

REPORT ON PROCEEDINGS BEFORE

**PORTFOLIO COMMITTEE NO. 1 – PREMIER AND
FINANCE**

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

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At Macquarie Room, Parliament House, Sydney, on Tuesday 16 December 2025

The Committee met at 9:15.

PRESENT

The Hon. Jeremy Buckingham (Chair)

The Hon. Dr Sarah Kaine

The Hon. Stephen Lawrence

The Hon. Chris Rath

The Hon. Damien Tudehope

PRESENT VIA VIDEOCONFERENCE

The Hon. Bob Nanva

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The CHAIR: Good morning, everyone. Welcome to the second hearing of the Committee's inquiry into the application of the contractor and employment agent provisions in the Payroll Tax Act 2007. Firstly, I acknowledge the Gadigal people of the Eora nation, the traditional custodians of the lands on which we are meeting today. I pay my respects to Elders past and present, and celebrate the diversity of Aboriginal peoples and their ongoing cultures and connections to the lands and waters of New South Wales. I also acknowledge and pay my respect to any Aboriginal and Torres Strait Islander people joining us today. My name is Jeremy Buckingham. I am the Chair of the Committee.

I ask everyone in the room to please turn their mobile phones to silent. Parliamentary privilege applies to witnesses in relation to the evidence they give today. However, it does not apply to what witnesses say outside of the hearing. I urge witnesses to be careful about making comments to the media or to others after completing their evidence. In addition, the Legislative Council has adopted rules to provide procedural fairness for inquiry participants. I encourage Committee members and witnesses to be mindful of these procedures.

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Mr JACK AQUILINA, Managing Associate (Tax), Dentons Australia, on former oath

The CHAIR: Welcome, Mr Aquilina, and thank you for making the time to give evidence. Would you like to start by making a short statement or introductory remarks?

JACK AQUILINA: I just want to say to you and the Committee thank you very much for the honour of being able to give evidence again in this inquiry. It's a great pleasure to be with you. I think it'd be morally obtuse of me not to recognise the tragic events that happened in Bondi over the weekend. As a jealous Melburnian and a proud Victorian, I must say we're no longer Victorians and Melburnians today; we're New South Wales people with you today in recognition of what is a tragic moment in Australian history. I hope that that can put into perspective the reality that we have a wonderful democracy, a wonderful country. The opportunity to be able to come here peacefully today and talk about important issues like payroll tax just emphasises that, ultimately, peace, love, unity and the immigrant character of our nation will always prevail over what is unquestionably the evil of antisemitism. I want to send my condolences and support to all the people of New South Wales. We're all New South Welshmen today.

The CHAIR: Thank you, Mr Aquilina. Fine sentiments.

JACK AQUILINA: Just in terms of the payroll tax provisions, there is obviously a very big issue with these provisions—that is, their reliance on the concept of service as a moderator for determining what is an employment-like relationship. It is the absolute reliance by section 32 (1) on that concept of services that is creating vast difficulties with how the provisions are being tackled by the courts, how they're being interpreted and how they're being administered by Revenue. The problem with the concept of services being the basis for determining an employment-like relationship is that it is an incomplete way to describe what an employment-like relationship would look like.

The biggest difficulty with language—and we've seen this with many learned people over time saying that language is an incomplete tool by which we have to interpret the world, let alone through legislation. The problem with the concept of services being the arbiter is that it has to be interpreted by someone as to what its upper limits are. It seems to me that the upper limits of this concept of services just continues to grow and grow and grow. It's not just because arrangements today that are being entered into are novel or new—that does influence the analysis—but it's because the nebulous concept of the upper limits of the concept of the word "service" are creating difficulties in the way in which the courts are approaching the interpretation of the legislation.

You can have arrangements now where the parties never intended to be in a service relationship, where a contract never reflected a service-like arrangement, where still, nonetheless, the courts will impute that a service-like relationship exists merely by implying that a reliance on a financial benefit—for example, for the supply chain—exists, therefore justifying that a service might exist on that basis. We can explore these issues today, but the case law continues to grapple with this. The recent decision by the Court of Appeal in New South Wales in Uber has just demonstrated, again, just how far this concept of service can go. I think that the Parliament has an opportunity here to really clarify what the characteristics of an employment-like relationship should be.

Services may be in the mix. In fact, in our submission, services is not a bad way to justify a portion of that analysis, but it has to be grounded in integration and control. If there's no integration and control between the principal and the contractor, even to some extent—even if there is the presence of a very nebulous, broad, deeming idea of services—then there is no employment-like relationship. The consequence of this, as I said when I appeared last time, is that the most vulnerable people in the supply chain are suffering the economic issues that are associated with this tax being passed through the supply chain.

It all hinges on this basis that there is a lack of clarity in the scope and, obviously, the application of the law. The courts can only deal with cases and controversies. They can only deal with fact-specific matters that come before them. I give them full credit, because it's very difficult to read these provisions. But only Parliament can lead the way in terms of drawing the line, making it clear and giving certainty to business. New South Wales can lead the nation on this. I think that the fact that the inquiry has met twice now and has done a lot of work indicates that it is willing to. I'm very excited about the opportunity to work with this bipartisan Committee in any way I can to ensure that the law is clarified and to assist not only the New South Wales economy but, ultimately, the Australian economy at large.

The CHAIR: I'll kick off with one question. You propose that the core threshold test in section 32 (1) should be reformed, moving from a services test to a new, as you've said, control and integration test. You suggest legislative amendments so that section 32 (1) will only apply if the designated person is substantially controlled by and integrated with the principal. Why is that superior to a test of benefit received?

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JACK AQUILINA: The problem with benefits received being the arbiter of what is an employment-like relationship is that it doesn't set the limits of which benefits fall within the acceptable parameter of benefits to be employment-like versus something else. There's no doubt that every commercial transaction has a benefit contemplated in that arrangement. Otherwise, no-one would enter into contracts in the first place. But what makes something employment-like? Remember, payroll tax is a tax on employment. It's not a tax on transactions. It's not a tax on supply chains. It's a tax on employment relationships or things that mirror, or are similar to, employment relationships. What makes an employment relationship is something where there is a degree of integration and control between the principal and contractor.

I've used the word "substantially" in the proposed legislation. Parliament might decide to lower that threshold. That is something that could be perfectly amended. I just think "substantially" gives a bit of robustness to the analysis. It's not really about a superior test in the abstract. It's actually about realigning the law to concepts of employment that have been around for over 150 years—which I know members of this Committee have written about before and are aware of—without undermining the purpose of these provisions, which is to capture these arrangements where the workforce is being artificially—or in a contrived manner—outsourced to independent contractor relationships in ways that would undermine the payroll tax base. There's a balancing act here, and I think that the proposed legislation we've put forward gives you a starting point to rebalance it in the correct direction.

The Hon. DAMIEN TUDEHOPE: Since you made your submission in February, we've had the Uber decision come down. If you were rewriting your submission now, in light of the Uber finding, what change would you make to your submission?

JACK AQUILINA: I don't think we'd change what we propose in terms of reform. But we'd highlight, again, in our section on services, the nebulous concept of services being extended beyond its natural meaning.

The Hon. DAMIEN TUDEHOPE: Do you suggest that the Uber decision is wrong?

JACK AQUILINA: I don't know if I'm in a position to say that. The court has made its decision. I don't agree that the concept of services should be interpreted so broadly.

The Hon. DAMIEN TUDEHOPE: You're acting for Uber; do you think it's wrong?

JACK AQUILINA: I'm not acting for Uber, Mr Tudehope.

The Hon. DAMIEN TUDEHOPE: If you were.

JACK AQUILINA: If I were acting for Uber, then they'd be paying me to say that it's wrong, yes.

The Hon. DAMIEN TUDEHOPE: Do you think it is wrong, intellectually?

JACK AQUILINA: Yes, absolutely.

The Hon. DAMIEN TUDEHOPE: Why?

JACK AQUILINA: I think it's wrong because I think that the mere fact that a person derives financial benefit from the related activities of another person, in and of itself, is not a service. I think that's to take the concept of service beyond its natural meaning and in a way that the employment law, at the very least, has never contemplated employment-like relationships to be characterised.

The Hon. DAMIEN TUDEHOPE: Would you agree that if the High Court disagreed with your view, that that would give significant clarity to the nature of employment contracts for the purpose of the Payroll Tax Act?

JACK AQUILINA: If the High Court overturns the Court of Appeal's decision, it will provide some clarity.

The Hon. DAMIEN TUDEHOPE: No, say it agrees with the Court of Appeal decision.

JACK AQUILINA: If it agrees with the Court of Appeal decision, or provides some clarity based on those particular facts and circumstances of what might constitute a financial benefit related to service in that context, I don't think it provides certainty across the board because—as you know, Mr Tudehope—people will structure their arrangements in all sorts of ways, and there'll be unintended consequences following the decision that we can't even contemplate now that might apply.

The Hon. DAMIEN TUDEHOPE: Isn't that the problem with your proposal as well, though?

