**Submission No 18**

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

**Organisation:** Connective Broker Services Pty Ltd

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# Submission

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# Introduction

## About Connective, background and context

Connective is Australia's leading mortgage aggregator and plays a key role in the country's residential mortgage market. Approximately one in eight Australian home loans are written by a mortgage broker using Connective's services. As a mortgage aggregator, Connective operates as an intermediary between its lending panel of over 60 financial institutions and its vast network of over 4,500 Connective brokers throughout the country.

In NSW, as at December 2024, Connective provided aggregation services to 1,010 mortgage broking businesses using our services representing 1,730 individual mortgage brokers. In 2024, these mortgage brokers settled nearly $44 billion of home loans on behalf of their customers representing over 67,068 home loans at an average loan size of approximately $654,000.

Key elements of Connective's service offering to mortgage brokers include:

- The brokers we service are entitled to 100% of all commissions paid by lenders on loans they introduce to that lender. After all, lender commissions are the broker's money that the banks pay them for originating loans for their borrower customers. This reality is reflected in our financial statements as we do not gross up our revenue by treating broker commissions as Connective's revenue. Instead, the collected commissions are treated as a liability in our balance sheet.
- We offer broker businesses two options for paying their monthly service fee, either (i) a flat monthly fee or (ii) a monthly fee determined as a small percentage of the commissions earned by that business in the previous month. With notice, the business is able to freely change which monthly fee option it pays. In addition, regardless of which fee option they choose, each broker pays an additional flat monthly fee for access to our services.
- We do not dictate how each broker runs their business, they are free to work whatever hours they choose, brand their business, lenders who they seek to introduce loans to, clients they service, premises for operation, how they operate etc.
- The ability for a broker to introduce loans to a specific lender on Connective's lender panel is not automatic with that broker needing to apply for accreditation with that lender, who has sole discretion as to whether they approve that application or not. That lender also has the ability to remove that accreditation at their sole discretion.
- As part of their monthly service fee, Connective offers a range of services to brokers including access to submit loan applications to our lender panel (over 60 financial institutions), collection of commissions from lenders, use of its proprietary customer relationship management software and compliance support. We do not dictate which of those services each broking business uses (nor how those services are used).
- We also offer additional services to brokers which they can choose to access. These include digital marketing support and access to property data and credit bureau services.
- As mortgage broking is a regulated industry under the *National Consumer Credit Protection Act 2009* (Cth) (**NCCP Act**), brokers need to hold an Australian Credit Licence (**ACL**) or be authorised to operate as a credit representative under an ACL. We do not mandate which ACL brokers operate under although we do offer, as a service, the option for a broker to be authorised under Connective's ACL.
- Our arrangements with our brokers are on a non-exclusive which means they can choose to contract with other aggregators or submit applications direct to lenders, where appropriate. The brokers we service are able to terminate our services at any time with 30 days' notice and can freely transfer their loan book to another aggregator.

## Summary of recommendations

The relevant contractor provisions should be reformed to ensure they operate fairly, predictably and in line with their purpose. The reforms should focus on distinguishing independent business relationships from employment-like circumstances. Specifically, we recommend:

- **Introducing clear criteria to assess control and integration:** concepts of substantial control or integration into a principal's operation should determine whether a contractor is truly independent. Service providers who merely facilitate transactions or enforce compliance with the law should not be caught under the provisions.
- **Exempting intermediary service providers:** businesses that operate as intermediaries should not be deemed 'employers' under the relevant contractor provisions in the absence of the control and integration mentioned above.
- **Clarifying that compliance obligations do not constitute control:** ensuring compliance with regulatory requirements such as those imposed by the financial, healthcare or legal industries, should not be misinterpreted as employer like control.

These reforms would preserve the original intent of the payroll tax provisions, ensuring that disguised employment relationships remain captured while independent business relationships are protected. By modernising tax laws to reflect contemporary business models, NSW can support small businesses, encourage competition and maintain a strong and dynamic economy.

# Overview of aggregation models in the mortgage industry

## The aggregation and mortgage brokering industry

Home ownership has historically been the foundation of financial security for Australians. It represents stability, family, and opportunity. As the property market has evolved, it has also become more complex. Rising housing costs, tighter credit conditions, and stronger financial regulatory requirements have made securing a home loan a daunting challenge for everyday Australians.

