

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

Organisation: Finsure Finance & Insurance Pty Ltd
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Finsure Finance and Insurance Pty Ltd

Wholesale Aggregator Submission
Parliament of New South Wales, Legislative Council
Inquiry into Payroll Tax Act Relevant Contractor Provisions

SUBMISSION

Introduction and purpose

About Finsure, background and context

Finsure is one of Australia's leading wholesale mortgage aggregators, supporting over 3,700 independent mortgage brokers by providing access to a broad panel of lenders, industry leading technology, and regulatory and compliance services. It provides services to 27.8% of mortgage brokers based in New South Wales (**NSW**) making it the aggregator that is the largest wholesale service provider to brokers in that state.¹ Finsure operates as an intermediary, enabling independent brokers to connect their borrower customers with suitable home loan products.

Finsure's wholesale aggregation model enables brokers to operate as independent businesses with full autonomy over their branding, client relationships, and business decisions. Brokers choose to engage Finsure's services but remain self-employed professionals running their own businesses. One of our main service offerings to brokers is our industry leading technology platform, *Infinity* which is a software platform that enables brokers to connect with lenders and manage their commission payments. Our cutting-edge technology is a major part of our business and we see ourselves as a technology service provider.

Finsure is currently in dispute with the Chief Commissioner of State Revenue in New South Wales (**Chief Commissioner**). The dispute relates to the Chief Commissioner's attempt to apply the relevant contractor provisions of the *Payroll Tax Act 2007* (NSW) (**Payroll Tax Act**) to Finsure's arrangements with a number of mortgage brokers. The Chief Commissioner has taken a misguided position that brokers operating under Finsure's aggregation model are performing work for Finsure, rather than operating independent businesses servicing their own clients. This interpretation incorrectly equates Finsure's wholesale aggregation model with an employment like relationship, despite brokers:

- **Not being employees:** Brokers operate independent businesses, set their own schedules, and work with multiple lenders
- **Earning income from lenders:** Finsure does not pay brokers wages or salaries but simply facilitates commission payments from lenders.
- **Using Finsure as a service provider:** Brokers choose to use Finsure's platform, compliance tools and lender network but retain full operational independence.

Applying payroll tax to Finsure's wholesale aggregation model fundamentally mischaracterises its role as a service provider and threatens the viability of independent mortgage brokers. The inappropriate extension of the relevant contractor provisions risks:

- **Reducing competition in the mortgage market:** by forcing independent brokers into franchise or lender-controlled models, which would adversely affect the NSW residents who use brokers to negotiate the best deal for them to finance the acquisition of their homes.
- **Increasing costs for brokers:** as the payroll tax imposed on aggregators will be passed on to brokers through higher fees and compliance costs.
- **Distorting the financial services industry in NSW:** by discouraging investment in technology driven service platforms.

We are passionate about the future of our industry and proud of the services we provide to empower independent small businesses to thrive in the NSW economy. The small businesses we service are made up of everyday people who have taken a risk to go out on their own and provide essential assistance to members of the community who are seeking to get access to credit.

¹ [Broker boom for NSW and the ACT | Mortgage Professional Australia](#)

This submission provides our unique perspective on the inequitable consequences of our currently broken payroll tax system, which, if allowed to continue could result in brokers ceasing to operate due to the prohibitive additional expense or passing that cost on to their customers – who are NSW residents seeking to finance their homes. We make this submission with the hope that reform can alleviate the current situation for all players in the aggregation business that provide important services to the brokering community and, by extension, NSW residents who rely on brokers to help them finance them into their homes.

We urge the NSW Government to correct the potential misapplication of payroll tax to businesses like Finsure's and other intermediary businesses, which will ensure that:

- independent mortgage brokers can continue to operate freely;
- that competition remains strong and NSW resident borrowers benefit from the better financial deals they can secure in a more competitive environment; and
- the mortgage industry is not unfairly burdened by tax consequences not intended by the Payroll Tax Act.

Recommendations

Urgent reform is needed to ensure that the relevant contractor provisions remain relevant to a modern economy and fit for purpose. We recommend:

- **Amending the provisions to exclude complying aggregators:** Introduce a clear legislative carve out for business to business (B2B) platforms that sell services to independent contractors.
- **Exclusions from the carve out:** Exclude from the carve out arrangements where the business directs, controls and is integrated with and financially depends on contracted labour. This would align the law with its original intent to capture disguised employment while excluding independent business models.
- **Intermediary oversight is not control:** In adopting the B2B exemption clarify that intermediary oversight required by law should not be mischaracterised as employer like control. The relevant contractor provisions should not apply where an entity's role is limited to compliance facilitation and regulatory obligations rather than directing or controlling the economic activities of independent businesses.
- **Issue clear guidance to provide certainty for B2B service providers:** The Chief Commissioner should issue public guidance confirming that qualifying aggregators and other technology driven platforms are not employers for payroll tax purposes. Generally, you might expect that wholesale aggregators will qualify for the exemption and that franchise aggregators would not. However, there could be exceptions.