JACK AQUILINA: I wouldn't agree with that, Mr Tudehope. I think compared to what you're starting with, it's a vast improvement.

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The Hon. DAMIEN TUDEHOPE: Depending how you draft your contract. Whether an interpretation of "control and integration" is a factor of the contract is just a drafting issue, isn't it?

JACK AQUILINA: It's not necessarily a drafting issue because, if you look at the definition of "contract" in the provisions, it goes beyond what is merely written. In fact, it's now so broad that we can even look at things that parties didn't even contemplate. In fact, you can even look to the vibe of whether or not there is some form of abstract benefit to determine whether it's a service. I wouldn't say the contracts play a huge role in and of themselves anyway based on the current approach to interpreting the legislation. I think, Mr Tudehope, you and your colleagues can work together to actually realign these provisions in a way that will provide more certainty and clarity to business so they can ensure that their arrangements are clearly reflected and contemplated—either in writing or conduct—in a way that actually reflects employment-like relationships, if that's so intended to be captured. At the moment, it's a nebulous, never-ending pool of uncertainty that's not going to be resolved.

The Hon. DAMIEN TUDEHOPE: Is your model based on a definition of "employment" which would require the Parliament to actually specify all those things which are a component of the so-called integration and control model which you are suggesting?

JACK AQUILINA: It's not unusual for Parliament to set out indicia.

The Hon. DAMIEN TUDEHOPE: Indicia?

JACK AQUILINA: Yes.

The Hon. DAMIEN TUDEHOPE: You would say a legislative regime which says these are the things that will indicate whether someone is employed or not for the purposes of the Payroll Tax Act.

JACK AQUILINA: Just to be clear, what I'm proposing is a number of indicia that are non-determinative. If you read the draft, it says they are things that the court may take into account to determine whether or not an employment-like relationship exists under section 32 (1).

The Hon. DAMIEN TUDEHOPE: That brings in exactly the point that I was making to you—that because they are indicia only on your submission, it becomes a drafting issue.

JACK AQUILINA: Of the contract or the legislation?

The Hon. DAMIEN TUDEHOPE: Of the contract.

JACK AQUILINA: I think it also goes to the conduct of the parties, Mr Tudehope.

The Hon. DAMIEN TUDEHOPE: That's the common-law position, isn't it?

JACK AQUILINA: The common law does look—

The Hon. DAMIEN TUDEHOPE: The multifactorial position that the common law adopts in relation to what constitutes employment is, in fact, exactly the sort of notion that you would be proposing, is it not?

JACK AQUILINA: We've borrowed from the common-law concept, of course, because this is an extended definition of employment, not an abstract definition of something else that's unrelated.

The Hon. DAMIEN TUDEHOPE: Let me ask you about that. One of the things that you say is, for the purposes of imposition of payroll tax, it has got to be for a legitimate purpose. Do you recall that part of your submission?

JACK AQUILINA: Absolutely. Yes.

The Hon. DAMIEN TUDEHOPE: Given the constitutional restrictions on what States can legitimately tax, do you say that it is illegitimate for a State to tax payments to contractors?

JACK AQUILINA: No, I don't say that at all, Mr Tudehope. I don't think I've ever said that.

The Hon. DAMIEN TUDEHOPE: For the purposes of this hearing, could the amendment effectively provide for an alternative payroll tax provision that it does, in fact, apply to contractors?

JACK AQUILINA: There is a provision that does that. That is section 32.

The Hon. DAMIEN TUDEHOPE: But you make a decision about contract for service and a contract of service. You want to differentiate between those contracts for the purposes of the Payroll Tax Act, do you not?

JACK AQUILINA: The law already does that to some degree. What I'm saying is that you should reform these provisions to align it to its intended purpose, and to ensure that it only captures—

The Hon. DAMIEN TUDEHOPE: What do you say the intended purpose is?

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JACK AQUILINA: To tax arrangements that are employment-like and originally artificially contrived in a manner to avoid the application of the common-law definition of employment under the Act. That's the purpose.

The Hon. DAMIEN TUDEHOPE: So it was originally a tax avoidance position?

JACK AQUILINA: Yes, it was.

The Hon. DAMIEN TUDEHOPE: So, effectively, the drafting can become a tax avoidance position?

JACK AQUILINA: Are you suggesting, perhaps, that the anti-avoidance provisions would apply?

The Hon. DAMIEN TUDEHOPE: Yes.

JACK AQUILINA: I can talk to that, if you'd like—about the anti-avoidance provisions. The problem with the general anti-avoidance provisions, Mr Tudehope, is that, if you read them, they are equally as unclear as the provisions that we're trying to reform today. They actually apply on a general basis and they usually rely on concepts of understanding what the objective purposes of the parties are when entering into transactions. I think the administrators have been reluctant to apply those provisions because they're very complicated to apply to a broad set of arrangements, and I'm not sure they're the adequate answer to the drafting issues that currently exist in section 32 (1). Although, if we were to reform the law, then I guess the commissioner could use them as a backstop to prevent any further contrivances from occurring. But the commissioner is not using it for a reason. It's because he doesn't need to. The current law is so broad and nebulous he can apply it to anything.

The Hon. DAMIEN TUDEHOPE: In your submission, you say this at paragraph 154:

... an effective system of taxation must be adaptable to new business models and economic trends in order to remain certain, and enforceable, in response to changes to the modern economy.

Do you recall saying that?

JACK AQUILINA: I do, yes.

The Hon. DAMIEN TUDEHOPE: If business models—and this is the question I put to you—are shifting away from direct employment to new models involving various contractor relationships, is there any reason why the State should not tax contractor payments as well as employee payments?

JACK AQUILINA: I've never advocated a position where you shouldn't advocate contractor payments. I haven't advocated for the abolition of section 32 (1); I've simply advocated for reforming that provision to ensure that it only captures the class of contractor arrangements that Parliament indicated to the community it would tax when it enacted these provisions, and to provide further certainty to business and the community about what is in and what is out. That is not currently possible under the current state of the law.

The Hon. DAMIEN TUDEHOPE: The thrust of your submission is that you would want more clarity about what constitutes an employment contract for the purposes of the Act. Is that right?

JACK AQUILINA: Yes.

The Hon. DAMIEN TUDEHOPE: And you would encourage Parliament to amend the Act for the purposes of specifying all those indicia of what an employment contract is?

JACK AQUILINA: Yes.

The Hon. DAMIEN TUDEHOPE: Which is the current multifactorial common law approach.

JACK AQUILINA: It's not the current multifactorial test, Mr Tudehope. What it does is—if you looked at a pendulum, the common law test says too far to the left and we're so far into the nebulous right, we're not even on the planet. The point is what it's trying to do is anchor it back to notions and concepts that are actually predictable, reliable, and have been the state of the law for over 150 years—that people presumed would be the case when these things were enacted, have operated on that basis since they were enacted, and are now finding themselves in a position where they're perhaps surprised by the fact that it's not being applied that way, and the courts are having great difficulty in interpreting the law to be consistent with that intention. All I'm trying to do is provide certainty.

The Hon. DAMIEN TUDEHOPE: Do you agree with the suggestion that the High Court, in fact, may do exactly what you're asking Parliament to do?

JACK AQUILINA: The High Court can't rewrite the law, and I think that's what I'm asking Parliament to do. The High Court can provide—

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The Hon. DAMIEN TUDEHOPE: When you rewrite the law, aren't you wanting more clarity about what the law says rather than rewriting?

JACK AQUILINA: I think, in order to provide more clarity, you're going to have to update these provisions. I've provided a minimalist approach. You might be able to provide an even more minimalist approach.

The Hon. DAMIEN TUDEHOPE: The High Court may do that, may it not?

JACK AQUILINA: I don't think they're going to tell you how—that's not the job of courts, to determine cases in the abstract. They determine cases based on facts, Mr Tudehope. They'll provide certainty on whether it applies to Uber's arrangements, on Uber's facts. They might provide some broader comments about whether the concept of service has gone too far in their mind. They might. I don't know. If they did, that would be great, but it won't resolve this underlying issue.

The Hon. DAMIEN TUDEHOPE: They are being fundamentally asked, in fact, to describe whether the contract which exists between Uber and its drivers represents an employment contract.

JACK AQUILINA: You're right, yes.

The Hon. DAMIEN TUDEHOPE: In doing that, wouldn't you agree that the judges will have to turn their minds to what constitutes employment for the purposes of an employment contract?

JACK AQUILINA: They'll have to turn their minds to what they believe the definition of "services" is under the current legislation.

The Hon. DAMIEN TUDEHOPE: Won't that give greater clarity?

JACK AQUILINA: It could. I don't think it necessarily will resolve the uncertainty that is the pre-emptiveness for this inquiry. I don't think it does the job. I don't think courts are placed to legislate, Mr Tudehope. I don't think it's their role. And I think that although it might be a helpful decision, it might be a very unhelpful decision too. We've got to be careful anticipating what the High Court may or may not do. I don't think it resolves the issue. I think it needs parliamentary reform.

