

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

**Organisation:** Mortgage & Finance Association of Australia  
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# Submission: Inquiry into the Contractor Provisions of the Payroll Tax Act 2007

7 February 2025



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The Chair  
Portfolio Committee 1 – Premier and Finance  
Parliament of New South Wales

Dear Chair and Committee Members,

## INQUIRY INTO THE CONTRACTOR PROVISIONS OF THE PAYROLL TAX ACT 2007

The Mortgage and Finance Association of Australia (MFAA) is Australia's peak body for the mortgage and finance broking industry, representing over 15,500 members nationally. This includes circa 15,000 mortgage brokers (over 7,000 in NSW alone), all 11 major aggregators<sup>1</sup> as well as lenders of all sizes, both banks and non-banks. On behalf of the MFAA and our members, I welcome the opportunity to contribute to the Committee's inquiry into the contractor and employment agent provisions within the *Payroll Tax Act (NSW) 2007* (**the Act**) (**the Inquiry**).

This Inquiry is both timely and overdue. It is also the first of its kind and we commend the Committee Members for being bold and instigating this Inquiry.

For nearly a decade, the mortgage broking industry has grappled with uncertainty surrounding the payroll tax law, particularly the application of the contractor provisions in Division 7 Part 3 of the Act (**Contractor Provisions**).<sup>2</sup> Despite repeated engagement with the NSW Government, there has been little support for the industry.<sup>3</sup>

With brokers facilitating nearly 75% of all mortgages in Australia,<sup>4</sup> they are vital to home ownership in NSW, fostering competition for the benefit of all borrowers. It is no secret that the state is also in a housing affordability and cost-of-living crisis, with NSW borrowers bearing higher than the average Australian mortgage.<sup>5</sup> In this environment, brokers are focused on supporting their clients. The application of payroll tax, especially retrospectively, risks placing unsustainable financial strain on the smallest of small broker businesses, threatening their operations and their ability to assist NSW borrowers. Without brokers, NSW home buyers will have fewer choices and face higher mortgage costs, further exacerbating the housing affordability crisis in NSW.

### Key issues for the Committee to consider

- The Contractor Provisions are poorly drafted and outdated, causing significant challenges for several industries including the broking industry. The lack of clarity allows for the Contractor Provisions to be interpreted, not just to capture *bona fide* contractor relationships, but in ways that do not reflect modern day business practices. Acknowledging this lack of clarity, in 2022 Revenue NSW agreed to pause new audits on mortgage aggregators pending the outcome of ongoing litigation.<sup>6</sup>

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<sup>1</sup> Australian Finance Group (AFG), Connective, REA Group (Mortgage Choice), Loan Market Group (LMG), National Mortgage Brokers (NmB), Outsourse, Specialist Finance Group (SFG), Yellow Brick Road (YBR), Finsure, Lendi Group (Aussie Home Loans), Astute Financial.

<sup>2</sup> In this submission, when we refer to the Contractor Provisions, we are referring specifically to section 32 of the Act.

<sup>3</sup> See Appendix 1 for a chronology of engagement with the NSW Government.

<sup>4</sup> MFAA media release, *Mortgage broker market share remains strong in June quarter*, 9 September 2024, <<https://www.mfaa.com.au/news/mortgage-broker-market-share-remains-strong-in-june-quarter>>.

<sup>5</sup> Data for average home loan size from the Australian Bureau of Statistics Lending Indicators September 2024 shows the average mortgage in NSW is \$779, 000 compared to the national average of \$642, 000, <<https://www.abs.gov.au/statistics/economy/finance/lending-indicators/latest-release>>.

<sup>6</sup> MFAA media release, *MFAA secures stop action from Revenue NSW*, 27 March 2023, <<https://www.mfaa.com.au/news/mfaa-secures-stop-action-from-revenue-nsw>>.

- Today, small businesses use platform services and technology to scale operations and connect with customers more efficiently. Mortgage brokers, for instance, operate independently, sourcing their own clients while relying on aggregators' technology platforms to support their business activities. Under federal law, mortgage brokers are required either to be licensed or be credit representatives of a licensee—a service typically provided by aggregators. As evident in CPN 016,<sup>7</sup> Revenue NSW interprets the obligations that flow from these federal licensing requirements as creating taxable contractor relationships between brokers and aggregators, resulting in an illogical state tax obligation arising from federal legislation.
- The impact of outdated Contractor Provisions and Revenue NSW's enforcement practices on our members has been severe. The ambiguity has resulted in significant compliance costs, disruptive audits, and protracted litigation, placing an unnecessary burden on businesses and impeding their ability to grow and thrive.

