with its policy intent, provide fairness to businesses and industries that would otherwise be placed in significant distress, and also prevent increased costs on aggregation businesses which would otherwise have little choice but to pass those additional on-costs by way of payroll tax, to individual mortgage broking businesses and ultimately to consumers.

In summary, we believe these changes will bring clarity, reduce undue burdens, and restore fairness to payroll tax administration.

I welcome the opportunity to discuss these recommendations further and appreciate the committee’s consideration of this important issue.

Sam White
Executive Chairman, LMG

LMG submission

About LMG

LMG is the largest and most progressive aggregator group across Australia and New Zealand supporting a community of over 6,000 brokers who excel in residential, commercial and asset finance. Our purpose is to grow outstanding broker businesses so that Australians & New Zealanders can get a fair go with finance.

Proudly family-owned and led, LMG supports businesses operating under their own brand, or the Loan Market brand, and partners with over 70 banks and lenders.

The business has grown rapidly, with LMG brokers helping customers settle over $126 billion worth of loans in FY24 and reaching a collective loan book of $370 billion.

Background to RNSW dispute

LMG's recent dispute with RNSW leading to the decisions in *Loan Market Group Pty Ltd v Chief Commissioner of State Revenue* 2024 NSWSC 390 (***Loan Market (1)***) *and Loan Market Pty Ltd v Chief Commissioner of State Revenue (No 2)* [2024] NSWSC 1393 (***Loan Market (2)***) provides it with a unique position to make a submission with the benefit of extensive firsthand experience concerning the contractor provisions within the Act and engagement with RNSW and the judicial system.

LMG provides a summary of its position, as further outlined in this submission, below:

1. LMG welcomes the clarifications from the Court. It was a finding of fact by the Court that:
    a. Brokers run independent businesses that provide mortgage broking services to their customers; and
    b. Loan aggregators provide services to assist brokers.

2. The Relevant Contract provisions were not intended to apply to bona fide independent contractors.
    a. Payroll tax was not historically enforced on the fees paid to mortgage brokers. After nearly 30 years of operation, the first interaction with RNSW - and the first signal of any disagreement with the industry position to our knowledge, occurred in 2015.

3. The current wording of the provisions work by casting the net wide and relying on exemptions to apply to bona fide independent contractors: *Loan Market 1* at [207]. But the difficulty, as recognised by the Court, is that the exclusions are very specific and leave subsets of relationships of bona fide independent contractors that may be subject to payroll tax. The following is the practical effect of the provisions, as currently worded, to the mortgage broking industry:
    a. Exempts medium to larger businesses which often meet the two or more exemption; and
    b. Increases the economic costs relevant to smaller broker businesses which operate on the same basis as the medium to larger exempt broker businesses, but do not have the scale or need to employ/engage other workers.

4. When it applies, the calculation of deemed wages is unduly complex to complete and be verified by State Revenue authorities - reinforcing that it was not intended to apply to mortgage brokers.

5. The evidentiary burden on aggregators is unreasonable:
    a. It relies on information that may not be available to aggregators, and the ability for an aggregator to 'evidence' an exemption is dependent upon the willingness of a mortgage broker to regularly and correctly divulge information about their affairs which may change over the course of time;
    b. Incorrect, outdated or misleading information provided to (and therefore relied upon by) an aggregator hinders aggregator confidence in the economic outcome resultant from claiming an exemption. That is, if an auditor, through seeking information from government sources (which are not available to taxpayers) determines the information relied upon by an aggregator (in good faith) to claim an exemption is incorrect or has changed, an aggregator would be liable to backdated tax, interest and penalties; and
    c. There is outdated public guidance available from RNSW which needs to be clarified to be consistent with the decision of the Supreme Court in *Loan Market* and in consultation with industry. Commissioner Practice Note CPN 016v2 (titled Payroll Tax Act – Relevant Contracts - Australian Financial Services Licences and Australian Credit Licences) is dated June 2022 and has not been updated since *Loan Market (1) or (2)*, to present knowledge.

6. The high economic and compliance costs that are inconsistent with the intention and objectives of the provisions and are exacerbated because, although the payroll tax provisions are intended to be harmonised across the state and territories, it is not.