The Hon. Dr SARAH KAINE: Following on from the line of questioning from Mr Tudehope and your answers, you're contending that at the moment there's a breadth to the provisions and the interpretation, but you also mentioned that there's been a change in business models, which I've taken an interest in, over time. Isn't there some argument to say that actually having a breadth in provisions is actually a flexibility that allows new business models to be captured, given that you also seem to have conceded that some of those new business models are used by less scrupulous organisations to circumvent not only payroll tax but also, I would contend, labour laws. Isn't there a benefit in some cases to having a broad scope to provisions?

JACK AQUILINA: I agree in principle, Dr Kaine. But there is a broader principle at play, and that is the rule of law. When Parliament passes a piece of legislation with a particular intent, purpose and scope, it isn't appropriate, I think, for the detrimental reliance interest of the community for it then to permit that legislation to be applied in a way that falls wholly outside its intended scope and purpose.

The Hon. Dr SARAH KAINE: Can I just stop you there? Your interpretation is that it falls wholly outside. We've had an appeals decision interpret it in a different way. It's a little bit in the eye of the beholder, isn't it? It will be the same with the High Court decision whether one agrees that it is helpful or unhelpful. A lot of this surely relies on your position as a business, or the representative of a business, and whether you think it's beneficial to their chosen business model. Isn't that the case with most legislation?

JACK AQUILINA: In regards to your first comment about the Court of Appeal, I don't think they've agreed with any—they've made no comments on the policy of this. They have looked at the word "service" in the legislation, and they've made a determination on what they think that means in the context of the specific facts that turned before them. I don't think the court would ever make a view on the policy and whether or not the legislation has permitted interpretations beyond the policy. I'm here to talk about the policy.

I think that the policy does not align with what was intended. I think that the detrimental reliance issues that are arising as a consequence of these overly broad interpretations is a big issue. I think it's something that could be easily fixed without prejudicing the revenue and could ensure that the New South Wales economy, and hopefully the rest of the Australian economy, cannot be in a position to prejudice and hurt the most vulnerable—because this is who is being hurt by these provisions, I have to say. It's not the big end of town.

The Hon. DAMIEN TUDEHOPE: Give me an example of that. How do you say the most vulnerable are being hurt?

The Hon. Dr SARAH KAINE: Yes, please. You got my question.

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JACK AQUILINA: Every single contractor that that is impacted, largely by these decisions, is a sole trader contractor who themselves are starting their own small businesses and who is operating those businesses in good faith under the idea that it is their businesses. The costs, although not imposed on them directly—imposed on, say, an intermediary—are being directly imposed on them. That is hurting them. These are people who operate on low margins and who are operating in circumstances where they have very little control or imbalance in these relationships. I think that the unfair impost of this tax is that it is inevitably going to hurt those people—it is hurting those people. Whether they are the single operator mortgage broker, driver, cleaner, telehealth provider or whoever it may be, these people are bearing the cost. That is an obscenity of the system. I don't think Parliament ever intended for that to happen. We've got an opportunity to correct it.

The Hon. Dr SARAH KAINE: Can I just follow up on that? The characteristics of the people that you describe as being vulnerable are exactly the types of characteristics that you would expect in sham contracting. Sham contracting is often set up to avoid exactly the things that we've been talking about, i.e. payroll tax and labour conditions. Isn't it really that this is just another example where the intermediaries are actually exploiting the people down the chain rather than a failing of payroll tax provisions to capture the right people?

JACK AQUILINA: There is always truth between these things. I am sure some intermediaries exploit their contractors. I'm sure that happens; I can't deny that. Also, the provisions enable this tax to be passed on in a way that is unfair and captures relationships that would never have been the subject of this conversation, perhaps, 10 years ago. I think it's a mix of multiple things that are going on here. The point is society has changed, and the economy has changed. These relationships need scrutiny, and they are being subject to scrutiny. My point last time, and my point this time, is that what Parliament can do is provide certainty about what the upper limits are to ensure that the provisions are aligned to intended purpose as a question of certainty. If Parliament wants to expand the provisions or introduce a new tax, it is within its rights to do so, Mr Tudehope. For example, the question you asked earlier—it's within its rights to do so, constitutionally.

The Hon. DAMIEN TUDEHOPE: I'm not saying you introduce a new tax.

JACK AQUILINA: I'm not saying you are, but I'm saying, constitutionally, you're asking if it's within its scope. Of course it's—

The Hon. DAMIEN TUDEHOPE: Be very careful. I'm not saying that.

The Hon. Dr SARAH KAINE: We've got it.

The CHAIR: We've got it. It's in the transcript.

JACK AQUILINA: It's within its rights. The point is, what we're arguing is that these provisions need to be aligned to their intended purpose and need to capture those relationships that have an employment-like nature to them.

The Hon. Dr SARAH KAINE: I guess that's my point, though. The relationships you're describing as being most vulnerable are very, very employment-like. You were talking about control. You're talking about cleaners. You chose examples that are notorious for having employee-like relationships concealed through contracting provisions. It's an interesting example you gave.

JACK AQUILINA: Sure. That's right. I agree. But the question really is, what are these provisions designed to do?

The Hon. Dr SARAH KAINE: Capture those relationships is what they're designed to do.

JACK AQUILINA: Yes. But just because they happen to capture some arrangements that one person might say are favourable doesn't mean that the policy is right. My colleague said last time, "Everything's in unless it's out." I don't take that view. I think language has an upper limit. The problem is, if everything's in, you capture the good and you capture the bad. There's nothing stopping Parliament drawing the line. Even under the proposals that I've adopted, some of these arrangements might be caught anyway.

Say, for example, there's an arrangement where the cleaner is being directed and controlled by the principal, and there's a degree of integration between the cleaner and the principal's business, and there's a service. You're in. I don't think we're speaking at cross-purposes here. All I'm saying is that there needs to be a degree of clarity around what the upper limits of this are. The courts aren't in a position to do this in a way that's satisfactory, I think, because they can only determine individual cases and controversies. What Parliament can do is provide minimalist change in clarity to get the right outcome, make sure the line is drawn and make sure there's certainty going forward. I think that would be a good thing for the economy.

The Hon. BOB NANVA: Could I follow on from that point? The policy intention of the Act was ostensibly as an anti-avoidance measure. On that, we all agree. You've suggested that that should be grounded in

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integration and control, which for me is a very early nineteenth century view of the economy and working relationships. Why is that notion of integration and control more relevant in determining an employment relationship in 2025 than factors like the risk of job insecurity of the labour involved or the degree of economic and bargaining power? Because in many of these relationships, these people can't set their own rates. They've got no bargaining power. Why are those factors less relevant than integration and control, which harks back to the master-servant era that's just no longer relevant today?

JACK AQUILINA: Just to be clear, the test we're proposing is integration, control and service. In terms of the emphasis on integration and control, these are the things that the Federal Government have recently reintroduced in the Fair Work Act as factors that need to be considered, in light of the fact that the High Court said, "You just look at the contract and the wording of the contract, and that's it." I'd say, yes, they might be grounded in history, but the good thing about things being grounded in history is that there's a relevant consistency and predictability about those concepts, which is one of the issues here. There is no predictability and consistency with how the current tests are being formulated.

With the factors that you've highlighted around risk control, bargaining power and contracting, I don't see any reason why they don't fit into those existing notions. The idea of integration and control, particularly under the master and servant relationship concept, was a question of imbalance. It was a question of assessing imbalance and then determining whether the degree of that imbalance meant that the principal was able to direct and control a purported employee or agent in a way that is employment-like. All we're trying to do is put meat on the bone of what is an employment-like relationship. We can't ignore 150 years of history.

If Parliament wants to add additional factors that might be relevant to that exercise, then that's something it would need to consider. I don't see how anything you've said might not be arguments that would be made by a competent person to the revenue, or against the revenue, based on the existing criteria we've set out. But, like I said in my paper—I think there was some humility in there. I said that I'm not a parliamentary draftsman, but it's there for your consideration. I think that it's a better realignment than what we're currently dealing with, which is nebulous uncertainty.

The Hon. CHRIS RATH: I just wanted to move to Revenue NSW. I don't know if you remember their evidence from what seems like an eternity ago now to this Committee. I take the point entirely in your submission about how the economy has completely changed from when payroll tax was first envisaged, but isn't it also the case that Revenue NSW's interpretation of how they apply payroll tax has also changed?

JACK AQUILINA: I've got to be careful, Mr Rath, because the commissioner and his representatives said nice things about me when he gave evidence—probably the first time in history. I agree with that. Like I think I said to Dr Kaine last time, for all sorts of political and economic reasons and all sorts of practical factors, the Revenue is needed to interpret these provisions—being confronted with revenue demands—but also being confronted with new arrangements that have never been tested before. Legislation gives them the opportunity to interpret these things as broad as they can argue. So, yes, I agree. I think if you would ask people in the mortgage broking industry or people in the medical profession or other professions whether or not the law has changed in terms of its administration, I think they'd unequivocally say to you yes, and I would agree with them.

The Hon. CHRIS RATH: Do you think it's potentially part of a tax grab?