## Recommendations

1	<p>A consultation of the Contractor Provisions is conducted by NSW Treasury, the purpose of which is:</p> <ul style="list-style-type: none"> <li>• To amend the law to reflect its original intent as anti-avoidance provisions designed <u>not</u> to capture <i>bona fide</i> contractor relationships.</li> <li>• It should then follow that Revenue NSW should apply the law as intended, targeting anti-avoidance rather than genuine business arrangements.</li> </ul>
2	<p>Following from the outcome of the review of the Contractor Provisions, to require Revenue NSW to conduct a review of CPN 016 in comprehensive consultation with mortgage broking industry stakeholders.</p>
3	<p>In the interim, immediate relief be provided to the broking industry by implementing an amnesty on audit and enforcement actions and ensuring no retrospective application of the current law is applied.</p>
4	<p>That a national dialogue commences across states and territories to seek true harmonisation of payroll tax laws with a clear focus on reducing unnecessary red tape and administrative burden on national businesses.</p>

## Conclusion

The NSW Government has a unique opportunity to lead by clarifying payroll tax law and modernising its administration. Doing so will reduce uncertainty, promote fair competition, and encourage business investment. If payroll tax challenges remain unaddressed, it will reduce competition in lending, increase costs for already stretched NSW borrowers, continue to restrict the hopes of prospective first home buyers from ever owning a home, and threaten businesses vital to home ownership in NSW.

We therefore urge the Committee to deliver recommendations that provide clarity, fairness, and certainty for mortgage broking businesses across NSW.

Yours sincerely,

Anja Pannek

<sup>7</sup> See Commissioner Practice Note: Payroll Tax Act - Relevant Contracts – Australian Financial Services Licences and Australian Credit Licences (CPN 016), <<https://www.revenue.nsw.gov.au/news-media-releases/cpn-016-payroll-tax-relevant-contracts#:~:text=The%20purpose%20of%20this%20CPN,financial%20services%20and%20credit%20services>>.

## **Our submission**

This submission addresses key aspects of the inquiry's terms of reference, with a particular focus on the application of the contractor provisions in Division 7 Part 3 of the Payroll Tax Act (**the Act**) (**the Contractor Provisions**).

## **Industry background**

The mortgage broking industry operates through three key entities: brokers, aggregators and lenders.

Mortgage brokers are predominantly small independent businesses with business models ranging from sole traders, private companies, trusts and partnerships. According to MFAA data, approximately 41% of brokers in the industry operate as single broker businesses. For this reason, the Contractor Provisions disproportionately impacts on the broking industry. We explain the reasons for this under Recommendation 1 below.

Brokers maintain their own premises, bear the costs of their business operations, employ or contract administrative and support staff as needed and acquire their own clients. Brokers are responsible for directly managing client relationships and providing tailored services to their clients. They do so by placing loans with lenders on behalf of their clients and receive a commission by lenders in return. Aggregators facilitate these commission payments from lenders to brokers through commission platforms. Importantly also, brokers must be directly accredited with lenders to enable them to offer and distribute those products to their clients.

Brokers invest in their own marketing, technology and compliance requirements including through engaging the services of aggregators.

A pictorial overview of the industry structure and key facts is provided in **Appendix 2 – Mortgage Broking Industry Overview**.

## **The regulatory framework required by brokers to comply with to provide services to their clients**

Mortgage brokers assist consumers in finding and securing suitable home loans (otherwise known as credit assistance under national law).

To provide credit assistance to their clients, brokers must either be licensed or operate under a license (the license is called an Australian Credit License or 'ACL'). This federal licensing regime was established under the Credit Act which commenced in 2010 to regulate credit activities across Australia.

In effect, these licensing requirements require broker businesses either to hold their own ACL or have their businesses operate as a 'credit representative' under another entity's (i.e. an aggregator's) ACL.

## **The role of aggregators as service providers to brokers and lenders**

Aggregators serve as intermediary service providers between brokers and lenders, offering brokers compliance services (including licensing services, as described earlier), business development support, and commission processing. Aggregators provide brokers with access to lender panels, a service that includes conducting due diligence on lenders, aggregating lender product information, and facilitating streamlined access to a diverse range of lender product options.



In the early days of the broking industry, mortgage brokers referred clients' loans directly to lenders. However, as the industry expanded and technology advanced, brokers began leveraging technology platforms to efficiently review multiple lender products, capture client information, and submit loan applications. These platforms were developed and provided by aggregators, who as noted above, also introduced systems to streamline the payment of broker commissions across multiple lenders. This innovation enabled scale for lenders and brokers alike.

To further support this growth, lenders and aggregators established commercial relationships that facilitated commission payments,<sup>8</sup> compliance oversight and data management. It is worth emphasising that aggregators emerged primarily because lenders wanted to avoid the administrative burden of administering payments to individual brokers. Instead, they preferred paying a lump sum to the aggregator, which then distributed payments to individual brokers based on the lender's instructions. In essence, similar to platform service providers such as Uber, aggregators act as a payment collection agent, collecting payments from lenders and remitting those payments to brokers.<sup>9</sup>

Over time, additional services for lenders and brokers were added to this core function.

There are different aggregation models, including retail and wholesale models both which offer a diversity of service offerings including varying levels of support, technology, compliance services and service fee structures. The important point here is that brokers, as independent businesses, choose the aggregator model that best suits their needs, selecting and paying for only the services that align with their business strategy. It is important to also note that brokers have the flexibility to switch aggregators at any time.<sup>10</sup> **Appendix 3** provides a summary of the various aggregation models and their characteristics.

Today, aggregators are integral to the operational efficiency of the broking industry for the services they provide to brokers as described above.