Mortgage brokers have become indispensable in this environment, ensuring Australians can access competitive home loan options tailored to their needs. Today, nearly 74.6% of home loans in Australia are facilitated by mortgage brokers,[1] a figure that will continue to grow as borrowers seek out professional, independent guidance in an increasingly difficult lending market.

Many mortgage brokers operate independent businesses and don't work with a single lender. They act as independent professionals, comparing loan products across a wide range of financial institutions to find the most competitive solutions for their clients. They operate in a highly regulated environment, and are subject to laws including the NCCP Act – which are designed to ensure that borrowers receive suitable and responsible lending advice. Brokers' presence levels the playing field in the housing market by increasing competition and ensuring that borrowers are not locked into uncompetitive mortgage deals.

But brokers do not operate in isolation. Sitting behind most independent brokers are mortgage aggregators, who are the technology and service providers that equip brokers with the infrastructure, tools and lender access which brokers need to operate their businesses efficiently. These include:

- **Technology and business support:** software platforms such as customer relationship management (**CRM**) systems help brokers to compare mortgage options, track applications, and manage client relationships.
- **Regulatory and compliance assistance:** brokers operate in one of the most highly regulated industries in Australia. Aggregators help them meet legal and compliance obligations, including allowing brokers to operate under their ACL as a 'credit representative' if they do not hold their own licence.
- **Commission processing:** mortgage brokers earn commissions from lenders when they successfully originate a loan. Aggregators facilitate this process, ensuring commissions are processed and disbursed correctly.

Despite their clear role as a business to business (**B2B**) service provider, the NSW Commissioner of State Revenue (**Chief Commissioner**) has put genuine independent businesses like aggregators in a difficult position, suggesting that contract arrangements between all mortgage aggregators and independent brokers could be akin to an employment arrangement. This is a fundamental mischaracterisation which threatens the mortgage broking industry, many of whom are small businesses operating in NSW. This may also put additional pressure on an already competitive housing market, leading to worse housing affordability conditions.

[1] MFAA | Latest Industry Intelligence Service (IIS) report published 18th Edition

## Franchise versus Wholesale business models

Not all aggregators operate the same way. The mortgage aggregation industry has two distinct models. These are the 'franchise' and 'wholesale' aggregation models.

| Feature | Franchise Aggregators | Wholesale Aggregators |
|---|---|---|
| **Branding** | Brokers generally operate under the aggregator's brand and must follow strict branding and marketing guidelines. | Brokers generally maintain their own brand identity, controlling how they present themselves to the market. |
| **Control & Integration** | The aggregator has a high level of control over business practices, requiring brokers to follow operational procedures, marketing strategies, and set fee structures. | Brokers operate independently, setting their own fees, working with their own clients, and deciding how to run their businesses (subject to compliance with the law). |
| **Fee Structure** | Aggregators take a significant commission split from broker earnings. | Brokers can choose from flat fees, per-loan fees, or commission-based models, ensuring financial flexibility. |
| **Business Model** | Aggregators act more like a unified brokerage, where brokers function as part of a larger system rather than independent professionals. | Aggregators are service providers, giving brokers access to tools, technology, and regulatory support without imposing operational control. |

The *Loan Market* decision involved a franchise aggregator that imposed a high degree of operational control and integration over its brokers.[2] Under their agreements, brokers were required to operate under Loan Market's branding, use Loan Market's marketing materials and adopt Loan Market's operational procedures and policies.[3]

The Supreme Court of NSW found that this level of control and integration exceeded a typical independent contractor relationship and created a sufficiently close connection between the brokers' activities and the franchise's core business operations.[4] As a result, the Court determined that the brokers were providing services 'for or in relation to' Loan Market's business, bringing the arrangements within the scope of the relevant contractor provisions.

Unlike Loan Market's model, wholesale aggregators do not impose control over business operation, branding, or marketing decisions. Brokers in the wholesale model retain greater business autonomy, and merely use the aggregator's services as a business tool rather than being integrated into its framework.

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[2] *Loan Market Group v Chief Commissioner of State Revenue* [2024] NSWSC 390 (**Loan Market**).
[3] Ibid.
[4] Ibid.

