

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

Organisation: Mortgage Choice
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Submission to the Inquiry into the application of the contractor and employment agent provisions in the *Payroll Tax Act 2007*

February 2025

Mortgage Choice welcomes the opportunity to contribute to the Inquiry into the application of the contractor and employment agent provisions in the *Payroll Tax Act 2007* (NSW).

As one of Australia's leading aggregators of mortgage brokers, Mortgage Choice is well positioned to provide insight on the impact of the current application of the contractor provisions on the mortgage broking industry.

About Mortgage Choice

For more than 30 years, Australians have trusted Mortgage Choice brokers to help them find the right loan to finance their property dreams. Owned by ASX-listed digital property business REA Group, Mortgage Choice is a national brokerage with 1,076 brokers (as at 31 December 2024), including 765 small business owner franchisees.

As a member of the Mortgage and Finance Association of Australia (MFAA), Mortgage Choice supports the ongoing effort of the mortgage broking industry's peak body to ensure the application of the *Payroll Tax Act 2007* is fair and reasonable for all.

Context

The articulation of anti-avoidance provisions within Division 7 of Part 3 of the NSW Government's *Payroll Tax Act 2007* has, for several years, created a lack of certainty on how the NSW payroll tax laws should be applied to genuine independent contractors and more specifically, aggregator broker contracts.

The recent decision of the NSW Supreme Court in *Loan Market Pty Ltd v Chief Commissioner of State Revenue* [2024] NSWSC 390 has surprised the mortgage broking industry and created further confusion among aggregators and mortgage brokers.

Based on our current understanding of the application of the exemptions, many of our Mortgage Choice network who are single operators may not be entitled to rely on the exemptions to 'relevant contracts' under the *Payroll Tax Act 2007*. It would be remiss not to acknowledge that these exemptions involve questions of degree and commercial reality, leading to uncertainty.

Mortgage Choice will explore passing on the cost of payroll tax to our brokers who are ineligible for the exemptions specified in the relevant law. Several other mortgage broking aggregators have also indicated they will take a similar approach with their broker networks.

Mortgage Choice believes the current application of the contractor provisions (being Division 7 of the *Payroll Tax Act 2007*) will have an unintended consequence of increasing small business owner costs to the point that it discourages mortgage brokers from operating their own small businesses.

Mortgage brokers provide immense value to consumers by helping them to find competitive loan products that best suit consumers' needs and to manage their mortgages on an ongoing basis. The value consumers see in brokers is demonstrated by the fact that brokers now settle three-quarters of all home loans in Australia, according to the latest MFAA market share data released in December 2024.

This submission responds specifically to the following terms of reference for this Inquiry:

- (a) the provisions in Division 7 of Part 3 of the *Payroll Tax Act 2007* on contractors;
- (c) revenue rulings and Commissioner's practice notes issued by Revenue NSW addressing the contractor and employment agencies provisions in the *Payroll Tax Act 2007*; and
- (d) decisions of courts in cases involving the application of the contractor and employment agencies provisions in the *Payroll Tax Act 2007*.

Recommendations

Mortgage Choice makes the following recommendations within this submission:

1. Clarification is made to the provisions in Division 7 of Part 3 of the *Payroll Tax Act 2007* to better reflect the provisions' intended purpose of anti-avoidance, confirming that bona fide independent contractors, specifically aggregator broker arrangements, are not subject to payroll tax on their commissions;
2. Pending the review of Division 7 of Part 3 of the *Payroll Tax Act 2007*, an amnesty on audit and enforcement actions and ensuring no retrospective application of the current law is applied; and
3. Following review and clarification of the law, Revenue NSW be required to update Commissioner's Practice Note (CPN) 016, with input from the broking industry.

1. Clarification is made to the provisions in Division 7 of Part 3 of the *Payroll Tax Act 2007* to better reflect the provisions' intended purpose of anti-avoidance, confirming that bona fide independent contractors, specifically aggregator broker arrangements, are not subject to payroll tax on their commissions.

It is vitally important that immediate clarification is made to Division 7 to ensure that these provisions are used for their intended purpose of ensuring businesses do not engage in anti-avoidance activities.

The current lack of specificity and clarity within these provisions creates an unnecessary burden on small businesses within the broking industry, including increased business costs and outlay from small business owners. Mortgage Choice firmly believes this has the potential to adversely affect the number of mortgage brokers who choose to operate small businesses that help thousands of Australians build intergenerational wealth via the property market.

Additionally, the current exemptions to the contractor provisions require significant administrative effort from aggregators and brokers to ensure appropriate evidence can be provided to Revenue NSW. The evidence required is not consistent with the type of records broking businesses – either aggregators or small business owners – have historically kept. This in turn impacts the industry's operational efficiency.

2. Pending the review of Division 7 of Part 3 of the *Payroll Tax Act 2007*, an amnesty on audit and enforcement actions and ensuring no retrospective application of the current law is applied.

In response to industry uncertainty of payroll tax law in connection with genuine contractor arrangements in the broking industry, in 2023 Revenue NSW confirmed it would not commence any new audits connected to mortgage broking aggregators' tax liabilities under the provisions of Division 7 of Part 3 of the *NSW Payroll Tax Act 2007*, pending the outcome of ongoing litigation. Until certainty in the legislation is provided, this amnesty should continue.

Given prolonged uncertainty around the Division 7 provisions paired with the nature of the exemptions that require rigorous evidence, Mortgage Choice believes it would be challenging to fairly and accurately apply the law retrospectively.

3. Following the review of Division 7 of Part 3 of the *NSW Payroll Tax Act 2007*, Commissioner's Practice Note (CPN) 016 be reviewed, with input from the broking industry

Given the sustained period of uncertainty around the application of Division 7 of Part 3 of the *Payroll Tax Act*, it is important to ensure all stakeholders have a clear, shared understanding of how to interpret Division 7 of Part 3 of the *Payroll Tax Act*, particularly section 32.

As such, Mortgage Choice recommends that Revenue NSW is required to review CPN 016 – with input from the mortgage broking industry, including the MFAA – to ensure all relevant stakeholders have clarity on the intended application of the provisions. This would also help to minimise the ongoing resource required from Revenue NSW, the broking industry and its small business owners to ensure compliance.

Conclusion

With the current application of the contractor provisions in Division 7 leading to unintended consequences that will potentially affect thousands of small business owners, this is an important and timely review of the *Payroll Tax Act 2007*.