Following the introduction of the Credit Act and additional regulatory demands stemming from the Banking Royal Commission, aggregators have expanded their services to help brokers meet their compliance obligations efficiently, including through technology-driven solutions for record-keeping and reporting. While some larger broking businesses may have an in-house compliance function, this is rare. The majority of small brokers, particularly sole operators, rely on an aggregator's service provision or, engage third-party compliance service providers to manage compliance obligations. Given the complexity and cost of managing compliance independently, the services provided by aggregators are crucial in ensuring brokers can operate efficiently and continue providing services to their clients.

In effect, the broking industry's efforts to comply with national licensing laws have resulted in the relationships between aggregators and brokers being treated as relevant contracts under the Contractor Provisions.<sup>11</sup> This is demonstrated in the case study below.

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<sup>8</sup> Lenders remit the commissions earned by brokers from settled loans to aggregators, who then distribute the payments to brokers. In some cases, aggregators deduct their service fees before transferring the remaining commission. In other instances, the full commission is passed to the broker, who subsequently pays the aggregator's service fee. In both cases, the process occurs strictly under the instruction and direction of the broker.

<sup>9</sup> The model is similar to that articulated at paragraph 178 – 181 of *Uber Australia Pty Ltd v Chief Commissioner of State Revenue* [2024] NSWSC 1124.

<sup>10</sup> From our estimates, between 4–5% of brokers switch aggregators on an annual basis.

<sup>11</sup> See CPN 016 and the Loan Market Case.

### Case Study 1: The impact of Credit Act compliance on payroll tax

Blue Broking is a small sole proprietor business run by John, an experienced mortgage broker who sources and services his own clients. Blue Broking needs to either be licensed or to be a representative of a licensee to be able to help its clients secure home loans. John decides that it is easier for Blue Broking to become a credit representative under the ACL of Aggregator Z.

Aggregator Z provides services to John's business such as access to lender product information, compliance and record keeping tools, and technology platforms, which help streamline his operations. The technology provided by Aggregator Z also enables record keeping for John allowing him to meet regulatory requirements efficiently while focusing on serving his clients. John pays Aggregator Z for these services.

Commission is collected by Aggregator Z from lenders on John's behalf and then is paid to John on a monthly basis.

Revenue NSW views John's relationship with Aggregator Z as constituting a relevant contractor arrangement for payroll tax purposes. As a result, Aggregator Z incurs a payroll tax liability for John's business that includes retrospective fines and penalties. Aggregator Z operates, as an intermediary, on very low margins of 5% and its business model cannot absorb the cost of payroll tax when passing through commissions as a service to brokers. As such, Aggregator Z passes on the cost of that payroll tax liability to Blue Broking through an increase in service fees.

For John, the additional payroll tax liability including retrospective taxes and penalties could jeopardise his business, forcing him to reduce expenses like marketing and professional development, or even consider exiting the industry.

The case of Blue Broking highlights the unintended consequences of applying payroll tax laws to a federally regulated industry. It demonstrates the urgent need for clarity and reform to ensure the broking industry can continue to operate effectively and support NSW borrowers.

### Key recommendations

In light of the above, we set out our key recommendations below, including amending the Contractor Provisions to align with its original anti-avoidance intent.

#### RECOMMENDATION 1

A consultation of the Contractor Provisions is conducted by NSW Treasury, the purpose of which is:

- To amend the law to reflect its original intent as anti-avoidance provisions designed not to capture *bona fide* contractor relationships.
- It should then follow that Revenue NSW should apply the law as intended, targeting anti-avoidance rather than genuine business arrangements.

### Overview of the relevant contract provisions

The Contractor Provisions were introduced in 1987 as an anti-avoidance measure and have remained largely unchanged despite significant shifts in the nature of work and modern contracting arrangements. The Contractor Provisions were originally designed to address the misclassification of employees as independent contractors, ensuring payroll tax applied to arrangements resembling

employment, particularly where contractors worked exclusively or primarily for a single entity.<sup>12</sup> As we understand, the Contractor Provisions were not intended to capture *bona fide* contractors.

Section 32(1) operates by deeming a contract as a "relevant contract" for payroll tax purposes if services are provided under that contract during a financial year and wages are paid "for or in relation to the performance of work". Section 32(2) then provides exemptions intended to exclude "bona fide" contracts from payroll tax liability. These exemptions aim to distinguish genuine business relationships from employment-like arrangements.<sup>13</sup>

Due to the broad drafting aimed at targeting tax avoidance, the Contractor Provisions unintentionally now capture genuine independent contractor arrangements. For example, this broad drafting has led to the considerable uncertainty in industries such as mortgage broking.

This issue has been repeatedly identified and highlighted by experts.