Simon Bednar

Chief Executive Officer



1. Overview of aggregation models in the mortgage industry

1.1. The aggregation and mortgage brokering industry

For many Australians, the dream of owning a home is much more than a financial transaction – it is a cornerstone of our culture and a critical component of the Australian way of life. Historically, generations have built their families and communities around the security and pride that comes with home ownership. Today, that dream has become increasingly challenging to achieve.

Recent decades have seen dramatic shifts in the economic landscape. Rising inflation, credit market tightening and the ongoing effects of a housing crisis have all contributed to a significant housing affordability challenge. Data from the Australian Bureau of Statistics (**ABS**) shows that housing prices in major cities have surged by 71.6% between 2014 and 2021.² In addition, further data from the ABS and the Reserve Bank of Australia shows that household debt levels have grown significantly relative to household incomes, exacerbating the pressure on everyday Australians.³ In NSW alone, it is estimated that over 33% of households rely on home loans to secure their property, demonstrating the pivotal role that access to fair and competitive finance plays in enabling Australians to achieve home ownership.

Mortgage brokers play a key role in unlocking access to home ownership. Today, nearly 60% of home loans are originated through brokers, who act as intermediaries between borrowers and lenders.⁴ A mortgage broker's primary role is to help their clients secure home loans or other financing by assessing their financial situation, comparing available products, and recommending options. Brokers gather necessary documentation from borrowers and submit loan applications to lenders. Brokers are typically accredited by multiple lenders and work with many of them, allowing them to offer a wide range of options to borrowers. As they operate within the financial services industry, brokers are subject to regulatory and compliance requirements such as the National Consumer Credit Protection Act (**NCCP Act**). They are compensated through commissions from lenders, based on the loans which they originate.

These professionals serve as trusted advisors who help families navigate a labyrinth of financial products, ensuring that borrowers receive the most competitive and suitable finance available. Their independent advice and the diversity of lender products they offer underpin a competitive marketplace, which ultimately benefits every Australian family and makes home ownership more accessible.

Where mortgage brokers are the face of the industry, what sits behind them are support mechanisms provided by service providers such as mortgage aggregators. Mortgage aggregators operate as intermediaries between mortgage brokers and lenders, playing an essential role in improving consumer choice and fostering competition within the home loan market. Aggregators provide the infrastructure and tools that brokers need to operate their businesses.

Depending on the model of aggregation, wholesale aggregators such as Finsure, (and others such as Connective Services Pty Ltd and, Specialist Finance Group, for example) are not mortgage brokers. Rather, they, like Finsure, they are important technology, infrastructure and support providers to mortgage brokers, who are an aggregator's customer.

² Australian Bureau of Statistics, *Residential Property Price Indexes: Eight Capital Cities* (Media Release, December 2021) < [Residential Property Price Indexes: Eight Capital Cities, December 2021 | Australian Bureau of Statistics](#)>; Australian Bureau of Statistics, *Residential Property Price Indexes: Eight Capital Cities* (Media Release, September 2014) , [6416.0 - Residential Property Price Indexes: Eight Capital Cities, Sep 2014](#).

³ Australian Bureau of Statistics, *Average Household Debt Grows by 7.3 per cent* (Media Release, December 2022) , [Average household debt grows by 7.3 per cent | Australian Bureau of Statistics](#)>; Beckers et al., *Developments in Income and Consumption Across Household Groups* (Reserve Bank of Australia, January 2024) < <https://www.rba.gov.au/publications/bulletin/2024/jan/developments-in-income-and-consumption-across-household-groups.html>

⁴ Mortgage & Finance Association of Australia (**MFAA**): <https://www.mfaa.com.au/news/mortgage-brokers-record-highest-ever-market-share-amidst-global-pandemic>

The services aggregators typically offer can be broken into several core categories:

- **Business support and technology infrastructure:** aggregators supply brokers with tools such as customer relationship management (**CRM**) software, such as Finsure's *Infynity*. CRM's allow brokers to compare mortgage products from various lenders, assess their clients' borrowing capacity, manage compliance, and submit loan applications on behalf of clients. Additionally, some aggregators offer marketing services and professional development programs that help brokers to build their client base and enhance their skills. The provision of these tools helps brokers manage their businesses effectively, using established and industry tailored systems.
- **Compliance and regulatory assistance:** as brokers are intermediaries between lenders and borrowers, they are subject to the NCCP and other regulatory frameworks. Aggregators assist brokers by ensuring that they meet these legal obligations. For instance, brokers who do not hold their own Australian Credit Licence (**ACL**) can become credit representatives of the aggregator's ACL, allowing them to legally conduct their business whilst ensuring compliance with the law.
- **Commission management and disbursement:** one of the core services which aggregators provide is managing the flow of commissions from lenders. Aggregators enter into agreements with lenders to facilitate the payment of commissions to brokers for each loan settled. These commissions are typically split between the aggregator and the broker, with the aggregator retaining a pre-agreed percentage as it's fee for the services provided. This common arrangement allows brokers greater flexibility in the management of their cash flow, as their earnings are directly tied to the volume of business, they generate rather than a fixed salary or hourly wage. It additionally underscores the independent nature of the relationship as brokers are not paid like employees who receive regular wages. Instead, brokers generate revenue in their business based on the volume of loans they write for their borrower customers, providing them the autonomy to control the scale and direction of their operations to suit their needs.