Loan Market (1) **findings**

LMG provides here key background information relating to the aggregation industry as heard in *Loan Market (1)*:

- In the late 1990s lenders began to impose conditions on mortgage brokers to receive accreditation, including minimum value of loans required to be written in a month which led to the sharing of accreditations and then developed into the emergence of aggregators in the industry (at [53])
- Mortgage brokers using aggregators generally gain access to services including a panel of lenders, technology, training and professional development programs, business planning and business development, software, marketing collateral, administrative and compliance services, and licencing. The broker is charged a fee to access those services. Aggregators sit between the mortgage broker and lender, and do not deal directly with the public (at [47])
- Customers of the mortgage brokers are consumers of residential home lending products and services, which are provided by the lenders (at [49])
- Brokers earn commission through introducing customers to lenders (at [81]). The LM Group generated revenue through fees charged to mortgage brokers in respect of the services provided by the LM Group to the mortgage brokers, LM Group's customers are mortgage brokers, not loan applicants or borrowers (at [83])

With the above context in respect of the mortgage aggregation industry and for further reference, we summarise below a brief timeline of the NSW dispute:

- In October 2015, LMG was notified of an audit being commenced
- In late 2018, that audit concluded finding that payroll tax was applicable
- In 2019, LMG filed an objection to the audit decisions which ultimately upheld the audit's conclusion
- In January 2020, proceedings commenced in the NSW Supreme Court by LMG
- In 2023, the matter was heard across 5 days in May and June
- In April 2024, the preliminary decision was handed down in *Loan Market (1)*
- In November 2024, the secondary decision in relation to penalty, interest and costs, was handed down in *Loan Market (2)*

The legislative framework as explained in the Loan Market Decision:
Richmond J handed down his first decision in April 2024 on the primary issues in dispute. In finding that the relevant contract provisions did apply, he had specific regard to the following:

- Each of the assessed brokers conducted a business, which is properly described as mortgage broking or loan origination (at [184])
- While LML did provide various services to the brokers, it did so for the purpose of enabling eMOCA to earn commissions under the lender agreements to which eMOCA was a party (at [192]). The business of LML is properly characterised as entering into and performing the broker agreements in order to facilitate the generation of commissions payable to eMOCA under the lender agreements (at [193])
- The performance by brokers of promises to undertake the work in a particular way is properly characterised as the performance of a service to LML notwithstanding that it is also the performance of a service to the client for whom the loan is arranged (at [202])
- The provision of services can arise notwithstanding that this involves, at the same time, the provision of services to a third party (at [203])

Intention and history of the provisions

The Act was introduced in the Legislative Assembly on 19 June 2007, passed on 27 June 2007 and assented on 4 July 2007. The explanatory notes accompanying the bill state: The object of this Bill is to repeal and re-enact the *Pay-roll Tax Act 1971 (NSW)* (**the 1971 Act**) with various changes to harmonise the Act with the equivalent payroll tax legislation of Victoria.

The bill in respect of Victoria's payroll tax legislation (**Victoria Act**) was introduced in May 2007 and assent given on 26 June 2007.

The explanatory memorandum accompanying the Victoria Act notes the following: The intention of the provisions is to capture 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.

The 1971 Act contained similar relevant contract provisions at s 3A:

> (1) A reference in this section to a relevant contract in relation to a financial year is a reference to a contract under which a person (in this subsection referred to as the ***designated person***), during that financial year, in the course of a business carried on by the person:
>
> (a) supplies to another person services for or in relation to the performance of work,

(b) is supplied with 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 those goods to a designated person or, where the designated person is a member of a group, to another member of that group,

Further comments in respect of the intent are captured in the cases discussed below (**with emphasis**).

In *Loan Market (1)*:

- [207] The conclusion that the Broker Agreements constitute a relevant contract under s 32 may be seen as a **harsh outcome for LML because the contractor provisions now found in s 32 were originally introduced as an anti-avoidance measure which was not intended to catch "bona fide independent contractors"**: see Bridges Financial Services at [218]–[219]; Downer EDI Engineering Pty Ltd v Chief Commissioner of State Revenue [2019] NSWSC 743 at [101]–[110]. But the way the legislature approached the implementation of that purpose was to cast the net of 'relevant contract' very widely and then to give exclusions which were intended to catch the bona fide independent contractor relationships.