For instance, in 2018, the Law Society of NSW, in its submission to the NSW Treasury review of payroll tax administration,<sup>14</sup> noted the challenges posed by poor legislative drafting and the resulting compliance difficulties for taxpayers. Similarly, payroll tax expert Mr. Jack Aquilina, Managing Associate at Dentons and Senior Fellow at Melbourne Law School, in his paper titled *Payroll Tax & Relevant Contractors* further elaborated on these challenges, emphasising the impact on businesses navigating these complex provisions:

*"Both the approach being taken by revenue authorities and the uncertainty creates a very difficult environment for businesses of all sizes to operate in. It builds into what are usually low margin business models further imbedded cost and risk and, in the author's respectful opinion, extends the role of payroll tax far beyond its stated and legitimate function within the State taxation scheme. Either the line will be drawn by the Courts in interpreting and applying the law as currently drafted or Governments across Australia will need to work together to enact sensible reform."*<sup>15</sup>

Our members' experience is reflective of these observations - that the drafting of the law has repeatedly required interpretation by the courts, resulting in a significant impost both financially and in terms of taxpayer time. This is evident in the Loan Market Case, where Revenue NSW audits began in 2015, the case was heard in 2023, and a final ruling was received in 2024 — marking nearly a decade without clarity.

## Overview of recent case law

Recent case law has highlighted the challenges for industries across NSW with the Relevant Contract Provisions, these include:

- In the Loan Market case, where the Supreme Court of New South Wales in its ruling that commissions paid by a mortgage aggregator to brokers fell under the "relevant contract" provisions, noted the law's application as "harsh" suggesting that legislative reform was needed.<sup>16</sup>

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<sup>12</sup> See footnote 6 for reference.

<sup>13</sup> One of these exemptions is in section 32(c) of the Act and colloquially named the 2+ rule. The 2+ rule exemption allows businesses with fewer than two employees to be exempt from payroll tax obligations. The "2+ rule" exemption does not apply to the arrangements between aggregators and sole proprietor broking businesses, meaning they are not exempt and are captured within the aggregator's payroll tax net. This places the payroll tax liability on aggregators for commissions paid to solo brokers.

<sup>14</sup> The Law Society of NSW submission to the Review of Payroll Tax Administration dated 6 July 2018,

<https://www.treasury.nsw.gov.au/sites/default/files/2018-11/Review%20of%20Payroll%20Tax%20Administration%20Submission%20-%20Law%20Society%20of%20NSW.pdf>.

<sup>15</sup> See *Payroll Tax & Relevant Contractors presented to the Vic Tax Forum*, 21-22 March 2024 by Jack Nathan Aquilina pg 36.

<sup>16</sup> Loan Market Case paragraph 207.



- The NSW Supreme Court ruled in *Uber Australia Pty Ltd v Chief Commissioner of State Revenue* that payments to Uber drivers were not subject to payroll tax. This case is subject to appeal. However, the case highlights the uncertainty of the provisions being applied to technology platform providers and intermediaries, potentially highlighting disparate results under the current law and creating an unlevel playing field between industries using bona fide contracting arrangements.
- In *Thomas and Naaz Pty Ltd v Chief Commissioner of State Revenue [2023] NSWCA 40*, the New South Wales Court of Appeal upheld that payments from a medical practice to its doctors are subject to payroll tax. This decision led to state governments across Australia legislating exemptions for General Practitioners (GPs) from the application of payroll tax, including the NSW Government.

### *Exemptions disadvantage vulnerable small businesses*

Because the current exemptions only exempt larger contractors (that is contractors that have two or more people involved in the service delivery and/or operate for more than 90 days a year),<sup>17</sup> the law disproportionately impacts single person small businesses.

This is because single person businesses fall outside the scope of the exemptions where they are operated by one individual for more than 90 days and there is a deemed service flow between the individual (whether a natural person or company) and the intermediary service provider. This has the obscure result of imposing significant costs on the smallest of small businesses that do enter into bona fide independent contractor relationships with service providers. The added cost to their business puts them at greater risk of failure and creates significant hurdles, putting them artificially at a competitive disadvantage in the marketplace. This is despite that fact that the current law does not appear to have a principled policy justification for this anomalous outcome for small business.

### *Proposed solution*

The NSW Government must determine whether the objective of payroll tax legislation is to impose tax obligations on bona fide independent contractors. We believe that this was never the original intent of the law. Instead, Section 32 was designed to prevent payroll tax avoidance by businesses that deliberately misclassify employees as contractors to circumvent their tax obligations. Over time, the broad application of this provision has led to unintended consequences, capturing genuine independent contractor arrangements that should not fall within the scope of payroll tax.

To restore Section 32 to its original intent, we recommend reforming the provision to ensure it only captures employment-like contractor relationships by removing the concept of services from its definition. Instead, we propose aligning the provision with the well-established common law definition of employee to capture contractor relationships that are identical in character to employment relationships.<sup>18</sup>

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<sup>17</sup> These exemptions are in ss32(b)(iii) and (c) of the Act.

<sup>18</sup> See *Workpac Pty Ltd v Skene*, *Workpac Pty Ltd v Rossato and Ors*, *CFMEU v Personnel Contracting Pty Ltd* and *ZG Operations Australia Pty Ltd v Jamsek*

Additionally, we propose the introduction of two key exemptions to modernise the Relevant Contractor provisions and to ensure it does not capture genuine independent business arrangements:

- First, an exemption for bona fide contractors should be introduced to reflect the original intent of the Contractor Provisions.
- Second, an exemption for intermediary service providers should be introduced to reflect modern business models such as aggregation services.