JACK AQUILINA: Well, "tax grab" is a political term, Mr Rath. There are revenue constraints. They're a revenue collector. The Commissioner of Taxation collects revenue and he has targets around the collection of revenue. I have to say, he's been well within his rights to pursue this one. There is an upping in the rate of collection of revenue on these arrangements because they were never taxed before. So, yes, clearly there has been a change in the way in which this has been administered and enforced by the commissioner.

The Hon. CHRIS RATH: They argue—if I can recall their evidence—that it's a matter of enforcement and that they haven't changed any interpretation. Basically, nothing's changed at their end. It's essentially just that they're now enforcing what has always been the case, which is very different to almost every other stakeholder that we've heard from, which have said they've been hit with retrospective payroll tax bills that they never thought they would have to pay.

JACK AQUILINA: I don't agree that it's a change in enforcement, because that would imply, unfairly, that the commissioner has decided not to enforce the law.

The Hon. CHRIS RATH: For decades.

JACK AQUILINA: For decades. I don't think that's fair. I don't think any Commissioner of Taxation has ever approached the administration of that role in that way. I think what has happened is there have been changes in the economy that have invited opportunities to test what are very broad limits of wording in legislation. We're

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lawyers. We do this for a living. Clients come to us. We look at these things to try and exploit the broadness or the narrowness of provisions. That's the lawyers' game. My view is that might be the lawyers' game and we might make money doing that, but that's not very good public policy. The Parliament can now draw the line and say, "Okay, we accept that this is where the law has gone. Here's where the line can be on these issues." There's always going to be room for interpretation because semantic language has its limits. But, just to go directly back to your question, clearly the commissioner has taken a broader view of services and has pursued that successfully in the courts, and that's why we're here, I suppose. It's created this controversy and mismatch between community expectations around what the law is versus how it's applying to them today.

The Hon. DAMIEN TUDEHOPE: What do you say those community expectations of what the law is are?

JACK AQUILINA: I think the community expectations were that these wouldn't apply to bona fide independent contractor relationships.

The Hon. Dr SARAH KAINE: That was the crux.

The Hon. DAMIEN TUDEHOPE: That's the crux of it. What all these cases are now seeking to test is what is a bona fide independent contractor.

JACK AQUILINA: I think the cases make clear that they do apply to bona fide independent contractor relationships, despite their purpose. I think Justice Richmond said that in Loan Market.

The Hon. DAMIEN TUDEHOPE: Well, let's talk about Loan Market. I think the court said that the provision might be harsh, but it's the law.

JACK AQUILINA: It is the law. I think the court has to grapple with the fact that the language is so broad that it's capable of applying in ways that perhaps haven't applied before. I don't think there's anything inconsistent in Loan Market with that principle. I think he makes the remark that it can apply to bona fide independent contractor relationships, and that is a harsh result. That's what he says.

The Hon. BOB NANVA: I'm very sympathetic to your call for certainty. If Parliament needs to push through some new laws to provide that certainty to business, then that's always a good thing. The difficulty I've got is that legislation can be a very blunt instrument at trying to anticipate every unpredictability in life, particularly in a modern economy with the sort of technology that we're seeing. Ultimately, the problems you speak to are just a challenge as old as time, aren't they? You've got businesses using modern tools, modern technology and different business structures, ultimately with a view to minimising their tax, which is an entirely legitimate thing to do. The issue since the 1980s, when these laws were ostensibly conceived, is that the sophistication of the technology and the legal advice around that has got to a point that we couldn't have conceived of 30 or 40 years ago. This is just a challenge as old as time, isn't it? You can't have laws that can predict every scenario in life.

JACK AQUILINA: I don't think I've ever contended that that's what the law can do. I agree with you: That's always a limitation of language, let alone the law. There is always going to be interpretive limitations to it. The law can be a blunt instrument. What I'm proposing is that you adjust the law—I'd say in a minimalist way—to align it to what its original objective is, unless there's a policy decision to expand it beyond that. I want to challenge you very briefly. I don't think a lot of businesses are engaging in these arrangements to minimise their tax. I don't think that's a fair thing. Tax is always a consideration, but I have to say, as an adviser, tax is usually the last thing they tend to think of. I wish they thought about these things up-front.

I think there are legitimate arrangements here that have been the product of a changing economy. I don't think tax has been the driving force behind its structure. In fact, if tax had been, a lot of these arrangements might've been set up in different ways to artificially avoid the tax, let alone allow themselves to fall into the trap of falling into this idea of services. They would've managed that better, for example. I'm not sure about that. What I will say is that, yes, the law is a blunt instrument. Yes, you're always going to have interpretive difficulties. Yes, you can't anticipate every issue. You can set clear policy parameters about what you think the upper limits of something are or what the lower limits of something are. I think the Parliament should do that on this occasion.

The Hon. BOB NANVA: Won't those just be subject to legal advice, legal opinions and challenges?

JACK AQUILINA: There won't be a law in history that you write, as smart as you all are, that will never be subject to interpretation. What I'm saying is the current state of the law is so open to interpretation and uncertainty that it's causing harm. You can minimise that harm. You can't eliminate the harm, but you can minimise that harm and align it better with policy objectives that are accepted are the basis of these provisions in the first place and ensure that that uncertainty is targeted in the best way possible towards the outcomes that the community would expect. The types of administration that have been happening over the past 30-odd years have

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changed. It's that surprise element that needs to be realigned. Parliament might decide that it doesn't want to do that because it wants to see these provisions expand in a way that has never been applied before, but that's a policy decision. I'm just inviting Parliament to realign it.

The Hon. BOB NANVA: You wouldn't agree that this anti-avoidance provision of the Parliament at the time, in casting the net of "relevant contract" so widely, was anticipating or flagging that we cannot predict the future, so we've defined this as broadly as we have to perhaps capture arrangements that we can't even conceive of today?

JACK AQUILINA: Absolutely. The issue isn't so much whether Parliament wanted to allow adaptability in capturing arrangements. The question is whether or not they ever anticipated that the law would be interpreted so broadly as to apply it in a way to say that parties to a contract never intended for a service to arise and are deemed to have a service through some abstract notion of supply chain benefit. These are the sorts of things that might not have been anticipated, but if you put those things to the people who wrote these laws, they would've said, "No, it was never intended to go that far." That's the point. That has to be true, because look at community expectations. Why are all these stakeholder groups coming to Parliament and saying, "We are surprised by this"?

The Hon. Dr SARAH KAINE: Because they don't want to pay tax.

JACK AQUILINA: Can I respond to what you said? I don't think it's simply that they don't want to pay tax, Dr Kaine.

The Hon. CHRIS RATH: They never paid it before.

JACK AQUILINA: They've never paid this tax before. More importantly, it's not just that they've never paid it before; there has never been an expectation that they pay it. It's that detrimental reliance issue that's really important. Like I said last time, I have full sympathy for the idea that there's a lot of reform that can be done around this from a workplace perspective to protect individual worker rights. I think that needs to be looked at, but this is not the avenue.

The CHAIR: Do you think that the definitions of sole traders are fit for purpose in this context? I think the common understanding of a sole trader is that they have full control over the business decisions, but in the context of these relationships, they don't. Therefore, are they sole traders? Are those provisions fit for purpose when it comes to these new types of arrangements?

JACK AQUILINA: I think I need to admit the upper limits of my knowledge. I haven't looked at the interaction between the sole trader definition and these provisions. Nonetheless to say, the concept of a service is so broad. In one of the recent cases before the Supreme Court, which is reserved, the question was asked, "If I impose an obligation under a contract to ask you to comply with the law, which is something you have to do anyway, is that capable of being a service under these provisions?" And the Revenue said, "Of course it can be." We're not even talking about things that people can't control. Things people are required to do, if reflected in the contract, could still be a service and therefore a relevant contract. These are the sorts of upper limits that Parliament can provide certainty on. Are these the types of arrangements where we say they're employment like? Really?

The Hon. Dr SARAH KAINE: I have a couple of questions which are going back a little bit to previous answers. It goes a bit to what Mr Nanva was asking as well. These arrangements have been around for 30-odd years, is that correct?

JACK AQUILINA: The legislative arrangements, yes.

The Hon. Dr SARAH KAINE: And the exchange is that some organisations haven't been subject to tax before, and we also had a discussion around community expectations, and they change as well. You said something which was interesting, which was this abstract notion of supply chain benefit. I'm struggling to see how it's abstract when supply chain relationships clearly—you can see where the benefit flows in supply chains. It's not a tricky concept. But that is something that has developed over 30 years. We weren't talking about supply chains in the 1980s, and even in the 1990s, in the way that we do now.

Again, I mention it, and Mr Nanva has mentioned it. Isn't this actually demonstrating that it actually might be a benefit of law to be flexible enough to capture changing business structures—and supply chain has become a much more prevalent concept—but also a community expectation that where you have extremely large, very successful companies at the tops of supply chains there is some community contribution. That is, these organisations need to contribute to the States in which they operate. Isn't that a positive of this legislation?