Bridges Financial Services Pty Ltd v Chief Commissioner of State Revenue [2005] NSWSC 788 (**Bridges**):

- [219] Section 3A of the Pay-roll Tax Act 1971 (NSW) was introduced by the Pay-roll Tax (Amendment) Act 1985 (NSW). In his Second Reading Speech, the Minister for Employment and the Minister for Finance said that **bona fide independent contractors would not be caught by the legislation**: Hansard, Legislative Assembly, 13 November 1985 at 9558.

Downer EDI Engineering Pty Ltd v Chief Commissioner of State Revenue [2019] NSWSC 743:

- [104] The contractor provisions of the 1971 Act, s 3A, were introduced by the Payroll Tax (Amendment) Act 1985 (NSW). According to the Explanatory Note to the Payroll Tax (Amendment) Bill 1985 (NSW), the terms of the definition of 'relevant contract' in s 3A(1) were:
    - "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 Principal Act. The definition contains appropriate exclusions so that **the parties to genuine service contracts will not be prejudiced**."
- [109] Mr Debus in the second reading speech said, relevantly:
    - "The legislation was designed to overcome certain tax-avoidance practices involving contractors and employment agents… **In effect, only contracts that are similar to a normal contract of service are subject to payroll tax**"

Payroll tax has not historically applied to commission payments paid to brokers. That is to say:

- The relevant contract provisions have been in operation since 1987 under the predecessor 1971 Act;
- Aggregators have been established in the mortgage broking industry since the late 1990s and early 2000s;

- Aggregators have operated under reasonable advice that brokers are bona fide independent contracts and exempt from payroll tax; and
- It was not until 2018, as the LMG audit closed, that there was a conclusion from RNSW that payroll tax was applicable to these relationships

Application of the provisions

The express words of the relevant contract provisions have broader application than the original intention as a result of the relatively low threshold associated with acts which constitute a "service" provided under a contract.

As per Richmond J's observations (**with emphasis**):

- [199] The requirement that the services supplied under the contract are "services of persons for or in relation to the performance of work" is merely that the services supplied under the agreement are work-related: Accident Compensation Commission v Odco Pty Ltd (1990) 95 ALR 641 at 651; Bridges Financial Services Pty Ltd v Chief Commissioner of State Revenue [2005] NSWSC 788; (2005) 60 ATR 237 at [225]; Smith's Snackfood at [56].
- [200] … As noted in IW v The City of Perth (1997) 191 CLR 1 at 11, **the term "services" has a wide meaning**. In the Macquarie Dictionary, the first two meanings given to "service" are "an act of helpful activity" and "the supplying or supplier of any articles, commodities, activities etc required or demanded". In the Oxford Dictionary, the first two meanings of "service" are "the action of helping or doing work for someone" and "an act of assistance".
- [202] The performance by the Assessed Broker of the promises to undertake the work in a particular way is properly characterised as the performance of a service to LML and this is so notwithstanding that it is also the performance of a service to the client for whom the loan is arranged: Thomas and Naaz Pty Ltd v Chief Commissioner of State Revenue [2023] NSWCA 40 at [41]–[45]. See also Bridges Financial Services at [226].
- [208] **The potential difficulty for a taxpayer is that the exclusions are very specific and may leave a subset of relationships such as those in the present case where the contractor is a genuine independent contractor but may not come within any of the exclusions.**

This is the same approach and sentiment expressed in previous court decisions, as outlined below:

Bridges

- In 2005 the case of *Bridges* was decided by Gzell J in the NSW Supreme Court. This case considered the *Pay-roll Tax Act 1971* (NSW), being a predecessor to the Act, whereby the relevant contract provisions were contained in s 3A(1)
- In this case, where the taxpayer was a financial planner, the court noted the following:
    - [221] …The structure of the Pay-roll Tax Act 1971 (NSW), s 3A is to define, in broad terms, a relevant contract. If an arrangement answers that description, the second step is to determine whether any of the exceptions apply. It is because of the exceptions, that the legislation does not catch bona fide independent contractors. It is because of the non-application of an exception that the object of taxing the putative sub-contractor who works exclusively, or primarily, for one person under a contract whose object is to obtain the labour of that person, is achieved. If s 3A(1)(b) were confined in the manner submitted on behalf of Bridges, there would be little scope for the operation of the exceptions.