Whilst aggregators are service providers to brokers, they do not engage in the core activities of either lenders or brokers. Aggregators are not responsible for originating loan applications, making lending decisions, or advising borrowers on the suitability of financial products. Their primary role is to act as a link between brokers and lenders, facilitating the connection and ensuring the smooth flow of transactions. Critically, the intermediary role ensures that brokers remain independent, acting in the best interests of their clients, whilst aggregators provide back-end support services.

1.2. Franchise versus Wholesale business models

There are two primary business models in the mortgage aggregation industry, which are the franchise model and the wholesale model.

The franchise model: more control and integration

The following features define the franchise model:

- **Shared and integrated brand identity:** brokers in the franchise model typically operate under the aggregator's brand, and their business identity is closely tied to the aggregator's reputation.
- **Operational control:** franchise aggregators provide a range of back-end services to brokers, including those listed in Section 1 above. Brokers are generally required to follow the operational procedures and guidelines set by the aggregator in relation to the use of those services, which encompass both mandated day-to-day business processes as well as compliance requirements, such as those under the NCCP. This includes using the aggregator's CRM, adhering to the aggregator's marketing campaigns, and complying with

centralised operational standards which don't differ across 'branches' (despite them being owned by different franchisees).

- **Revenue sharing:** A franchise aggregator's fees will typically be higher than the fees charged by a wholesale aggregator, reflecting the higher level of support and integration provided by the franchisor.

The case of *Loan Market Pty Ltd v Chief Commissioner of State Revenue* case provides a useful example of how the franchise aggregation model operates in practice.⁵ In *Loan Market*, brokers were provided a suite of services by Loan Market Limited (**LML**), including access to a lender panel, marketing support, training programs, and a shared brand identity. Brokers were required to operate within the operational framework established by LML including branded marketing, compliance protocols and operational guidelines. Despite brokers being classified as independent contractors in their agreements, the Court determined that the significant integration of brokers within LML's business system and the shared branding effectively made them part of the aggregator's business framework.

Wholesale model: low control, no integration, flexible fee models:

Wholesale aggregators function only as a service provider rather than an integrated business partner. Brokers operate their own businesses independently and make their own strategic decisions

The following features are typical of a wholesale aggregation offering:

- **No brand influence:** brokers under the wholesale model operate under their own independent branding, choosing how and where to market themselves.
- **Full operational autonomy:** wholesale aggregators act primarily as service providers, offering lender access, compliance tools, and technology platforms without dictating how brokers run their businesses.
- **Fee structures:** wholesale aggregators offer brokers an opportunity to pay flat fees for services rather than defining their fee as a percentage of broker commissions. Finsure offers brokers flexible fee options to suit their needs – being flat fees, fees per transaction, or a commission split. This model prioritises cost transparency and broker independence, and is attractive to brokers who prefer to retain full control over their earnings.

1.3. Comparisons of wholesale business to other digital service providers in the modern gig economy

Mortgage aggregation businesses share key characteristics with modern digital service platforms in the gig economy. A central feature of these business models is the intermediary role that the platform plays. Mortgage brokers obtain the services of aggregators primarily to access lender panels, compliance support, and business infrastructure, whilst retaining control over their independent businesses and client relationships.

This is generally comparable to the structure of other platform-based service industries. For example:

- A software subscription service (eg. Microsoft Office) provides tools that businesses use to enhance operations, but the subscriber does not 'perform work' for the software provider.
- A rideshare platform enables drivers to find passengers, manage payments, and access regulatory frameworks, but does not dictate how they drive, who they service, or when they take fares.

⁵ *Loan Market Pty Ltd v Chief Commissioner of State Revenue* [2024] NSWSC390 (**Loan Market**).

- A freelancer marketplace connects independent professionals with clients, providing infrastructure and payment facilitation without exerting employer-like control over the work performed.

Mortgage brokers are paid commissions by lenders for successfully originating loans. However, rather than receiving payments directly from the bank, commissions generally flow through the aggregator, which acts as an intermediary. When a broker successfully originates a loan, the bank disburses the commission to the aggregator, who on-pays that commission to the broker after deducting its pre-agreed fee for service. This mirrors many gig economy platforms which deduct a service fee for provision of their infrastructure, but do not pay workers for their labour.