JACK AQUILINA: It's a good question, Dr Kaine, but the difficulty is it's loaded with policy preference and presuppositions around what is desirable. All I can speak to is the fact that we know what Parliament intended when it enacted the provisions, we know how they've been administered, we know where they're going and we

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don't know how far they're going to go. The value judgement that you raise very legitimately, which is relevant for politicians and legislators, is: Do we care that it has gone beyond its scope and do we care that it's capturing arrangements it never intended to? Do we care that it's having these adverse consequences in the way that it is because we believe it's good policy or because we think the result is desirable?

The Hon. DAMIEN TUDEHOPE: Well, then it's not an adverse consequence.

JACK AQUILINA: That's a value judgement.

The Hon. DAMIEN TUDEHOPE: The use of the words "adverse consequence" was a value judgement.

JACK AQUILINA: Sure. There are adverse economic consequences. A tax is an adverse consequence. It's a cost in the supply chain. I think we can agree with that. It's just basic economics.

The Hon. DAMIEN TUDEHOPE: Paying tax might be a beneficial consequence.

JACK AQUILINA: Beneficial to who is the question.

The Hon. DAMIEN TUDEHOPE: Society at large.

JACK AQUILINA: The point I'm making—I was trying to answer Dr Kaine's question because she was putting to me the very sensible question, which is: Do we care about all these things happening? I can't answer whether you care or not.

The Hon. Dr SARAH KAINE: I care.

JACK AQUILINA: You care. I'm not saying you don't care.

The Hon. Dr SARAH KAINE: I'm being facetious.

JACK AQUILINA: I'm just saying to you that in my view, as a question of the rule of law and as a question of certainty, if a law's going to go beyond its remit—and even for interpretive ways—there should be an up-front approach to the public where the Parliament passes or makes clear what it wants. There can be a stale mandate in these things. These things were passed in the '70s, or originally in some form in the '70s. I'm just saying that Parliament can realign it to what it was and set clear boundaries whilst also enabling it to be flexible and adaptable to capture all sorts of arrangements. I'm not saying to exclude these arrangements; I'm saying to provide more meat on the bone. Services is not on its own an appropriate mechanism, in my view. Or it can enact new provisions, as I said earlier, that would say, "We're going to expand the concept of employment-like relationships beyond what has been traditionally understood and impose tax on relationships that have never been taxed before but"—as you say—"there's community benefit," or whatever the policy justification is.

The CHAIR: Thank you, Mr Aquilina. I hate to interrupt you. You've provided a lot of meat on the bone for this hearing, and we very much appreciate it, but the time for your evidence has concluded. Thank you for appearing again today before the inquiry and this hearing. We appreciate your evidence on behalf of Dentons. If there are any supplementary questions, the secretariat will be in contact in due course to provide those. Again, thank you very much for your submission and your evidence here today.

(The witness withdrew.)

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Ms PIA BRUNNER, Director, Public Policy and Government Affairs, Australia and New Zealand, Uber, affirmed and examined

Mr CAMERON LOUGHLIN, Legal Director, Australia and New Zealand, Uber, affirmed and examined

The CHAIR: Thank you very much for appearing. Do you have some introductory remarks you'd like to make?

PIA BRUNNER: Thank you, Chair, and thank you to members of the Committee for the opportunity to appear today. Before we begin, I'd like to acknowledge the tragic events in Bondi on Sunday. Our thoughts are with all those directly and indirectly affected, and we extend our sincere sympathies to the families, victims and the broader community. We also acknowledge the New South Wales Government and emergency services for their response to this event. We appreciate the careful work the Committee is doing to examine how the contractor and employment agent provisions of the payroll tax are being applied across New South Wales. Uber welcomes this inquiry.

Across many industries, including health care, financial services, cleaning, direct selling and the gig economy, businesses, including Uber, have expressed deep concern about how payroll tax provisions are being interpreted. The legislation was written for a very different era, and it is struggling to keep pace with modern business models. Because of that, many businesses are facing uncertainty and, in some cases, serious financial consequences. Our submission sets out four main points. First, the payroll tax contractor provisions are now being applied in a way that goes well beyond the original purpose. These rules were introduced decades ago to prevent tax avoidance in situations where a worker was in substance an employee but being treated as a contractor. They were never designed with digital platforms or many of today's modern work models in mind. In Uber's case, drivers are not engaged as employees or as contractors.

The Uber platform provides technology and market services that help independent drivers connect with riders. Drivers using the Uber platform choose when and where they work, how long they work for, and many use multiple platforms simultaneously. In other policy areas—for example, industrial relations—we see rideshare drivers recognised as independent contractors. In fact, this Parliament passed legislation earlier this year to bring gig workers, including rideshare drivers, within the contractor provisions of chapter 6 of the Industrial Relations Act. Yet we see independent drivers being treated as though they are employees of Uber for the purposes of payroll tax, representing a significant expansion of the regime and contrary to the original policy intent. We submit both the relevant contract provisions and the related exemptions are not fit for purpose for modern forms of work.

Second, there is a further challenge when it comes to the contractor exemptions as the onus is on business to establish that the exemption can be applied, even if the data required to prove the exemption is not available to the business. To illustrate this with a specific example, Uber has previously engaged with Revenue NSW on the application of the services to the public exemption in the current legislation. Revenue NSW has indicated their view that the public is not passengers but other rideshare platforms. Therefore, in order for Uber to prove that the services to the public exemption applies, it is necessary for us to show that the driver "multi-apps" and then what proportion of the drivers' income comes from work sourced on the Uber platform compared to other platforms.

It's really common for rideshare drivers to source work through other avenues, including multi-apping. However it will not surprise the Committee that Uber does not hold data about what income drivers obtain from other sources or platforms, nor would it be appropriate for us to request this information from drivers. This type of data is only held by the ATO. Revenue authorities are able to request this under information-sharing agreements. It is therefore impossible for Uber to provide, at an individual driver level, the earnings data required to meet the criteria Revenue NSW has set for this exemption.

Thirdly, the interpretation and application of payroll tax is producing inconsistent outcomes and clear competitive imbalances. In the point to point transport industry, a booked trip in a taxi and a booked trip in rideshare are very similar from a passenger perspective. Taxi companies and rideshare platforms are each regulated as booking service providers that facilitate bookings between drivers and passengers. Yet because of how the exemptions are being interpreted, taxi companies are treated differently to rideshare platforms. It doesn't pass the commonsense test that two visitors operating functionally identical models can end up with very different payroll tax outcomes. It's confusing for business and it creates a competitive disadvantage.

Finally, the administrative guidance that business relies on is not suited to contemporary ways of working. For example, guidance on the services to the public exemption and the 90-day exemption was written for traditional contract arrangements that do not reflect our business models. As a result of issues with guidance, and the approach taken by Revenue NSW, businesses that genuinely want to engage with the payroll tax framework are left uncertain about how the rules and exemptions apply and are constrained in their ability to obtain clarity.

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Uber is committed to working constructively with Revenue NSW and the Government and with industry to improve clarity and consistency in the interpretation and supporting compliance.

We support regulation that is modern, fair and understandable. Our recommendations to the Committee are straightforward. We believe the exemptions should be updated so they apply fairly and consistently across industries, with the goal of restoring clarity and aligning the system with the original intent of payroll tax. Finally, I note that Uber has been granted special leave to appeal this matter to the High Court. That process will take its course but the concerns raised in this inquiry show that the issues here go well beyond any single company or any single case. Businesses need clarity, predictability and a system that reflects the way people actually work day to day. Thank you again for the opportunity to contribute to this inquiry. My colleague and I are happy to take your questions.

The Hon. DAMIEN TUDEHOPE: Can I just start by asking when you expect the hearing to come on before the High Court?

PIA BRUNNER: Approximately the middle of next year.

The Hon. DAMIEN TUDEHOPE: So in June or July 2026?

PIA BRUNNER: Approximately. We don't have a date at this point.

The Hon. DAMIEN TUDEHOPE: For the purposes of the position you're putting to the High Court, what effectively do you say, or where do you say that the Court of Appeal is wrong and which should be overturned by the High Court?

CAMERON LOUGHLIN: Because the matter is before the Court, we're not able to discuss it today.

The Hon. DAMIEN TUDEHOPE: Why?

CAMERON LOUGHLIN: That's our position. Sorry, sir.

The Hon. DAMIEN TUDEHOPE: Can't you say why you think that the Court of Appeal has got it wrong?

CAMERON LOUGHLIN: We think that our business is not captured by the Payroll Tax Act. We think that we operate in a marketplace and that the relevant contract provisions of the Act shouldn't be applied.

The Hon. DAMIEN TUDEHOPE: The Court of Appeal has disagreed with that position.

CAMERON LOUGHLIN: Correct.

The Hon. DAMIEN TUDEHOPE: What specific aspects of the Court of Appeal's decision do you say the court has got wrong?

CAMERON LOUGHLIN: I'm sorry, I'm not in a position to discuss that because the matter is before the court.