- [222] It was also submitted that the provision did not apply because the contract with the representatives did not oblige them to provide any financial advice on behalf of Bridges to any clients. They could do so if they chose. I reject that submission. Once a representative chose to supply Bridges with services, those services were provided under the contractual arrangements between the representative and Bridges.
- [225] The reference to services for or in relation to the performance of work in the Pay-roll Tax Act 1971 (NSW), s 3A(1)(b) is no more than a requirement that the services be work-related: Accident Compensation Commission v Odco Pty Ltd (1990) 64 ALJR 606 at 612; 95 ALR 641 at 652.

Novus Capital

- In 2018 the NSW Civil and Administrative Tribunal delivered their decision in the case of *Novus Capital Ltd v Chief Commission of State Revenue* [2018] NSWSCATAD 72 (**Novus**). Novus concerned the application of the Act, again in relation to a financial planner.
- Having regard to Bridges, the decision maker in Novus was satisfied that the agreements Novus had were a relevant contract for the purpose of Division 7 of the Act, and each of the exemptions were considered.
- The decision maker notes:
  - [220] First, in respect of [155(a)] the language of s 32(2)(c)(iii) may not be easy to read or understand.
- This acknowledgement sheds light on a key issue in the Act. If, according to Bridges, the relevant contract provision is to be broadly interpreted and the exceptions are the only way to eliminate the kinds of relationships not intended to be caught by the provisions then there is a serious issue whereby the exceptions are characterised as not “easy to read or understand”.

Thomas & Naaz

- In 2022 another matter (although in a different industry) concerning the relevant contract provisions contained in the Act was heard before the NSW Civil and Administrative Tribunal in *Thomas and Naaz Pty Ltd v Chief Commissioner of State Revenue* [2022] NSWCATAP 220. The decision was then appealed to the NSW Supreme Court of Appeal in 2023 in *Thomas and Naaz Pty Ltd v Chief Commissioner of State Revenue* [2023] NSWCA 40.

- The taxpayer in these decisions operated medical centres in western Sydney and employed nurses, reception and administrative staff. Separately, the medical practitioners were contracted and thus the main issue was whether the relevant contract provisions applied.

- The NSW Supreme Court of appeal agreed with the original decision and found that:
  - [41] Contrary to the applicant’s submissions, it seems perfectly plain that the medical practitioners provided **services** to the applicant. It is true, of course, that they provided medical services to the individual patients, who assigned their rights to medicare benefits to the practitioners. But that does not prevent the medical practitioners from at the same time being regarded as supplying services to the applicant.
  - [45] Unquestionably the medical practitioners provided valuable contractual promises to the applicant, which were conducive to the conduct of the applicant’s business. The performance of those promises required positive actions by the medical practitioners on a continual basis while the contract was in force. It is no strain of language to regard the totality of the performance by the medical practitioners (including the provision of medical services to patients, but extending to the other promises in the contract such as attending

the medical centre, adhering to its protocols and taking leave as permitted) as amounting to the provision of services to the applicant.

- This interpretation of services by the NSW Supreme Court of Appeal again added to the broad reading of the provisions.

The result of this widely-cast net and the narrow exemptions is that:

- Broker businesses who are medium to larger organisations will more readily meet an exemption but small businesses are unfairly penalised. Smaller businesses that conduct broadly the same type of services, are not able to meet an exemption as easily and thus the brunt of the obligation gets placed on the smallest businesses who are less capable of meeting these additional fees;
- There is a burden placed on the taxpayer to obtain the relevant evidence to prove an exemption, some of which aggregators (or businesses more generally) have limited practical basis to access or otherwise compel the provision of;
- The costs put on the taxpayer are passed onto the brokers given the nature of the role played by aggregators in the broking industry.

