

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

Organisation: Commercial & Asset Finance Brokers Association of Australia
(CAFBA)

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Submission

Inquiry into the application of the contractor and employment agent provisions in the Payroll Tax Act 2007

**Commercial & Asset Finance
Brokers Association of Australia**

Prepared February 2025



Commercial & Asset Finance Brokers
Association of Australia

Clerk of the Parliaments,

NSW Legislative Council
NSW Parliament House
6 Macquarie Street
Sydney NSW 2000

6th February 2025

Attn: Clerk of the Parliaments,

**RE: Inquiry into the application of the contractor and employment agent
provisions in the Payroll Tax Act 2007**

The Commercial & Asset Finance Brokers Association of Australia Limited (CAFBA) is a strong voice for issues within the commercial finance sector, and we welcome the opportunity to submit our commentary and into the application of the contractor and employment agent provisions in the Payroll Tax Act 2007.

CAFBA members are professional commercial finance brokers committed to providing the best quality service to our business clients.

In this submission, our overarching objective is to propose measures that are responsible and achievable, and are consistent with Parliament's desire to assist SME Businesses to invest, grow, employ, and prosper.

The CAFBA board members, staff, and our members are pleased to continue working with the NSW Parliament and are willing to make ourselves available to assist you with the development of final recommendations.

Yours sincerely,

David Gandolfo, OAM
CAFBA Advocacy Chair

Domenic Lo Surdo
CAFBA President

Background on CAFBA

CAFBA is the industry association for professional commercial finance brokers in Australia, whose prime area of business is the distribution of commercial finance facilities to their clients. Our members include approximately 1,500 firms and brokers nationwide and our affiliate members are represented by Australia's major finance providers.

CAFBA works on behalf of our members to promote and encourage policies that advance the commercial finance industry and access to finance in Australia through government and legislative lobbying, education, and professional development.

In 2020, CAFBA commissioned East & Partners, a global leading banking and business advisory firm, to undertake a Broker Channel Analysis in the Australian Asset and Equipment Finance Markets. The research concluded that 72% of new commercial equipment finance is sourced through commercial brokers, up from 64% in 2017. These are the brokers who CAFBA represents.

CAFBA is a member of the Council of Small Business Organisations Australia ("COSBOA") and The Australian Finance Industry Association ("AFIA").

CAFBA members know that providing Australian small businesses with access to finance is crucial to economic growth. Although brokers are commonly associated with home loans, CAFBA members work in a complex environment to provide a boutique service. Without the work of CAFBA's professional members, many Australian small business owners would struggle to navigate the complexities involved with commercial and equipment finance.

The overall commercial finance market in Australia is believed to be over \$300 Billion annually, so we represent a very significant part of the Australian economy. Positive fiscal policy in this sector benefits the whole of the economy.

CAFBA embodies the strengths of its members in a unified approach for dealing with financiers and legislators at a national level and regularly seeks the views of members. As an association, CAFBA provides the framework and support to professionally assist our members in their daily activities. This involves education and training, legislative and regulatory updates and forums where the members can interact and exchange ideas with their peers.

CAFBA prides itself on being self-regulating and maintains strict membership standards on probity, continuing professional development, industry experience, and reputation. It is a condition of CAFBA membership that commercial finance brokers must belong to an ASIC-approved External Dispute Resolution Scheme.

Payroll Tax Act 2007 (NSW)

The current payroll tax system, which taxes employers on the payment of wages for employees or those in an employee-type arrangement (such as contractors or agents), has remained a significant revenue source for state governments alongside property and stamp duties, despite the aim to phase it out with the introduction of the GST in 2000.

Although intended to be harmonized nationwide, inconsistencies in payroll tax rates, thresholds, and legislative frameworks persist among states and territories, creating a costly and complex compliance burden for businesses operating across multiple jurisdictions. This tax complexity is seen as a disincentive for small businesses to hire staff, hindering productivity and expansion.

In 2022, the NSW Legislative Council's Select Committee on the Impact of Technological and other Change on the Future of Work and Workers in New South Wales recommended exploring alternative tax regimes to replace payroll tax. Specifically, the Committee suggested studying the feasibility of implementing a business cash-flow tax as a more efficient alternative (Recommendation 13).