The Hon. DAMIEN TUDEHOPE: I find that a most peculiar position for a lawyer to put: A lawyer doesn't want to articulate a decision in a case where it is party. Did you think that the court, in the first instance before the single judge, got it right?

CAMERON LOUGHLIN: Yes.

The Hon. DAMIEN TUDEHOPE: Okay. We're making progress.

The Hon. Dr SARAH KAINE: What did you think we might ask you today? Did you not think that you would come and we would ask you about the appeal?

CAMERON LOUGHLIN: I'm sorry. The advice I've received is that I can't talk about the case before the courts. There's a few things that we did want to talk about, including the fact that—

The Hon. Dr SARAH KAINE: It's more a question of what we want to talk about, Mr Loughlin, with respect.

CAMERON LOUGHLIN: Of course.

The Hon. Dr SARAH KAINE: I appreciate that.

The Hon. DAMIEN TUDEHOPE: I just want to ask this then. What do you say are the characteristics of your business model which take it outside of an employment contract for the purposes of the Payroll Tax Act?

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CAMERON LOUGHLIN: First, we don't believe that there's a relevant contract under the Payroll Tax Act. That's the case that we have before the High Court.

The Hon. DAMIEN TUDEHOPE: That's the arrangement between you and the driver?

CAMERON LOUGHLIN: Correct.

The Hon. DAMIEN TUDEHOPE: It's not a contract for the purposes of the Payroll Tax Act?

CAMERON LOUGHLIN: Correct. That's the case that we have before the High Court. Then separate to that, we obviously operate in an industry where exemptions have been applied for many years, whether that's for the taxi industry or in respect of our delivery business—the carriage of goods exemption.

The Hon. DAMIEN TUDEHOPE: Ms Brunner made the point that it would create an inequity between the taxi industry and Uber if this result was to be applied to your industry and not to the taxi industry. Do you want to expand on that?

PIA BRUNNER: We don't have direct evidence of what Revenue NSW has discussed with the taxi industry, as you'd expect. But there is publicly available guidance on the Revenue NSW website which talks about how they see payroll tax obligations applying in point to point. To paraphrase, it states that in Revenue NSW's interpretation the services to the public exemption very clearly applies to rank and hail work that a taxi might do. It appears, effectively, that then that exemption is extrapolated across to any booked work that that taxi driver might do, so the exemption appears to apply to both rank and hail and booked trips. Our point is—I almost park the rank and hail. We can understand how that is very much clearly considered services to the public. What we cannot understand is how taxi receives that exemption for booked trips which are fundamentally regulated and undertaken in the same way as our rideshare business. In the event that we are unsuccessful in the High Court, for booked trips, taxi will have an exemption and Uber will not.

CAMERON LOUGHLIN: If I can just add to that, our assumption is that when the exemptions were implemented it was never intended that taxis would be captured by the Act because it's an industry that has, traditionally, bona fide contractor relationships. Similar to carriage of goods for conveyance, they've got a specific exemption that covers their business. It's an industry that uses large independent contractor workforces, and those exemptions should apply to our business, too.

The Hon. CHRIS RATH: You might even use an app to book a taxi on your phone.

CAMERON LOUGHLIN: Correct. In fact, if you drive past a taxi—like we did this morning—printed along the side of all of those taxis are advertisements for the very apps that they're promoting their riders to use.

The CHAIR: In regards to the question that was put by Mr Tudehope regarding the decision of the Court of Appeal and your indication you did not want to answer that, you do have the option to take that question on notice if you would like to provide a response later. Alternatively, today we could go in camera to hear your response, if you wanted to provide a response that is not in a public forum.

CAMERON LOUGHLIN: We'll take the question on notice, if that's okay.

The Hon. DAMIEN TUDEHOPE: Can I ask you this: What would be the impact on your business if, in fact, you lose in the High Court?

CAMERON LOUGHLIN: Retrospectively, or on a go-forward basis?

The Hon. DAMIEN TUDEHOPE: I think the original assessment was \$800 million, wasn't it?

CAMERON LOUGHLIN: There are two parts to it. The first part is that, on a go-forward basis, we would obviously have to assess whether or not those costs should be passed through to users. But in a world where the tax is not being applied to our competitors, that's obviously a very unfortunate decision for a business to be put in. Retrospectively, the number is large. I don't have the exact number in front of me. But the assessment period stretches back to 2015 so, like many businesses grappling with the new interpretation of these laws, there is quite a sizeable retrospective liability.

The Hon. DAMIEN TUDEHOPE: Can I just ask you about the process by which this assessment period—had you ever been the subject of an audit or assessment process before, where you had been given an indication about whether the model which you had used was or was not liable to payroll tax?

CAMERON LOUGHLIN: My understanding is that an audit was commenced in 2019 and, prior to that date, there hadn't been any interaction or audits. We launched in 2012, so there was a period of around seven years where we were operating the business without an audit.

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The Hon. DAMIEN TUDEHOPE: The first you became aware of your potential liability for payroll tax was following the 2019 audit?

CAMERON LOUGHLIN: Correct.

The Hon. DAMIEN TUDEHOPE: And that had followed the Optical stores—

CAMERON LOUGHLIN: The Optical Superstore case.

The Hon. DAMIEN TUDEHOPE: Did that follow that case?

CAMERON LOUGHLIN: It was around the same time. I can't remember the exact sequencing of events.

The Hon. DAMIEN TUDEHOPE: It was a decision taken by Revenue that it had an expanded notion of what contracts were, in fact, caught for the purposes of payroll tax?

CAMERON LOUGHLIN: It appears that way, yes.

The Hon. DAMIEN TUDEHOPE: In terms of the assessment that you received, did you also receive interest and penalties as a component of that assessment?

CAMERON LOUGHLIN: Yes.

The Hon. DAMIEN TUDEHOPE: Did you lodge an objection in relation to the interest and penalties which were applied?

CAMERON LOUGHLIN: Yes.

The Hon. DAMIEN TUDEHOPE: What was the attitude of Revenue NSW to the issue of interest and penalties?

CAMERON LOUGHLIN: I think I'll have to take that question on notice.

The Hon. DAMIEN TUDEHOPE: But there were no discussions?

CAMERON LOUGHLIN: But there have been penalties levied.

The Hon. DAMIEN TUDEHOPE: Ms Brunner, one of the things that you have also highlighted and which you've also alluded to is the fact that there are other opportunities for apps, or this new industry model that contracts by way of apps. Is it your submission that where there is an opportunity for a new arrangement in relation to contracting, be it digital in its nature, then those contracts should not be caught?

PIA BRUNNER: I'm not sure I fully understand the question. Can I ask you to rephrase?

The Hon. DAMIEN TUDEHOPE: Perhaps it really flows from the previous question. If, in fact, you are found liable for payroll tax, do you concede that you may also be liable for workers compensation?

CAMERON LOUGHLIN: No, I don't believe so.

The Hon. DAMIEN TUDEHOPE: Why? You're employers.

CAMERON LOUGHLIN: I don't think there's any suggestion in the payroll tax litigation that the drivers are employees or even deemed workers, which I believe is the test under workers compensation law. It turns on whether there's a relevant contract.

The Hon. DAMIEN TUDEHOPE: If the relationship between Uber and its drivers is one of an employment contract for the purposes of the Payroll Tax Act, why wouldn't it also be the case that you may also be liable for workers compensation?

PIA BRUNNER: I think this goes to the point we were trying to raise earlier. We've been through a long process, obviously, of Federal industrial relations reform under the closing loopholes bill, which, although the terminology used is "employee-like workers", really brought clarity—at least in terms of the Federal industrial relations framework—that gig workers, like rideshare drivers and food delivery workers, are independent contractors. Granted, perhaps a different kind to what we might have seen when these laws were drafted, but we take the view that, at least federally, it's quite clear now that we're dealing with a class of contractors.

The Hon. DAMIEN TUDEHOPE: That's the previous question that I was asking.

PIA BRUNNER: And I pointed out that this Parliament passed legislation earlier this year that says, for the purposes of the New South Wales Industrial Relations Act, we recognise rideshare drivers are contractors. That language was used specifically in the Minister's media statements. So there is a contradiction. I understand that payroll tax and IR are different, but I guess our point is that we have viewed that our drivers, rideshare drivers

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and delivery people are contractors. We feel like that has been clarified in the industrial relations framework, but it feels like the payroll tax jurisdiction is pushing another way. Potentially, there is a risk for workers compensation—although, again, I note the New South Wales Government has an intention to do something in the workers compensation space for gig workers at some point this year.

The Hon. CHRIS RATH: Has Revenue given any explanation as to why they want you to collect data on your drivers about how much of their income comes from Uber, as opposed to them chasing up the ATO and getting that information themselves, as they're entitled to do? Have they given any explanation why it should be up to you?

CAMERON LOUGHLIN: Under the law, the onus is on the taxpayer to prove the exemption, so the payroll tax authority has issued guidance that taxis can rely on the "services to the public" exemption. We're not sure why, but it would be incumbent on us to have to prove the point and to prove that our drivers are providing services to the public. We would need to have access to that information from our competitors, which we don't have.