Complexity of the provisions and their applicability

Richmond J handed down his second decision in November 2024 on the remaining issues of penalties, interest, and costs. Most notably his Honour made the following observations [**emphasis added**]:

- [94] ... The fact that Mr Sullivan's views were not unqualified reflects the fact, which is not in dispute, that the operation of the 'relevant contract' provisions in the Act to the circumstances of the present case is complex.
- [105] In my view, none of the matters raised by the plaintiffs warrant the remission of the penalty relating to the payroll tax arising from commission payments in that period. The fact that the application of the relevant contract provisions to the LM Group's circumstances was complex and difficult is not itself a reason for remitting the penalty. Nor is the fact that the application of the law to the LM Group may appear harsh –that is **a matter for Parliament to correct by amending the legislation, and is ameliorated to some degree by the exemption provisions**.
- [116] .... It may be inferred that the Commissioner delayed in issuing assessments because he recognised that the issue was complex particularly because even if the threshold question was determined in his favour, the exemption question raised a number of issues and factual questions, some of which required evidence from third parties (the brokers) who were not within LM Group's control.

In making the above comments, the Court has therefore observed that, in respect of the mortgage aggregation industry, the relevant contract provisions:

- Are complex and difficult to navigate;
- May be harshly applied to certain entities;
- Include exemptions that may be difficult to fully answer and evidence due to the reliance on evidence required from entities for which the liable entity does not have control.

Justice Richmond's comments capture LMG's experience throughout its history dealing with RNSW on this issue, for which further context is:

- In addition to the dispute in respect of whether a relevant contract existed, Loan Market bore the onus of evidencing any exemptions. This entailed collating evidence in respect of the hundreds of brokers contracted with LMG across a 7 year period from 2012 to 2018. Once each broker has been characterised into their relevant potential exemptions, a representative witness was agreed whereby their eligibility for the exemption would be assessed and then applied to the group which they represented. As per the history timeline, this was a process that took years.
- In addition to the above, there was a lack of guidance from the Commissioner during this time, and some exemptions cannot be relied on without firstly receiving approval from the Commissioner, which may be a lengthy process in and of itself.
- In the event that the expectations for each exemption are clear, this is still burdensome on a taxpayer to comply with as brokers (in this case) are not under the control of the taxpayer and thus the evidence for which the taxpayer wishes to rely is not readily accessible. Instead, it relies on the assistance of hundreds, sometimes thousands, of individual entities to cooperate.
- Even after information is obtained by brokers which are willing to supply it, auditors regularly rely on information obtained by the ATO which brokers would usually be reluctant to provide (either for privacy / confidentiality reasons, or because at the time exemptions are being considered by aggregators, broker tax returns would often not have been due/lodged). This means auditor assessment of exemption feasibility is in practice, and can be based on different information sources prepared at different points in time, which are often unavailable to aggregators, leading to lengthy disputes as to evidentiary inconsistencies.

Unreasonable administrative burden into the future

As outlined above, the provisions as they currently stand put a large burden on taxpayers operating a mortgage aggregation business, contracting with thousands of brokers across the nation. LMG has spent almost a decade seeking clarity. Even now that the Supreme Court has delivered judgment outlining that the relevant contract provisions do apply, LMG remains in contact with the revenue authorities across Australia to agree an approach for the evidencing and approach to exemptions. Once clarity is gained, there will be indefinite ongoing work to maintain evidencing the exemptions.

Guidance
The Act has been in place since 2007, but it was not until 2019 (after the conclusion of the LMG audit) that the first Commissioner's Practice Note was published, providing guidance on how the relevant contract provisions applied.

The first of these was CPN 007 "Payroll Tax Contractors" published on 28 February 2019. This guidance contains commentary on what a relevant contract is; what the exemptions to a relevant contract are; and types and characteristics of independent contractors. In respect of the exemptions, the CPN recommends the following records are maintained:

For 90 days:
- a copy of the contract;
- a copy of the invoices prepared by your contractor showing the period that the contractor worked for you;
- recording in "accounts payable" the period that the contractor provided services;
- an attendance record of the days on which your contractor actually attended your business premises or work site.