# Current legislative framework and interpretation

The purpose of the relevant contractor provisions was *to catch those relationships where the sub-contractor works exclusively or primarily for one person and where the object of the contract between the parties is to obtain the labour of the subcontractor.* [5]

The goal of the provisions was to prevent businesses from deliberately reclassifying employees as contractors to avoid paying payroll tax. These anti-avoidance provisions were not designed to capture genuine B2B arrangements, nor were they meant to interfere with independent small business operators.

However, over time, the interpretation of the provisions has strayed dangerously far from their original purpose. Rather than targeting masked employment arrangements, the law is now being misapplied to legitimate service providers, including aggregators, gig economy platforms, and other B2B intermediaries. This is a fundamental distortion of the relevant contractor provision's intended scope.

The relevant contractor provisions were never designed to be a broad tax on businesses that have no meaningful control over independent contractors. These provisions were introduced as anti-avoidance measures – specifically to prevent businesses from disguising employment relationships to avoid payroll tax.[6] However, through an expansive application, the Chief Commissioner has sought to apply these provisions beyond their intended scope – to capture businesses that do not function as employers, and do not control or integrate contractors into their business operations.

This has created widespread uncertainty for industries that rely on independent contractors – particularly in service-based, technology driven business models such as aggregation. Under the Chief Commissioner's logic, any business that provides infrastructure or compliance support to independent professionals is suddenly at risk of being deemed to be an employer, regardless of the actual nature of the relationship. This is a fundamental distortion of the law. Further, small businesses are disadvantaged as they cannot avail themselves of the exclusion for businesses carried on by 2 or more persons.

The Chief Commissioner's Practice Note (**CPN**) 016 exemplifies this.[7] The position in CPN 016 seeks to redefine the boundaries of the provisions by equating basic statutory and regulatory compliance obligations with employer-like control. The reality is that mortgage aggregators and brokers operate in a highly regulated environment and have significant obligations under the NCCP Act. The NCCP Act introduces the ACL regime[8] and imposes obligations on both aggregators and brokers to ensure consumer protection, [9] ethical lending practices,[10] and comply with responsible lending laws. Many brokers choose to operate under an aggregator's ACL because it provides a streamlined way to meet their compliance requirements without the burden of obtaining and maintaining an individual license.

However, CPN 016 disregards the clear distinction between compliance facilitation and employment-like control. It suggests that because aggregators ensure brokers meet their legal requirements, they are exerting control akin to an employer. This is factually incorrect. If this logic were to be applied consistently, banks that require mortgage brokers to submit documentation to comply with regulations, medical clinics that ensure doctors meet healthcare accreditation standards, or even digital marketplaces that enforce consumer protection guidelines could all be deemed 'employers' for payroll tax purposes. This is an absurd result and economically harmful.

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[5] Victoria, *Parliamentary Debates,* Legislative Assembly, 27 October 1983, 1479-1580; Emphasis Added; see also *Nationwide Towing & Transport Pty Ltd v Commissioner of State Revenue (No 2)* [2018] VSC 609, [31] (Croft J).
[6] Victoria, *Parliamentary Debates,* Legislative Assembly, 27 October 1983, 1479-1580; Emphasis Added; see also *Nationwide Towing & Transport Pty Ltd v Commissioner of State Revenue (No 2)* [2018] VSC 609, [31] (Croft J).
[7] 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**).
[8] *NCCP Act*, Chapter 2.
[9] **See for example:** *NCCP Act*, ss 128,129,130,131
[10] **See for example:** *NCCP Act*, ss 47, 49, 50, 51.

# Adverse impacts of current law on aggregators

## Arrangements that are appropriately caught by the provisions

The fundamental anti-avoidance purpose of the provisions remains sound – where there is genuine integration and control akin to an employment relationship, the relevant contractor provisions should apply.

At their core, the provisions should capture arrangements where:

- **The principal exercises significant control over the contactors work:** this could include control over methods, timing and nature of work performed. If a business imposes the same or similar level of control over contractors as it would employees – such as mandating working hours, workflows, branding, or customer interactions – it could be deemed to have an employment-like substance where a 'service' is provided.
- **The contractor is integrated into the principal's business:** if a contractor is effectively functioning as part of the business, rather than as an independent entity – there is a strong case for the provisions to apply. This could include circumstances where contractors exclusively using the business' branding, systems and resources, and where their success is directly tied to the principal's operations or brand.
- **The contractor's services are core to the principal's revenue generation:** the provisions should apply where a principal's primary source of revenue depends on the direct output of its contractors, rather than where contractors merely use the business' services or technology to operate independently.