The Hon. CHRIS RATH: Is it unreasonable for individual drivers to be lodging their tax returns with you, so that you can determine what proportion of their income is coming from Uber?

CAMERON LOUGHLIN: It's difficult for taxpayers to have to rely on the exemptions, yes.

The Hon. DAMIEN TUDEHOPE: One of the things that we were talking about earlier was competitive neutrality. Would you accept the regulation of the Uber rideshare arrangement in the same way as for the taxi industry?

CAMERON LOUGHLIN: Yes, we're covered by the same laws and regulations—point to point.

The Hon. DAMIEN TUDEHOPE: Aren't there regulatory obligations which apply in the taxi industry—including licensing, asset ownership obligations and those sort of things—but don't apply in your industry?

PIA BRUNNER: The point to point sector is not so much regulated in terms of rideshare and taxi, but in terms of rank and hail and booked trips or booked service providers. To the extent that a taxi is doing a booked trip under the premise of a booked service provider, they have the same obligations as we do.

The Hon. DAMIEN TUDEHOPE: And in relation to the rank and hail arrangement, as you called it?

PIA BRUNNER: I think the distinction that's drawn there is that rank and hail is largely anonymous. You have a passenger getting into a car with a driver that they don't know. There's no identification and there is no tracking. That is my understanding of the core distinction between why rank and hail and booked trips are regulated differently.

The Hon. Dr SARAH KAINE: How much tax does Uber pay in New South Wales, aside from payroll tax?

CAMERON LOUGHLIN: We paid \$7.2 million in payroll tax in New South Wales in the last fiscal year in respect of the employees who we have in the State.

The Hon. Dr SARAH KAINE: But aside from payroll tax? It's a little bit of a trick question.

CAMERON LOUGHLIN: I don't know the answer to that question.

PIA BRUNNER: We comply with our tax obligations. We can take it on notice to provide a more fulsome answer.

CAMERON LOUGHLIN: There is, of course, the point to point levy that we also pay in New South Wales. I'm happy to take on notice the exact amount that we pay in respect of that.

The Hon. Dr SARAH KAINE: I might have the figure a little wrong, but I think I'm in the ballpark to say that Uber, globally, made a profit of about \$9.86 billion in 2024.

PIA BRUNNER: I would have to take that on notice to check the exact number.

The Hon. Dr SARAH KAINE: Would that be in the ballpark?

PIA BRUNNER: I'd expect so.

The Hon. Dr SARAH KAINE: Give or take. You paid \$7.2 million in payroll tax last year, was it?

CAMERON LOUGHLIN: Yes.

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The Hon. Dr SARAH KAINE: Your contention earlier in your answers was that, if that became an ongoing liability, a company that makes just shy of \$10 billion globally would pass that on, ultimately, down the chain to consumers, when other companies that also extract large profits in the State that are required to pay their payroll tax and don't imply that they're going to extract that down their customer chain.

PIA BRUNNER: The amount my colleague referenced is what we pay in relation to the employees that we have in our Sydney-based head office. So, no, I wouldn't interpret it to say that we will pass on that 7.2 in consumer pricing.

The Hon. Dr SARAH KAINE: But if that liability is extended to drivers.

PIA BRUNNER: Then it is potentially possible.

The Hon. Dr SARAH KAINE: You were here, I understand, for the conversation with the previous witness. In terms of social licence to operate, which Uber has had a bit of a mixed history about in various places around the world, is there a sense that an appropriate amount of tax for the profit that the company makes should be contributed to the community from which you extract those profits?

PIA BRUNNER: In terms of our social licence to operate, Uber has taken great strides in recent years. As I said, we were big advocates of the Federal reform to bring in place minimum standards for delivery people. Soon this week, I believe, the process will kick off for rideshare drivers. I think we have come to the Australian market with a recognition of how we need to operate and what some of the expectations are. I would push back on the concept, though, that an obligation on Uber's social licence to operate means we should operate in an environment where we are subject to a tax that our competitors are not.

The Hon. Dr SARAH KAINE: It's an interesting position for Uber to take because Uber came into a market and began operating in a way that their competitors could not. It's an interesting change of heart that you've had. I'm pleased that you have had that change of heart. You talked about multi-apping. How many competitors do you now have in Australia? I understand Ola is gone. How many other apps are there for Uber drivers to multi-app on?

PIA BRUNNER: We don't have a full list. DiDi would be the largest competitor. There are others from time to time. As you said, Ola has pulled out of the market. Shebah operates at time to time. I understand they have some challenges as well.

The CHAIR: How much of the market would Uber control, in terms of rideshare?

The Hon. Dr SARAH KAINE: That was my next question.

CAMERON LOUGHLIN: Taxi is still a sizeable proportion of the market in New South Wales.

The CHAIR: But of the rideshare market in New South Wales.

The Hon. Dr SARAH KAINE: Rideshare as opposed to taxi.

PIA BRUNNER: I think we would have to take that question on notice. There are commercial sensitivities around that.

The Hon. STEPHEN LAWRENCE: Thank you both for coming along. I wanted to ask about app sharing as well, as referred in your submission. I can't see page numbers, but you say in your submission at the bottom of one of the pages:

However, as Uber does not seek to restrict or control the ability of gig workers to source work across multiple platforms, Uber does not require gig workers that use our platform to provide information on their use of other platforms to source work.

Are you able to tell us what percentage of your workers get the majority of their work from Uber?

CAMERON LOUGHLIN: We wouldn't track that number because we don't have access to their total taxable earnings that they lodge with the ATO at the end of the year and then compare it to what proportion of that earning is with Uber.

The Hon. STEPHEN LAWRENCE: You presumably have information about how many hours each of the drivers is doing with Uber, right?

CAMERON LOUGHLIN: Yes.

The Hon. STEPHEN LAWRENCE: So wouldn't you be able to extrapolate from that in terms of the higher limit being the amount of hours that you could do safely in a week, for example, and then minus that from the amount of hours that your drivers are doing?

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CAMERON LOUGHLIN: A large proportion of drivers are part time or work fewer than 20 hours a week, so that methodology would fall over straight away. To go back to my earlier point, that's a very awkward and complex and cumbersome way to work out if an exemption applies to your business that allows you to not pay payroll tax.

The Hon. Dr SARAH KAINÉ: That's why the market share is quite pertinent for us to understand.

PIA BRUNNER: I think it's also worth noting when we say "multi-apping", that doesn't necessarily mean that a driver is, say, online with Uber for an hour, goes offline, and goes online with Didi for an hour. There are many drivers who you may see running two phones or both apps simultaneously.

The Hon. DAMIEN TUDEHOPE: Including taxi drivers.

PIA BRUNNER: Including taxi drivers. Even though our hours might say a driver has done 15 hours in a week, it doesn't give us any way to conclude how many hours they may have done with a competitor.

The Hon. STEPHEN LAWRENCE: Is your evidence that Uber has done no surveys or information collection or analysis to look at that question of what percentage of your drivers are getting what percentage of their work exclusively from Uber, or majority from Uber? You've got no idea at all?

PIA BRUNNER: We have survey data. I can undertake to provide the exact numbers on notice, but we have survey data that ranges anywhere from 50 per cent to 60 per cent of drivers who will multi-app. But we don't—

The Hon. STEPHEN LAWRENCE: Sure. But in terms of percentages, I'm talking about.

PIA BRUNNER: We've not asked that question, no.

The Hon. STEPHEN LAWRENCE: So there's no such survey or analysis that has been done by Uber, ever, to your knowledge?

PIA BRUNNER: No, not to my knowledge.

The Hon. STEPHEN LAWRENCE: Can you take that question on notice in terms of whether anywhere in Uber in Australia there's that information?

PIA BRUNNER: I can do that.

The Hon. STEPHEN LAWRENCE: That would be good.

CAMERON LOUGHLIN: Sorry, if I can just add to my colleague, we would never want to discourage drivers from feeling like they could multi-app, which is probably why we would not ask that question. There are also antitrust laws that we have to comply with, and we're subject to competition law in respect of sourcing independent contractors, so we do have to be careful about the types of information that we collect.

The Hon. STEPHEN LAWRENCE: Sure. But why would a survey expressed in neutral terms have a chilling effect on drivers' willingness to use other apps?

CAMERON LOUGHLIN: There are all sorts of rumours that go around in the driver community. They might think that we're tracking them or that we have an issue with them working on other apps. It's also just not a question we have a lot of interest in, because our business is premised on drivers having flexibility and freedom. It sort of would be the antithesis of our business model to be asking those types of questions.

The Hon. STEPHEN LAWRENCE: Do you require drivers to give undertakings that they're not driving above a maximum amount of hours per day or week?

CAMERON LOUGHLIN: We do have requirements in our contracts that drivers comply with fatigue limits, and we also enforce fatigue limits on our app.

The Hon. STEPHEN LAWRENCE: Couldn't you use that fatigue limit to get a sense of how many drivers, for example, are doing a certain amount of hours per day or per week, and then look at that in light of the fatigue limit and get a pretty accurate sense, at least in respect of a significant cohort, of what percentage of work they're doing exclusively for Uber?