Whilst aggregators facilitate transactions by managing the commission flow and ensuring compliance with regulations, they do not pay brokers for any services (because they do not receive any services). Brokers are compensated by lenders based on the loans they originate for their borrower customers. Much like how rideshare drivers are paid by passengers but have a platform that facilitates the payment process and takes a service fee, brokers are paid by the banks. The aggregator acts as an intermediary.

Brokers purchase access to a business 'toolkit' from aggregators, much like businesses pay for software or platform services. For example, when a business subscribes to Microsoft Office, it is not providing a service to Microsoft – it is simply paying for access to a tool that enhances its operations. Likewise, mortgage brokers use aggregation services to streamline their work. They are not rendering services to that aggregator but instead purchasing access to essential infrastructure, compliance frameworks and administrative efficiencies that support their independent businesses.

As with digital platforms, some aggregation models involve greater control and integration than others. Where aggregators exert substantial operational control – such as requiring strict adherence to marketing, branding, or business policies - there may be grounds for those arrangements to fall within the relevant contractor provisions. Thus, the exclusion we have recommended in the proposed drafting approach. However, most mortgage aggregators would not meet this threshold.

Applying the relevant contractor provisions to aggregators indiscriminately would be as illogical as treating every rideshare driver, freelancer, or software subscriber as an employee of the platform they use. The proper distinction must be based on control, integration, and dependency – factors which, in the case of wholesale aggregators, overwhelmingly point to arm's length B2B arrangements. Applying the relevant contractor provisions to these arrangements is principally illogical, harsh, unjustifiable and unfair.

2. Current legislative framework and interpretation

2.1. Background to the legislation

The ‘relevant contractor’ provisions were originally introduced in 1983 in Victoria through the *Payroll Tax (Amendment) Act 1983*.⁶ They were designed to address concerns over tax avoidance by businesses reclassifying employees as independent contractors to circumvent payroll tax obligations.⁷ These provisions were later harmonised across Australia, with similar provisions adopted in New South Wales.

The purpose of these provisions is to extend the definition of ‘employee’ to certain independent contractors whose relationships with the contracting party resemble employment arrangements in substance, particularly where the contractor works primarily or exclusively for one principal.⁸ Effectively, the law sought to prevent revenue erosion caused by artificial reclassification of employees as contractors. The provisions are designed to ensure that these types of contracts, where the primary object is the supply of labour to a single entity, are captured for payroll tax purposes.

It is our view that the exemptions clarify that the policy intent of the relevant contractor provisions is not to capture all independent contractors, but rather those whose arrangements closely resemble employment.

The application of the relevant contractor provisions does confine itself to arrangements resembling traditional employment, despite their stated purpose. Their application spans multiple sectors in the modern economy, but without necessarily recognising operational complexities and inherent risks of misconstruction of relationships as ‘employment like’.

Finsure’s business as a mortgage aggregator is a prime example. Although its role is purely facilitative – supplying technology, administrative support, and licensing frameworks, it is facing scrutiny under the provisions on the basis that the brokers’ efforts might be construed as ‘work’ for the aggregator. Under an expansive reading, the very fact that aggregators benefit from brokers using their platform can be misconstrued as contracted labour, overlooking the commercial reality that brokers are independent operators serving their own clientele and merely leveraging Finsure’s platform, and not advancing Finsure’s core business.

The practical consequences of the extended interpretation of the relevant contractor provisions include:

- **Retrospective large risk and liabilities:** a business found to be inadvertently engaging relevant contractors can face sudden, substantial liabilities. This risk is especially pronounced for enterprises that had no expectation or intention of an employment-like relationship, and did not consider seeking advice on the issue.
- **Distorted commercial structures:** businesses may feel compelled to restructure long standing arrangements or alter entire models out of caution to not be caught by the provisions. This could see distorted commercial decisions (or additional and unintended compliance burdens), and potentially curtailed innovation in sectors that depend on flexible partnerships – such as digital marketplaces, technology intermediaries and other gig-economy services.

⁶ *Nationwide Towing & Transport Pty Ltd v Commissioner of State Revenue (No 2)* [2018] VSC 609, [31] (Croft J); see also Jack Nathan Aquilina, *Payroll Tax & Relevant Contractors: A technical paper* (2024) The Tax Institute, VIC Tax Forum 2024.

⁷ Victoria, *Parliamentary Debates*, Legislative Assembly, 27 October 1983, 1479-1580; Emphasis Added; *Nationwide Towing & Transport Pty Ltd v Commissioner of State Revenue (No 2)* [2018] VSC 609, [31] (Croft J); see also Jack Nathan Aquilina, *Payroll Tax & Relevant Contractors: A technical paper* (2024) The Tax Institute, VIC Tax Forum 2024.