CAFBA believes payroll tax functions as a barrier to productivity, particularly for small businesses, by discouraging hiring and operational growth. The administrative burden, financial implications for employers, and complexities in compliance have led some small businesses to contemplate offshore hiring to mitigate the challenges posed by payroll tax.

Contractor Provisions of the Act

CAFBA highlights concerns regarding the outdated and ambiguous Contractor Provisions, impacting industries like mortgage broking and direct selling, where small businesses operate. The lack of clarity in these provisions results in misinterpretations that conflict with current business standards, creating an uneven competitive environment. The evolving technology landscape and reliance on platform providers accentuate the inadequacy of these laws for contemporary businesses.

Initially designed as anti-avoidance measures, the contractor provisions have deviated from their original purpose, now encompassing legitimate independent contractor relationships. Tax authorities, particularly in NSW, have broadened the scope beyond the intended scope, forcing businesses into costly legal disputes to navigate the evolving interpretations.

The complexity of self-assessing payroll tax adds another layer of challenge for businesses, particularly in determining liability under contractor agreements and applying complex exemptions. Many businesses opt to hire professionals to interpret the provisions, resulting in significant expenses. Some end up spending more on professional services than the actual tax liability, highlighting the intricate nature of compliance. The prevalence of legal disputes further emphasizes the complexity and difficulty of self-assessment under these provisions, and the Loan Market case (refer below) has highlighted the significant financial cost of challenging a tax assessment based on interpretation rather than the intention of the law.

The current situation underscores the critical necessity for a thorough review and revision of the Contractor Provisions to better align with modern business dynamics and ease the compliance burden on small businesses.

Mortgage broking example

In a significant development impacting the mortgage broking sector, the Loan Market case has brought about a substantial shift in the application of payroll tax, surprising many industry players. The ruling, diverging from the legislation's original goals, has presented considerable financial and operational hurdles for numerous small broking firms, ushering in a period of unparalleled disruption.

Referencing the NSW Government's actions following the Thomas and Naaz ruling concerning General Practitioners, where measures were taken to address unintended consequences for small business operators, CAFBA highlights the need for similar safeguards in scenarios where small enterprises and consumers could be adversely affected by contractor provisions impacting legitimate independent contracting arrangements.

CAFBA stresses the necessity for enhanced regulatory clarity to assist businesses in navigating the intricate provisions. With reports indicating challenges faced by businesses aligning industry descriptions with practical operations, CAFBA underscores the significance of guidance tailored to each sector. Concerns are raised regarding the adequacy of existing resources from Revenue NSW in capturing the nuances of various business models and the real-world implications of contractor provisions. This lack of precision adds to the confusion within the business community, underscoring the demand for more robust, industry-specific regulatory assistance.

CAFBA warns that any further departure from the intended scope of current Payroll Tax provisions has the potential to capture broader market segments such as commercial finance broking, which may appear to have similarities but which operates very differently to residential mortgage broking. The consequent impact on access to credit for small business would be extremely detrimental across all segments of the broader economy.

Proposed Solutions

NSW Treasury is called upon to lead consultations aimed at reviewing the overarching framework of the Payroll Tax Act to ensure its relevance in today's economic landscape. Simultaneously, Revenue NSW is encouraged to focus on combating anti-avoidance practices rather than penalizing legitimate business arrangements.

To improve clarity and efficacy, it is essential to introduce specific and practical exemptions tailored to contractor provisions, safeguarding genuine contractor relationships from unintended consequences.

Conclusion

A critical evaluation of the payroll tax system is essential due to the lack of alignment with modern business practices. The discrepancies, particularly in contractor rules, result in unintended consequences that impede investment and operational effectiveness. The current system is overly intricate, financially cumbersome, and disproportionately affects sectors and contractual arrangements not originally addressed by the tax regulations.

CAFBA is committed to contributing its insights on this critical issue, and respectfully requests the opportunity to further engage directly as a stakeholder to the Committee.

End of Submission.

For further discussion please contact

David Gandolfo OAM