What should not be caught are independent businesses that purchase infrastructure, platforms or regulatory support services – such as mortgage brokers accessing an aggregator's network – in circumstances where the aggregator does not control how they conduct their work or operate their business. Similarly, ensuring compliance with regulatory requirements, such as those imposed by the NCCP, should not be conflated with employer-like control.

## Application to aggregation businesses is flawed

The fundamental flaw in applying the relevant contractor provisions to mortgage aggregators lies in the mischaracterisation of the relationship between brokers and aggregators. The provisions were not designed to impose payroll tax on businesses that do not receive services "for or in relation to the performance of work." The expansive interpretation favoured by the Chief Commissioner which suggests that brokers perform a 'service' for all aggregators is incorrect. This misapplication of the law lacks legal basis and economic justification:

- **No service:** the foundation of the relevant contractor provisions is that a 'service' must be provided under a 'relevant contract.' However, many aggregators do not receive a service from brokers in any meaningful sense:
    - Brokers do not work for aggregators. Their work is for their borrower clients and their own business.
    - The role of an aggregator is facilitative – providing access to lender panels, compliance tools, and commission payment processing.
    - The aggregator's revenue is derived from selling services to brokers, not from brokers performing work for the aggregator.
    - In the wholesale aggregation context, brokers operate under their own brand and are responsible for their own marketing and business development.

The mere fact that brokers use an aggregator's platform does not mean that they provide a service to the aggregator – just as a business that uses a branded software does not provide a service to the software company.

- **No 'work' for aggregators:** even if a service exists, it must be 'for or in relation to performance of work' for the arrangement to fall under the relevant contractor provisions. The Chief Commissioner's position completely misapplies this requirement to wholesale aggregators. This is because:
    - a broker's core function is to secure home loans for borrowers, and not to do tasks that benefit the aggregator; and
    - the aggregator does not wholly depend on a brokers' work to generate its income – instead, it earns revenue from service fees paid by brokers for access to its technology and infrastructure.
    - The statutory test requires a nexus between the broker's 'work' and the aggregators business .[11] No such nexus exists.
- **Compliance oversight is not control:** a core justification advanced for applying payroll tax to aggregators is that they impose compliance obligations on brokers, particularly under the NCCP Act. As has been noted above, enforcing compliance with regulatory requirements is fundamentally different from exertion of employer-like control over a contractor's business. If following legal requirements is enough to trigger payroll tax liability, every industry with compliance obligations – medical, legal, financial, transport (to name a few) – would be at risk. This is not what the provisions were designed to capture.
- **Commission disbursement is not wages:** a further justification is that aggregators *pay* brokers, and this resembles an employment arrangement. This completely misconstrues the manner in which commission processing works in the mortgage broking industry. Brokers do not receive wages or salaries from aggregators. Brokers earn commission from lenders – aggregators merely facilitate the payments. The aggregator deducts a service fee for the broker's administrative and cash flow convenience. The economic reality is that brokers generate their own revenue through client transactions. The aggregator is simply an intermediary ensuring that commissions flow correctly from lender to broker. This is not a principal-agent relationship – it is a commercial service arrangement.

[11] *Uber Australia Pty Ltd v Chief Commissioner of State Revenue* [2024] NSWSC 1124, at [80].

# What is on the line if the law does not change

## Adverse impact on financial system

The aggressive application of the relevant contractor provisions in the mortgage industry will have direct and damaging consequences for housing affordability in NSW. Mortgage brokers play a vital role in ensuring that borrowers have access to competitive lending options. Their ability to operate independently, shop around for the best deals, and provide unbiased advice drives competition among lenders. If payroll tax is imposed on aggregators:

- The additional tax burden will be passed down to brokers, many of whom will exit the industry or consolidate into larger institutions.[12]
- Reduced broker competition will benefit the big banks, leading to less competition and higher borrowing costs for consumers.
- There will be reduced investment in financial services innovation, as regulatory uncertainty discourages investment in technology and digital lending solutions.

## Adverse impact on small business

Mortgage broking is a small business driven industry. The majority of brokers operate independent businesses, supporting their clients while managing their own costs, compliance, and marketing.