⁸ *Ibid.*

The revenue authorities have actively embraced these expansive precedents and sought to apply the provisions in novel contexts that were arguably beyond the legislation's original intention.⁹ One of the clearest instances of the revenue's overreach is in the mortgage aggregation industry. Mortgage aggregators, such as Finsure, were traditionally understood as technology and administrative service providers linking independent mortgage brokers (and consequently their borrower customers with lenders. Despite Finsure neither offering credit products nor exercising control akin to an employer (brokers run their own businesses and earn commissions directly tied to their origination of loans with various lenders) recent payroll tax audits and ongoing litigation suggests that the revenue interpret these arrangements as capturing 'work related services' performed by brokers for aggregators.

Some of the key points of contention between mortgage aggregators and the Chief Commissioner have been:

- **Agency vs Intermediary:** in his guidance note CPN 016, the Chief Commissioner draws a parallel between mortgage brokers and financial advisors in cases such as *Bridges*.¹⁰ The focus is on whether the licensor (aggregator) derived direct benefit from broker-originated business. The Court in *Bridges* found a clear principal- agent relationship.¹¹ By contrast, mortgage brokers typically serve a broad client base, do not exclusively represent one aggregator, and owe a fiduciary duty to act in the best interest of their borrower clients (not the aggregator).
- **'Credit Representatives':** the Chief Commissioner argues that aggregators effectively create an agency like arrangement by appointing brokers as 'credit representatives' under their Australian Credit Licence (ACL).¹² This view misconstrues the limited and regulated nature of the aggregator-broker relationship. Under the NCCP, aggregators cannot direct or control brokers in ways that would erode brokers' statutory obligations to act in the borrower's best interests.¹³ As such, the legislation actually restricts the aggregator's capacity to wield employer-like authority; what appears to be 'control' typically reflects compliance oversight required by law rather than any operational or economic subordination.

Additionally, the contractual arrangements between aggregators and brokers commonly underscore broker autonomy. Wholesale aggregators such as Finsure offer a service – including the use of their ACL – to brokers who either lack their own licence or choose not to hold one for commercial reasons. Providing access to the regulatory framework, along with supporting technology and administrative services reflects the aggregator's role of fulfilling a compliance and facilitation function for the brokers – not an exertion of the type of control indicative of an employment or agency arrangement.

It is submitted that these structural realities mirror what can be seen in gig-economy platforms. The 'licence' (such as an ACL or a rideshare platform account) functions as a valuable business asset offered to independent contractors. The provider of that asset must enforce a minimum level of compliance or brand standards to protect its licence or platform – this should not convert genuine independent contractors into 'relevant contractors.' Instead, this is merely the provider safeguarding its intangible asset and minimising regulatory risks. The designation of a broker as a credit representative should be recognised as a necessary, regulated feature of service provision – particularly in a heavily regulated field such as credit.

- **Commission flows:** because commissions flow through the aggregator's channels, revenue authorities contend that the aggregator 'pays' the broker for 'work' integral to the aggregator's business – particularly where the aggregators accounting records treat commissions as revenue and on payment to brokers as expenses. The reality is that the collection and

⁹ See for example: Chief Commissioner of New South Wales State Revenue Practice Note CPN 016v2 'Payroll Tax Act – Relevant Contracts – Australian Financial Services Licenses and Australian Credit Licenses' (CPN 016).

¹⁰ *Bridges Financial Services Pty Ltd v Chief Commissioner of State Revenue* [2005] NSWSC 788 (**Bridges**).

¹¹ *Bridges*, at [221].

¹² CPN 016.

¹³ NCCP ss 158LA, 158LE; see also: ASIC RG 273 'Mortgage Brokers: Best Interests Duty'

disbursement of lender commissions is a core service offered by aggregators for administrative convenience. The underlying remuneration is from the lender to the broker.

2.2. Loan Market Case and impacts on technology service providers

In *Loan Market Group v Chief Commissioner of State Revenue*,¹⁴ the Supreme Court of New South Wales held that Loan Market Group (**LML**), a franchise mortgage aggregator, was liable for payroll tax on payments made to its mortgage brokers.

Notably, Loan Market is a franchise aggregator, with considerable brand alignment, shared marketing initiatives, and an operational framework that places the aggregator and its broker network under a unified business identity. While the Court's ruling provides insights into how payroll tax may apply to a highly integrated franchise model, the principles should not be extended to other arrangements such as wholesale aggregators.

From a policy standpoint, the higher level of brand and operational integration that comes with a franchise model of mortgage aggregation arguably makes the arrangement more akin to a unified business system, where the aggregator might be seen as having a vested interest in, and partial control over, the franchisees business. However, as has been noted above – there are substantial differences in the business conducted by wholesale aggregators.

The decision in *Loan Market* has potential impacts beyond the mortgage industry. A central feature of the *Loan Market* analysis was whether the brokers' activity allegedly benefitted the aggregator's commercial objectives. This consideration would equally apply to rideshare platforms, food delivery applications, and other gig-economy intermediaries, despite those platforms having far less involvement in how the contractors actually conduct their day to day operations. In all such scenarios, the crucial legal questions becomes whether the platform's facilitative functions and brand or compliance oversight cross a threshold that effectively deems the contractors be supplying 'work' to the platform operator for payroll tax purposes.