These changes would not only introduce clarity into the law, it would reduce the risk of the Relevant Contractor Provisions being applied beyond its original intended purpose.

We support the recommendations made by Dentons in their submission to the Inquiry.

## RECOMMENDATION 2

Following from the outcome of the review of the Contractor Provisions, to require Revenue NSW to conduct a review of CPN 016 in comprehensive consultation with mortgage broking industry stakeholders.

Payroll tax administration in NSW was the subject of a NSW Treasury consultation in 2018 with all recommendations made by the NSW Commissioner for Productivity in its final report accepted by the NSW Government. A critical recommendation included a requirement for Revenue NSW Commissioner to produce practice notes to support greater clarity on core questions to assist with compliance.<sup>19</sup>

First introduced in 2021 and later updated in June 2022, CPN 016 outlines Revenue NSW's guidance on the application of the 'relevant contracts' provisions under Section 32 of the Act to both financial services under an Australian Financial Services License (AFSL) (in effect financial planners) and credit services under an ACL (in effect mortgage brokers).

As a key resource for the industry, CPN 016 should be able to be relied upon heavily to provide clarity and direction regarding the application of payroll tax in complex contractual arrangements between aggregators, lenders and brokers.

Our members have highlighted that CPN 016 was issued without adequate consultation, leading to defective guidance for industry. In our view, the current CPN fails in ways that includes but is not limited to the following:

- It mis-describes mortgage brokers as agents of aggregators rather than as agents of consumers in line with findings from the Banking Royal Commission.
- Brokers often engage directly with "off-panel" lenders that are not part of an aggregator's standard lender product information. The CPN does not clarify how these arrangements affect the existence of a "relevant contract."

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<sup>19</sup> See Review of payroll tax administration in New South Wales Final Report Recommendation 6 page 20, <https://www.treasury.nsw.gov.au/sites/default/files/2018-11/NSW%20PC%20to%20Treasurer%20-%20Review%20of%20payroll%20tax%20administration.pdf>.

- Situations where trail commissions are sold by one broker to another or transferred between aggregators are common. The CPN does not include guidance on how these are treated for the purposes of calculating payroll tax.
- Brokers are often required to engage mentors during their first two years as a requirement of lenders or industry bodies. The CPN does not clarify or contemplate these engagements in providing guidance on the criteria for the "two or more persons" exemption.
- Aggregators provide critical services to brokers, such as access to loan writing platforms and consumer credit assessments. The CPN does not address how these services are viewed in the context of the "two or more persons" exemption.
- The CPN needs to provide clearer guidance on the "de minimis" threshold, including qualitative and quantitative factors, to ensure consistent application of the exemption.
- The CPN does not clarify whether aggregators need to maintain records for the life of a loan (which could be up to 30 years) including what records are required to be kept demonstrating the reliance on exemptions.

It is important also that the CPN should reflect the range of structural models employed by aggregation groups with respect to arrangements with brokers as noted above as these can vary significantly in terms of service offerings, contractual arrangements, and the level of services provided to brokers.

The CPN was re-issued in 2021, however did not remediate these deficiencies and was issued without any notice to the industry to which it was related.

It is essential that any legislative reform is accompanied by a review and update of the CPN. In our experience, the ATO and federal regulators take a more collaborative approach to consultation, offering greater opportunities for early engagement with industry. This clear and constructive consultation process, coupled with reasoned decisions communicated to affected parties, has resulted in better compliance outcomes for industries.

We see a valuable opportunity for Revenue NSW to adopt similar consultation practices to those of its federal counterparts, fostering greater clarity and support for businesses in meeting their obligations.

### RECOMMENDATION 3

In the interim, immediate relief be provided to the broking industry by implementing an amnesty on audit and enforcement actions and ensuring no retrospective application of the current law is applied.

The mortgage broking industry operates within a highly regulated environment and is committed to compliance, however, to do so it needs certainty and clarity.

There are approximately 11 aggregation groups in the industry, all are MFAA members and almost every single one has or will be impacted by the lack of clarity in the law.<sup>20</sup>

<sup>20</sup> Australian Finance Group (AFG), Connective, REA Group (Mortgage Choice), Loan Market Group (LMG), National Mortgage Brokers (NmB), Outsourse, Specialist Finance Group (SFG), Yellow Brick Road (YBR), Finsure, Lendi Group (Aussie Home Loans), Astute Financial.

As a result of the finding in the Loan Market Case, many aggregation groups have commenced look-back self-assessment exercises, placing significant administrative burden and strain on our members to produce evidence for exemptions. For example, the record-keeping obligations tied to exemptions are extraordinarily onerous. If, for instance, with respect to trail commission payments on loans that could extend up to 30 years, aggregators would need to retain records for the entire duration to prove the exemption applied at the time the loan was established.

Additionally, the obligation for aggregators to self-assess exemptions is fraught with issues. Aggregators must obtain sensitive information from brokers, who are independent third parties, to confirm eligibility for exemptions. However, aggregators have no legal right to require this information, and brokers may hesitate or refuse to provide it due to privacy or confidentiality concerns. Further to this, the aggregator is ultimately liable for any errors made by the broker, despite having no control over the accuracy or completeness of the information provided. Conversely, requiring broking businesses to produce employee-like records imposes an unreasonable burden on these businesses as such record-keeping was never designed or contemplated for their independent operations.