If aggregators are forced to absorb payroll costs, they will need to increase their fees or alter business models to remain viable. This would significantly disadvantage small brokerage businesses, many of whom operate on thin margins. There would be:

- Increased strain on small businesses that rely on affordable access to aggregator services.
- Reduced viability for brokers to remain independent, as higher cost drive them towards more vertically integrated models.
- A decline in the number of independent brokerages, ultimately limiting entrepreneurial opportunities within the financial sector.

## Adverse impact on borrowers and competition

If the independent mortgage broker is undermined, the competitive benefits they provide will be lost. Fewer brokers will mean a more concentrated lending market controlled by major banks. Additionally, there will be reduced availability of lending solutions, particularly for niche borrower segments (eg. self-employed borrowers or those with unique financial circumstances).

## Adverse impact on borrower's access to lending and ability to buy a home

Just as the NSW Government recognised the economic and social risks of applying payroll tax to GP clinics,[13] it must now acknowledge the risks posed to mortgage aggregation. At a time when housing affordability is already at crisis levels, the last thing NSW needs is a new tax burden on an industry that exists to secure fairer and more competitive home loans for everyday Australians.

The relevant contractor provisions were never meant to apply to independent professionals like mortgage brokers. They were designed to target businesses engaging in payroll tax avoidance by disguising employment

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[12] Australian Government, *Re:Think – Tax Discussion Paper* (Discussion Paper, March 2015) 169, 175; Ralston, *Does Payroll Tax Affect Firm Behaviour* (Treasury Working Paper, February 2018) 2.
[13] CPN 036v2: Relief to Medical Centres | Revenue NSW.

relationships – not businesses that simply provide infrastructure and compliance support to small business operators.

The misapplication of the relevant contractor provisions to aggregators, and as a consequence independent brokers, would:

- Worsen the home ownership divide – first home buyers would be hit the hardest as options for finance would become more limited.
- Make borrowing more expensive as competition for loan pricing reduces.

# Conclusion: the need for legislative clarity

The mortgage broking industry—and the broader business environment that relies on independent service providers—stands at a critical juncture. The current approach to payroll tax provisions is misaligned with economic reality, potentially capturing B2B service models that were never intended to fall within its scope. Left uncorrected, this overreach threatens competition, innovation, and economic opportunity, placing unnecessary financial strain on small businesses and, ultimately, consumers.

At its core, the issue stems from a failure to differentiate between genuinely independent business relationships and employment-like arrangements. The law, in its current form, is being stretched in a way that misinterprets facilitation as control, and transactional relationships as employment dependencies. This is not just a tax issue—it is a fundamental mischaracterization of how modern businesses operate. The mortgage broking industry is just one example of an entire ecosystem of professionals who operate independently but leverage shared services, technology, and compliance infrastructure. Their autonomy is what enables them to serve clients effectively and drive market competition.

The solution is to ensure that the application of the relevant contractor provisions remains clear, targeted, and fit for purpose. Any interpretation of the law should be based on substance over form—focusing on whether a business relationship actually involves control and integration in a way that resembles employment. Rather than capturing all business transactions under a one-size-fits-all approach, the provisions should be structured to distinguish between:

- **Genuine employment-like relationships**, where a worker's activities are controlled, directed, and financially dependent on a principal.
- **Independent business relationships**, where professionals operate in their own right, bearing financial risk, setting their own fees, and merely using a service provider's infrastructure to facilitate their own business.

Subject to an exemption applying (eg services provided by 2 or more), it's possible under this approach most franchise aggregators will be taxed given that they have a high degree of control over their brokers and they integrate their businesses. Whereas wholesale aggregators might not be taxed. However, each aggregator would need to be assessed to determine who would be taxable and who wouldn't as there are many variants to the models.

This nuanced approach would protect the integrity of the tax system while avoiding unintended consequences for legitimate businesses. Without action, the continued misapplication of these provisions will erode small business viability, force independent professionals into less competitive and more restrictive models, and ultimately reduce consumer choice.

The path forward is clear: modern tax laws must reflect modern business realities. A properly calibrated framework will protect revenue integrity while fostering a competitive, independent, and dynamic economy—one in which businesses can thrive without facing arbitrary and unjust tax burdens.