Although *Loan Market* involved a franchise business, its significance resonates across the aggregator spectrum. Ongoing legal challenges, including Finsure's dispute with the Chief Commissioner, and the pace of revenue authority audits, suggests a growing appetite to test the law with respect to all forms of aggregator arrangements. Without clear legislative carve-outs or revised statutory language, wholesale aggregators (and technology platforms more broadly) could see themselves unfairly categorised as 'employers.'

It is imperative that policymakers and industry advocates consider targeted legislative reform to differentiate genuinely 'franchised' or highly integrated models from wholesale, technology based ecosystems. Such reform would allow the legislations to remain true its anti-avoidance intent – catching arrangements that are functionally employment -without penalising legitimate B2B platforms.

¹⁴*Loan Market Group v Chief Commissioner of State Revenue* [2024] NSWSC 390 (**Loan Market**).

3. Adverse impact of current law on intermediary businesses

3.1. Why application to all aggregators is problematic

The application by the Chief Commissioner of the relevant contractor provisions to aggregators and other B2B intermediaries, whether in mortgage broking, financial services, or the broader economy reflects a misunderstanding of the fundamental nature of intermediary businesses.

Legal misapplication of the relevant contractor provisions

Section 32(1) requires the existence of a 'relevant contract' under which a contractor supplies 'services for or in relation to the performance of work' for the principal. In an aggregation context - brokers typically do not perform work for the aggregator – they perform work for their borrower clients and originate loans for lenders. Aggregators merely facilitate access to lenders, provide administrative and compliance tools, and process commission payments. There is no 'service' performed by a broker 'for' the aggregator in the way an employee or dependent contractor would. The brokers' efforts are entirely directed towards securing loans from lenders on behalf of their clients, and the fact that an aggregator has ancillary benefits from broker using its platform does not equate to the provision of work-related services for the aggregator itself.

The fundamental nature of aggregation is intermediary facilitation, not the provision of work-related services by brokers *for* the aggregator. Unlike employment relationships, where workers perform tasks under the direction and control of their employer, brokers generally operate autonomously, choosing their clients, which lenders to be accredited with, and deciding their working arrangements without interference from the aggregator. The aggregator's role is purely supportive and transactional – akin to other B2B service providers that connect independent businesses with end users without dictating how services are provided. To conflate these independent relationships with an employment-like arrangement misinterprets the commercial reality and the intent of the payroll tax provisions.

Distorting the mortgage market and reducing competition

If payroll tax is imposed on aggregators and B2B intermediaries, the financial burden will inevitably be passed onto independent contractors – whether brokers, consultants, drivers, or other professionals. In mortgage broking, for example, independent brokers may face higher service fees, lower commission splits, or additional compliance costs. Independent brokers may be forced to reassess their business models, potentially opting for lender-owned distribution channels that offer more predictability. Similarly, gig economy platforms may need to increase fees or impose stricter conditions on their service providers, reducing flexibility and limiting market participation.

In mortgage broking, such shifts would substantially reduce the number of independent mortgage brokers and concentrate market power among major banks. Across the board, the result would be a loss of competition and consumer choice, as intermediaries are forced to either absorb new costs, limit services, or tighten contractual terms to mitigate risk.

Stifling innovation in financial services

A key strength of intermediary businesses, such as aggregators, is their ability to facilitate independent entrepreneurship – in many cases, without exerting operational control over contractors. The imposition of payroll tax based on an expansive and misguided interpretation of the relevant contractor would force intermediary businesses to either restructure their models or limit investment in innovation.

- **Financial services and mortgage aggregation:** aggregators may need to raise costs, reduce technology investment, or introduce restrictive terms to mitigate risk – discouraging the development of new financial technology solutions and limiting investment in mortgage platform innovation.

- **Gig economy & technology platforms:** rideshare, food delivery, and freelance work platforms may be forced to alter pricing structures or choose to impose greater control over service providers, diminishing the flexibility that defines these industries.
- **Professional services:** advisory, legal and consulting platforms could face unexpected tax liabilities, leading to a decline in new entrants and innovative service models

Creating legal uncertainty across other industries

The broad interpretation of the payroll tax provisions currently favoured by the Chief Commissioner introduces significant regulatory uncertainty not just in mortgage aggregation and brokering, but across various industries that rely on intermediary platforms.

In the aggregation context, aggregators provide essential infrastructure – compliance, payment processing, and software solutions – but generally do not exercise the level of control over brokers that would justify classification as an employer. If aggregators are deemed liable for payroll tax under the relevant contractor provisions, similar service models in industries such as real estate, financial advisory, legal consulting, and digital marketplaces could also face reclassification. Any business facilitating independent contractor-client relationships – without exerting substantive control – could be exposed to significant tax liabilities, leading to unintended market disruptions.