We note that some aggregator members are still responding to Revenue NSW (RNSW) audits and assessment activities, with one aggregator currently engaged in litigation. Our members' experiences with RNSW audits align with concerns raised in the NSW Law Society submission, which highlighted that *"Revenue NSW audit teams adopt a bureaucratic approach to both undertaking their audits and imposing penalties,"* resulting in *"high compliance costs to the business and displacement of day-to-day operations."*<sup>21</sup> Members have also expressed frustration that audit teams often rely on minimal analysis to issue assessments, leaving businesses with no choice but to allocate significant resources to object.

Furthermore, our aggregator members report that the anticipated legal costs of seeking judicial review often far exceed the amounts of tax in dispute.

#### *Cost of payroll tax on broker businesses*

The retrospective application of payroll tax, combined with fines and penalties, could result in significant costs for broking businesses. The MFAA estimates that the five-year retrospective application of payroll tax could cost a single broker \$68,408—nearly 38% of the average annual gross earnings for a single broker business.<sup>22</sup> This financial burden would threaten the viability of many brokers, particularly small operators, forcing closures and reducing the industry's capacity to serve borrowers. The flow-on effects would be profound: reduced competition in the lending market, higher borrowing costs, and diminished access to credit for first-home buyers, and families.

#### **Case Study 2: ABC Broking – A Sole Operator Facing the Payroll Tax Challenge**

ABC Broking is a sole proprietorship run by Sarah, an experienced and highly regarded mortgage broker based in regional NSW. For over a decade, Sarah has helped local first-home buyers and families secure tailored loan solutions. Known for her personalised service and commitment to her community, Sarah has built a loyal client base through hard work and dedication. The closest bank branch to the town in which she has her business is 50 kilometres away so she is integral to her community in providing them with access to finance.

<sup>21</sup> See page 5 of The Law Society of NSW submission to the Review of Payroll Tax Administration dated 6 July 2018, <https://www.treasury.nsw.gov.au/sites/default/files/2018-11/Review%20of%20Payroll%20Tax%20Administration%20Submission%20-%20Law%20Society%20of%20NSW.pdf>.

<sup>22</sup> The payroll tax rate is 5.45%. Aggregator revenue after costs typically run at 5% which is less than the payroll tax rate which means commercially aggregators are unable to absorb the tax and will have to pass wholesale amounts on to broking businesses.

Recently, Sarah received news that her aggregator, subject to payroll tax, has passed on the cost to its brokers. This additional expense, combined with the retrospective application of payroll tax, could cost Sarah more than \$60,000 with five years of back taxes and penalties—nearly 38% of her average annual gross earnings.<sup>23</sup>

Sarah has already made difficult sacrifices, cutting back on marketing and professional development, which are critical to growing her business and staying competitive. Despite her efforts, she believes these measures won't be enough to keep her business afloat.

The closure of ABC Broking would not only be a personal loss for Sarah but also a significant blow to her community. Many of her clients rely on her expertise to navigate the complex lending landscape, particularly first-home buyers who depend on her to find competitive loan solutions.

Sarah's story highlights the unsustainable burden that retrospective payroll tax and aggregator pass-through costs will place on sole proprietary businesses.

### *Impact on NSW homeowners*

Independent brokers, who facilitate nearly 75% of home loans in Australia, operate as small businesses and are critical to ensuring a competitive and accessible lending market. By helping borrowers navigate the lending process, brokers provide access to a wide range of credit products and secure competitive interest rates, reducing the average cost of a mortgage.

In New South Wales, where land values and mortgage costs are higher than the national average, brokers play a vital role in supporting homeownership and reducing the financial burden for borrowers.

If brokers were to leave the industry in significant numbers, the cost of an average mortgage accessed through a broker in NSW would increase by an estimated \$273 per month, or \$98,280 over the life of the loan. The resulting contraction in the broking industry would not only harm individual borrowers but also weaken the housing market and impede the state's bipartisan policy of improving housing affordability and boosting supply.


It is therefore essential for the government to consider the long-term impacts of payroll tax on brokers and on Australian homeowners, and ensure that policies support, rather than hinder, the critical role brokers play in New South Wales economy.

Given the inherent uncertainties and significant ongoing costs, implementing a moratorium on enforcement and ensuring no retrospective application of payroll tax is a practical and sensible approach. This would provide much-needed clarity and relief to the industry while allowing time for the inquiry to go through its processes.

### **RECOMMENDATION 4**

That a national dialogue is commenced across states and territories to seek true harmonisation of payroll tax with a clear focus on reducing unnecessary red tape and administrative burden on national businesses.





This inquiry is an important first step in addressing the significant challenges posed by payroll tax inconsistencies across Australian states and territories. However, broader reform is essential to resolve the systemic issues caused by the fragmented and inefficient system. Despite efforts toward harmonisation, discrepancies remain with respect to payroll tax thresholds. A table of the thresholds and rates is at **Appendix 4**. Further to this, various state payroll tax acts and their application across jurisdictions also vary significantly.<sup>24</sup>

These inconsistencies create significant compliance costs and administrative burdens for national businesses, particularly in industries like mortgage broking and aggregators that operate across multiple states.