For 2 or more:

- A record of the contractor's ABN;
- the written contract, if any, between you and your contractor;
- the invoices prepared by your contractor specifying the dates or the period during which services were performed;
- details of the workers who performed the work under the contract/invoice;
- records showing details of workers who attended the site where and when the work was performed;
- a declaration signed by the contractor identifying details of the individuals who performed the work, including ABNs if the workers were sub-contractors;
- evidence provided by the contractor indicating the contractor employs workers, such as details of the contractor's workers' compensation insurance policy.

Despite being released in 2019, the above requirements demonstrate that:

- The guidance was still only aimed at assisting taxpayers who engage contractors in a common sense, thus making it unworkable as guidance for the mortgage broking industry; and
- There is a substantial evidentiary burden where a taxpayer (like LMG) contracts with thousands of mortgage brokers.

It was not until 2021, 14 years after the legislation was enacted that there was specific guidance for the financial industry, notwithstanding that Revenue NSW held this view for a significant period before this, as evidenced by the audit outcome (concluded in 2018). In February 2021, the Commissioner published CPN 016 "Payroll Tax Act - Relevant Contracts - Australian Financial Services Licences and Australia Credit Licenses" which was later updated and re-issued in June 2022. The purpose of this guidance was to explain the application of s 32 of the Act to businesses providing financial or credit services.

The intent of harmonisation

The burden placed on taxpayers is inconsistent with the intention and objectives of the provisions as described above.

Payroll Tax Harmonisation

The 'Protocol for Payroll Tax Harmonisation between Jurisdications provides the following:

- On 29 March 2007 State and Territory Treasurers announced a decision to overhaul payroll tax arrangements to achieve greater legislative and administrative harmonisation.
- The protocol was one of 27 projects designed to achieve a National Seamless Economy
- On 11 July 2008 the Commissioners of all State and Territory Revenue Offices signified their commitment to establishing and maintaining consistency in the administration of payroll tax.
- The Commissioners signed a Protocol for Payroll Tax Harmonisation between Jurisdictions in 2010, confirming their continued commitment to the harmonisation process. This protocol states, inter alia, that the Commissioners agree to:
    - Improve the consistency of business practices, taxpayer information and administrative and compliance requirements;
    - Consider opportunities for further harmonisation of payroll tax legislation and, if appropriate, make recommendations to their respective governments to make legislative changes; and
    - Continue to consult with taxpayers and stakeholders as appropriate in relation to the

future direction of harmonisation in order to maximise benefits to stakeholders.

The intention of the harmonisation was to allow businesses to have consistent and clear guidance on the application of payroll tax anywhere within Australia. However, despite this there remains inconsistencies such as in the Australian Capital Territory where the exemptions (which are meant to aid the broad net cast by the relevant contract provisions) are not available. This adds further costs and burden to taxpayers nationally.

Recommendations

In respect of the relevant contract provisions contained in the Act, we recommend the following:

- A new exclusion should be introduced which exempts bona fide independent contractor arrangements;
- Alternatively, the current exemptions should be amended so that they carve out types of genuine independent contracting arrangements that are not intended to be caught; of which mortgage aggregation / broking arrangements should be amongst these in light of the commercial relationships between brokers, consumers, aggregators and lenders;
- Alternatively, an amnesty should be introduced to provide aggregators and other businesses who have prepared their payroll tax returns on the basis of reasonable technical positions, absent contemporaneous judicial guidance to the contrary, and who are subsequently found to have a tax liability. The amnesty could:
    - afford a ‘prospective only’ application of the law (as is the case for General Practitioners in certain States), or
    - limit historic application to a lesser number of financial years than five; or
    - impose no interest and penalties on historic periods.

Based on LMG’s experience and the material outlined above, these recommendations are intended to ensure that the Act has the effect of:

- Reducing the burden on taxpayers;
- Providing clarity on the provisions;
- Aligning the words of the provisions to the parliamentary intent;
- Rectifying the otherwise harsh outcome on the industry.