Rather than strengthening compliance, this ambiguity would undermine, discourage innovation, and force legitimate B2B service providers to reconsider their operating models. Without a clear and consistent control and integration rather than business structure, industries across NSW face retrospective risks, forced restructuring, or costly legal battles.

3.2. A framework based on control and integration

Rather than applying payroll tax indiscriminately to all aggregator and B2B models, the law should focus on control and integration. This principle is well recognised in employment law frameworks designed to distinguish independent contractor relationships from true employment.

Modernised relevant contractor provisions would recognise that:

- Aggregators and other intermediary businesses that do not control how independent contractors perform their work should not be classified as ‘employers’.
- The mere facilitation of transactions and provision of technology or compliance tools does not equate to employment-like control.

4. The unique opportunities for New South Wales by updating the law

4.1. NSW can lead the way in adapting the law to the needs of small business in the modern economy

The small business sector is the backbone of the NSW economy, employing thousands of Australians and driving competition across industries, from mortgage broking to technology services. However, many of these businesses now face an unpredictable payroll tax burden, where broad interpretation of the contractor provisions potentially threatens their viability.

There is a clear opportunity for New South Wales to recalibrate the provisions to align with modern business practices. Currently, the broad interpretation of section 32 means that wholesale aggregators may be liable for payroll tax even where they play a merely facilitative role, and brokers themselves operate as independent entities.

The misapplication of the relevant contractor provisions to intermediary models stems from a failure to distinguish between true employment like relationships and genuine independent contractor arrangements. The defining economic factors that differentiate these two categories are:

- **Degree of control and integration:** this refers to how much authority the principal has over the contractor's work, including mandates on business practices, branding, workflows and operational policies. High levels of control (such as requiring a contractor to follow company-specific marketing) suggests an employment-like relationship. Low control aligns with independent business status. Crucially, the requirement to comply with the law (such as the compliance obligations imposed on aggregators and brokers by the NCCP) should not be misconstrued as evidence of control or integration in an employment-like sense. In the Aggregator context, the NCCP legally requires brokers to operate under their ACL and meet federal regulatory standards. This does not equate to the day to day direction or supervision characteristic of an employment relationship.
- **Economic dependence:** the purchase of a service from an intermediary such as a wholesale aggregator should not equate to economic dependence. Intermediaries such as Finsure provide platforms administrative services, compliance frameworks and technology to their clients, much like software providers sell subscription based services to businesses. In this model, the wholesale aggregator's income is not dependent on the broker performing the work for the aggregator – rather, it is based on the fees aggregators charge brokers for access to technology, compliance infrastructure and lender networks. This distinction is critical as the relevant contractor provisions are intended to apply where a business relies on a contractor's work as a core part of its revenue generating activity. In contrast, a wholesale aggregator's financial model does not rely on the broker performing a service for the aggregator – it relies on brokers purchasing services from the aggregator.

These two factors must be assessed together. If an arrangement involves both high control and high economic dependence, it ought to fall within the relevant contractor framework. However, if control is low and the contractor maintains significant autonomy in generating income, the relationship should be treated as a B2B arrangement rather than an employment like structure.

By refining the relevant contractor provisions to exclude B2B relationships, NSW can modernise its tax system in a manner that protects small businesses, reduces administrative uncertainty and supports entrepreneurial activity in the state.

4.2. Securing NSW's place as a leader in the Federation at the forefront of economic growth and business competitiveness

One of the fundamental objectives of tax policy is to minimise economic distortions. Meaning that tax rules should not arbitrarily influence business decisions in a manner that undermines efficiency or competition.

The current relevant contractor provisions allow for an approach under which wholesale aggregators can be treated as if they are engaging brokers in a employee-like capacity, even though brokers are self-employed professionals with independent client bases and revenue structures. This interpretation may lead to a number of distortions, such as:

- **Increased costs:** wholesale aggregators are not hiring brokers to generate revenue; they sell them infrastructure and services. If the relevant contractor provisions are applied, aggregators will be forced to either absorb a significant tax liability that is misaligned with their business model, or pass costs on to brokers and reduce their profitability and competitiveness.
- **Structural disruptions:** the unclear provisions encourage small broker businesses to shift towards less efficient models to avoid uncertain liabilities. Wholesale aggregators may also be compelled to adopt alternative structures or stricter contractual controls over brokers – fundamentally altering a system that currently allows brokers to operate as independent professionals.
- **Reducing NSW's competitiveness as a financial services hub:** mortgage aggregation is a key component of each of the financial services and housing markets more broadly. Aggregators like Finsure provide brokers with access to multiple lenders, ensuring better consumer outcomes. A tax framework that overreaches into independent service arrangements creates uncertainty, discouraging investment in intermediary service models and pushing financial services firms to more business friendly jurisdictions.

By ensuring that the relevant contractor provisions are confined to their purposes, NSW can promote efficiency, competition and investment in service-based business models.