The current patchwork approach diverts resources away from productive activities and discourages investment in workforce expansion, further undermining Australia's productivity. As highlighted by the Business Council of Australia, payroll tax effectively penalises businesses for employing workers and hinders growth.<sup>25</sup> A nationally consistent approach to payroll tax rules is required to reduce inefficiencies, streamline compliance, and encourage economic growth.

While this inquiry is a welcome step, the federal government must take a leadership role in driving reform. Only a coordinated national approach can address the underlying challenges, simplify the system, and deliver the productivity benefits that businesses and the Australian economy need.

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<sup>24</sup> For example, as noted above, the exemption in 32(c) of the NSW Payroll Tax Act being the 2+ rule does not exist in the ACT Payroll Tax Act.

<sup>25</sup> See Business Council of Australia media release dated 29 November 2024:  
[https://www.bca.com.au/business\\_council\\_releases\\_payroll\\_tax\\_scorecard\\_and\\_calls\\_for\\_better\\_business\\_conditions\\_to\\_drive\\_investment](https://www.bca.com.au/business_council_releases_payroll_tax_scorecard_and_calls_for_better_business_conditions_to_drive_investment)

# Appendices

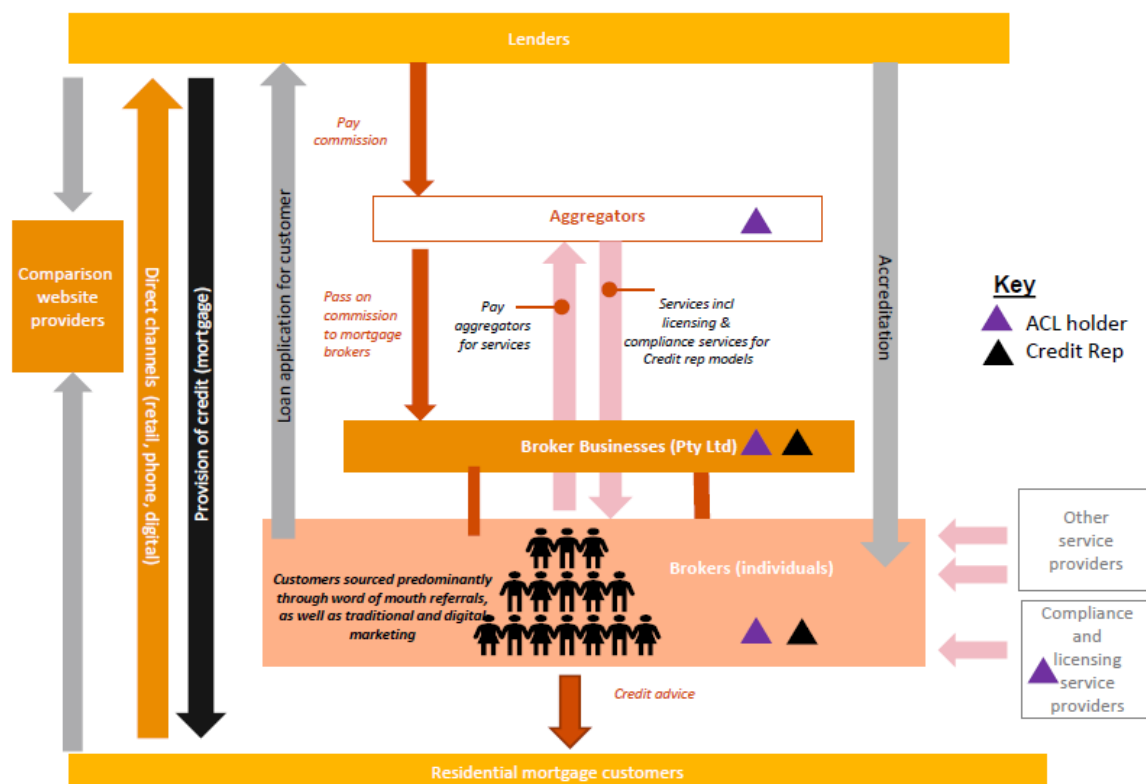
1. Summary of MFAA engagement with NSW Government on Payroll Tax
2. Mortgage broking industry overview
3. Aggregation models and characteristics
4. Payroll tax thresholds and rates across states

## Appendix 1 – Summary of MFAA engagement with NSW Government on Payroll Tax

Date	Description
7 February 2025	MFAA lodges submission to Inquiry
26 November 2024	NSW Portfolio Committee 1 (Premier and Finance) launch inquiry into payroll tax legislation
11 November 2024	Meeting with NSW Opposition Leader Mark Speakman, and NSW Shadow Treasurer Damien Tudehope
6 November 2024	MFAA media release - NSW Government must change payroll tax law
8 October 2024	MFAA media release - Associations join forces against payroll tax
24 July 2024	Joint MFAA, COSBOA, CAFBA letter to the NSW Government
18 July 2024	Meeting with the NSW Shadow Treasurer Hon Damian Tudehope
6 May 2024	Letter to Revenue NSW
6 May 2024	Letter to NSW Finance Minister Hon Courtney Houssos
1 May 2024	Letter to NSW Finance Minister Hon Courtney Houssos
15 April 2024	Media Release - Payroll tax ruling highlights legislation is flawed - 15 April 2024 (responding to Supreme Court 12 April 2024 LMG ruling)
8 February 2024	Letter to NSW Finance Minister Hon Courtney Houssos
31 January 2024	Meeting with NSW Finance Minister Hon Courtney Houssos
29 January 2024	MFAA (federal) pre-budget submission calls for Payroll Tax reform
13 December 2023	Follow up email to NSW Finance Minister Courtney Houssos
26 October 2023	Meeting with the NSW Shadow Treasurer Hon Damian Tudehope
27 September 2023	Meeting with NSW Treasurer the Hon Damien Tudehope
25 August 2023	Letter to NSW Finance Minister Hon Courtney Houssos
26 July 2023	Meeting with NSW Finance Minister Hon Courtney Houssos

Date	Description
26 July 2023	Letters to NSW Finance Minister Courtney Houssos and Revenue NSW
12 May 2023	Letter to Revenue NSW
1 May 2023	Letter to NSW Small Business Minister Steve Kamper
1 May 2023	Letter to NSW Finance Minister Hon Courtney Houssos
26 April 2023	Letter to Opposition Leader Chris Minns and Shadow Treasurer Daniel Mookhey
27 March 2023	Media Release - MFAA secures stop action from Revenue NSW 27 March 2023
23 March 2023	Meeting with Revenue NSW
6 March 2023	Media Release - MFAA launches NSW payroll tax campaign - 6 March 2023
22 February 2023	Follow up letter to Shadow Finance Minister Anoulack Chantivong
20 February 2023	Correspondence to Revenue NSW
20 February 2023	Correspondence to NSW Premier, Treasurer and Minister for Small Business (Labor)
20 February 2023	Letter to NSW Opposition Ministers

## Appendix 2 – Mortgage broking industry overview



### Key points:

- Traditionally lenders have sold products through direct channels including branches, call centres and their websites.
- Increasingly, borrowers have sought to obtain residential mortgages through third parties – mortgage brokers are now typically a lender's main third-party distribution channel.
- Mortgage brokers are individuals who are licensed to write loans for borrowers. Unlike the offering from direct channels, brokers can offer a range of products from multiple lenders
- Mortgage brokers operate as standalone businesses, earning income from each loan that they write. They generally receive an upfront commission and an ongoing trail for the life of the loan.
- In order for a mortgage broker to access a wide range of lenders for their customers to choose from, they generally align to an aggregator. Aggregators facilitate the relationship between lenders and brokers, enabling them to do business in an efficient way.
- There are a number of aggregation models - brokers who wish to operate under their own brand will choose "Wholesale Aggregation model", while those who wish to align with a brand can choose "Retail Aggregation model".



## Appendix 3 – Aggregation Models and Characteristics

Model	Is there an employment contract?	Does the broker work from the aggregator's premises?	Does the broker use aggregator-provided equipment?	Does the broker have their own insurances?	Does the broker use the aggregator's brand?	Does the broker get client leads through the aggregator?	Does the broker follow the aggregator's business hours?	Can the broker end their agreement with the aggregator at any time (with required notice)?	Does the broker keep clients after ending the agreement with the aggregator?
Retail	No	No	No	Yes	Yes	Yes, as a service, noting the use of self-generated referrals as well	No	Yes	Subject to the broker's service agreement with the aggregator
Wholesale	No	No	No	Yes	No	No	No	Yes	Yes
Salaried	Yes	Yes	Yes	No	No - employee	Yes	Yes	Yes – by resignation	No

## Appendix 4 – Payroll tax thresholds and rates across states

State/Territory	Annual Threshold	Tax Rate (above threshold)	Notes
New South Wales	\$1.2 million	5.45%	Reduced rate for regional employers.
Victoria	\$900,000	4.85% (metro), 1.2125% (regional)	Regional employers pay a lower rate.
Queensland	\$1.3 million	4.75%	Rate decreases to 4.5% for wages above \$6.5 million.
South Australia	\$1.5 million	4.95%	No regional variations.
Western Australia	\$1 million	5.5% - 6.5%	Graduated rate depending on total wages.
Tasmania	\$1.25 million	4% - 6.1%	Graduated rate depending on total wages.
Australian Capital Territory (ACT)	\$2 million	6.85%	No regional variations.
Northern Territory	\$1.5 million	5.5%	No regional variations.

- 1. Thresholds:** The threshold is the amount of annual wages an employer can pay before being liable for payroll tax.
- 2. Rates:** Rates apply to wages above the threshold. Some states have graduated rates or reduced rates for regional employers.
- 3. Exemptions:** Certain wages (e.g., for apprentices or trainees) may be exempt or subject to concessions.
- 4. Grouping Rules:** Businesses under common ownership or control may be grouped, and their wages combined for threshold purposes.



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