4.3. Ending the uncertainty for business and the community by better aligning the law with fairness and equity

The current provisions, which permit a broad interpretation, forces wholesale aggregators and other intermediary businesses into a defensive position, requiring them to either absorb tax costs, alter their models, or challenge tax decisions at a significant cost to both businesses and the taxpayer.

There is currently the potential for a fundamental misalignment between economic reality and a tax liability created by the relevant contractor provisions. This is because Aggregators do not generate revenue from the broker's work but may be treated as if they do. Uncertainty over whether an intermediary platform will be treated as an employer discourages investment in models which support independent contractors. Without clear legislative carve outs, businesses must self-assess their risk, potentially leading to significant disputes. A modernised framework should establish clear legislative guidelines to reduce unnecessary litigation, ensure compliance costs remain proportionate, and promote NSW as a stable and competitive jurisdiction.

4.4. Protecting the revenue system against genuine anti-avoidance

Payroll tax serves as an important function in ensuring that businesses contributing to the economy through employment also contribute fairly to the tax base. However, when the tax is misapplied to service providers who do not engage contractors as employees but instead sells services to them, it shifts from being a legitimate revenue measure to an economic distortion. The current misinterpretation section 32 is not protecting the payroll tax system – it is undermining it, creating unnecessary litigation, increasing compliance costs, and driving businesses to consider restructuring solely to avoid unplanned payroll tax liabilities.

The current provisions facilitate the Chief Commissioner's approach to treat businesses which facilitate work – rather than directly benefiting from it – as if they are employing contractors. This threatens digital platforms, intermediaries, and financial service providers who sell infrastructure rather than labour.

If left unchecked, this overreach will distort markets, reduce competition, and ultimately shrink the long term tax base by discouraging investment in NSW. It is imperative that the relevant contractor provisions be refined to focus on genuine cases of employment misclassification without penalising legitimate B2B service models like mortgage aggregation.

Rather than indiscriminately applying payroll tax to every business that interacts with contractors, NSW should adopt a targeted approach that captures genuine employment like relationships while excluding service providers that sell products and infrastructure to independent businesses. This would:

- **Maintain the integrity of the relevant contractor regime:** by ensuring it applies only to businesses that rely on labour as an income generating input not businesses that sell a service to independent operators.
- **Provide clarity and predictability:** so principal and contractor businesses know whether their arrangements trigger payroll tax liability, reducing the risk of costly legal battles.
- **Keep competition alive:** in mortgage broking and other service based industries by ensuring that independent businesses are not forced into alternative models just to avoid being passed down an unplanned tax burden.
- **Protect the long term tax base:** by ensuring that NSW remains a desirable place to invest and build intermediary business models, rather than driving them to other jurisdictions.

5. Conclusion: a practical, targeted, approach to payroll tax enforcement

New South Wales stands at a critical juncture in shaping its payroll tax framework to better align with modern economic realities. Payroll tax serves an important function in ensuring that businesses employing workers contribute fairly to the state's revenue base. However, when applied too broadly – capturing legitimate B2B service models – it moves beyond its intended purpose and instead creates economic distortions that ultimately weaken competition, stifle innovation, and discourage investment. The misapplication of section 32 of the *Payroll Tax Act* does not reinforce the tax system – it erodes it by increasing compliance uncertainty, creating unfair tax burdens and forcing businesses into suboptimal operating structures.

The rapid evolution of business models – particularly in platform based and intermediary-driven industries – demands a tax framework that is fit for purpose. The wholesale mortgage aggregation model, like many other service based industries, functions on a structure where businesses provide critical infrastructure, regulatory support, and access to lenders in exchange for fees paid by independent professionals. This is fundamentally different from an employment relationship, where a business profits from the direct labour of workers under its control. However, the current provisions risk being interpreted to conflate these two concepts, treating wholesale aggregators as if they were employers rather than mere service providers. If uncorrected, this misalignment may drive negative economic outcomes.

The solution is not to eliminate the provisions but to refine their application so that they capture only genuine employment-like relationships while excluding businesses that simply sell services to independent operators. The relevant contractor provisions, when properly targeted, would:

- Ensure businesses that directly rely on contractor labour as a core input into their revenue generation remain within the payroll tax net
- Exclude intermediary service providers, such as wholesale aggregators, whose revenue comes from selling services to independent contractors rather than profiting from their labour.
- Provide businesses with clarity and predictability in their payroll tax obligations, reducing the risk of retrospective liabilities and costly litigation.
- Strengthen competition in the housing market by allowing independent brokers to continue to operate without being forced into larger corporate or franchise structures.
- Maintain the long term stability of the relevant contractor regime by ensuring it is applied consistently with its policy intent and reinforcing its legitimacy rather than undermining confidence in its administration.

New South Wales has an opportunity to lead the way in modernising payroll tax enforcement to ensure it remains effective, fair, and aligned with the realities of contemporary business. Without reform, the state risks losing its competitive edge in financial services and other key sectors that rely on independent business models.