CAMERON LOUGHLIN: I think we would have to specifically ask them, "How many hours have you worked this week for one of our competitors?" to be able—

The Hon. STEPHEN LAWRENCE: No, that's not what I'm asking. I'm asking the opposite of that. I don't know what the fatigue limit is, but let's say it's 12 hours a day or 16 hours a day, and then you've got a

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driver who is doing eight hours with Uber or 10 hours with Uber. Presumably, if they're complying with the contractual obligation, they're doing significant percentage of their work with Uber, and you could work it out.

PIA BRUNNER: A driver who is doing eight or 10 hours a day wouldn't hit our fatigue limit.

The Hon. STEPHEN LAWRENCE: I know, but it would also mean that if they were complying with the fatigue limit, they couldn't do, as a percentage of overall work, much more work through share-apping, correct?

CAMERON LOUGHLIN: I might have to take this question on notice, but in New South Wales we track how much time a driver is online as opposed to on-trip. If someone has the app open for 12 hours or 13 hours, their 13 hours of driving time would then max out, irrespective of whether they took a trip or not, and during that time they could obviously be doing trips for one of our competitors.

The Hon. STEPHEN LAWRENCE: It seems to me that your submission is at pains to paint a picture of a majority of gig workers involved with Uber using a diversity of apps, not just Uber, but you don't seem to have done any work to present an accurate picture about what percentage of your workers are doing a majority or a large majority of their work exclusively with Uber.

CAMERON LOUGHLIN: The point we're trying to make is that the exemptions are not fit for purpose, and they're administratively cumbersome. It comes back, I think, to our original point that we operate in an industry that has traditionally been able to rely on exemptions—whether that's the taxi industry, which has a wholesale exemption under the services to the public exemption, which has not been applied to rideshare, or whether it's our Uber Eats business, which currently falls under an exemption for delivery of goods, that many companies across New South Wales will be relying on.

I suspect there is a number of courier companies with very large independent workforces that are relying on that exemption to not pay payroll tax in New South Wales. That was the point we were really making. We do have a bona fide independent contractor workforce. The fact that we would have to jump through all of these hoops—doing surveys, doing audits, asking drivers to fill out a form at the end of the day telling us how many hours they have worked for a competitor—to then rely on an exemption would be incredibly cumbersome for us.

The Hon. CHRIS RATH: Just following on from Mr Lawrence's questions, my understanding—and I'm not sure if you have any data you might be able to provide to us on notice—is that the number of hours driven by taxi drivers is far higher than the number of drivers with Uber. A lot of people that do use your app are actually part time—they might have another job—whereas with taxi drivers, it's often their sole source or predominant source of income, which often isn't the case. I don't know if there is any information you can provide to us on that.

PIA BRUNNER: I am happy to provide that on notice. We do have survey data which will show the number of drivers who have full-time or part-time employment and also the number who, perhaps, run their own business or are studying. I'm very happy to provide that survey data on notice.

CAMERON LOUGHLIN: Just to add to my colleague, taxis also purchase the car for a shift. The bailment model essentially is—they have the taxi for a 12- or 13-hour shift. They pay a fee to the taxi company to have access to the car for that 12 or 13 hours. They have got a sunk cost from minute zero, before they've even started driving. They have to drive for a certain number of hours to make back that fee that they've paid, and then after that they might keep what they earn, depending on what sort of model they are using. Our understanding is it's not really a part-time business model. You have to drive for the full 12 or 13 hours, because you've paid for the car for that period of time.

The Hon. Dr SARAH KAINE: But also taxi driver is a taxi contract determination in New South Wales, which is different to the arrangements between Uber and Uber drivers. There is a different arrangement with regards to minimum payments and that kind of thing. That is fundamentally—

PIA BRUNNER: I agree, but I would note that the taxi contract determination in New South Wales is an instrument that has not been updated in, I believe, 12 years and does not contain any minimum rates of pay.

The Hon. Dr SARAH KAINE: But there is still a difference.

PIA BRUNNER: It contains an amount that the driver needs to pay for the vehicle. It does not set any minimum earnings floor for the driver.

The Hon. CHRIS RATH: Wouldn't you agree it's not really a fair comparison to say what proportion of the rideshare market you have when your main competitor is, in fact, the taxi industry? How is that even a relevant statistic, given that it is a competitive market because of taxis being a key component and competitor within that market regardless of what other apps might exist in terms of rideshare? Isn't that the better determination of how competitive the market is?

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PIA BRUNNER: I would agree with that assessment. I think that goes to the point we made at the beginning where the exemption that taxi gets for rank and hail is neatly extrapolated over to the booked trips where we are directly competing with them. Yes, I would agree.

The CHAIR: Does anyone log, across platforms and across rideshare or taxis, the cumulative time that people are driving to make sure they're not doing 12 hours with one app and then doing 12 hours driving—doing a 24-hour shift driving a taxi and then driving for Uber or whoever?

PIA BRUNNER: I don't believe so.

The CHAIR: A driver could go out there and do 12 hours for Uber and then do four hours driving in a taxi.

PIA BRUNNER: The point to point commissioner is the individual or the entity who is responsible for regulation of the point to point sector, including fatigue management.

The Hon. BOB NANVA: A couple of my questions have since been answered, but I've just got a few more. Are there any substantive differences in Uber's business model in Australia as opposed to New Zealand? Is it the same sort of business model?

CAMERON LOUGHLIN: It's broadly similar, yes.

The Hon. BOB NANVA: Has the independent contractor argument been accepted in New Zealand?

CAMERON LOUGHLIN: By the courts, no.

The Hon. BOB NANVA: They're considered to be employees in New Zealand?

CAMERON LOUGHLIN: Four individuals in New Zealand were found to be employees by the Supreme Court of New Zealand, yes.

The Hon. BOB NANVA: For the sake of clarity, I'm just trying to get to the bottom of the main contention that you're putting to the Committee today. Is it ostensibly that Uber should not be subjected to any payroll tax or payroll-like taxes, or is the contention that you don't question the legitimacy or the equity of governments collecting that sort of revenue but you seek greater clarity in the application of those taxes to work arrangements that are facilitated by Uber?

PIA BRUNNER: I think it would go back to the point we've seen made in a lot of other submissions, where the original intention of payroll tax is a tax on employee wages, and the intention was that bona fide contractors are carved out. Through engagement we've had with other levels of government, we would submit that rideshare drivers and our food delivery people are bona fide contractors and therefore the legislative arrangements here are not keeping pace with modern forms of businesses and need to be updated.

The Hon. BOB NANVA: Would you accept, though, as a matter of equity—whether you call it a payroll or a wage tax—that a tax of that nature should apply to Uber, or it shouldn't?

PIA BRUNNER: Equity with whom?

The Hon. BOB NANVA: Other businesses, with a not too dissimilar model to Uber, are subjected to payroll taxes. I guess the analogy I've got is you've currently got a major evolution going on in the nature of work, in the economy and in technology. Where the law hasn't kept pace, changes are obviously made to ensure that, as a matter of equity, arrangements are captured so that people pay their fair share of revenue and taxes. If you take road user charges, the fuel excise tax doesn't apply to EV vehicles. It couldn't have been conceived at the time of the fuel excise that EV vehicles could become a thing. There will now be a road user charge that's implemented to ensure that, as a matter of equity, everyone is on the same playing field. There is an argument that Uber has been operating in an environment where there hasn't been a level playing field, and I'm just interested as to whether or not you believe that Uber should not be subjected to taxes of the nature of payroll taxes, full stop.

PIA BRUNNER: My response to that would be I've not seen any evidence that there's a proposal to extend payroll tax to contracting more broadly. For example, as my colleague mentioned earlier, for our delivery business, there is currently a carve-out for the delivery of goods, which applies to us. It also applies to all of the other traditional players in the delivery space or in the courier space, for example. I've not seen any proposal that says we should be extending payroll tax more broadly to those kind of contractor arrangements as well. I guess it's hard for us to respond when there's not a proposal on the table more broadly.

The Hon. Dr SARAH KAINE: Can I just jump in quickly, and it goes to the question I asked earlier as well. I understand what you're saying. There isn't a direct proposal, so it's hard to respond. But I wonder, particularly given your role, Ms Brunner, if you could then describe what Uber feels like it should be contributing

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to the general benefit of the State of New South Wales, given that it conducts work here. I just wondered if it feels—and it may not, and you may say none—that there is any sort of obligation to give back or to contribute, as others do who pay tax, maybe in different circumstances and maybe for different reasons. Does Uber feel that it should be, in the communities that it operates in, contributing to their good functioning?

PIA BRUNNER: I would say consistent with other businesses who undertake similar forms of work.

The Hon. DAMIEN TUDEHOPE: Isn't it the case that you say you should get the same exemptions as apply to the taxi industry?

PIA BRUNNER: Correct.

CAMERON LOUGHLIN: Correct.

The Hon. DAMIEN TUDEHOPE: If the taxi industry gets an exemption, then you should get an exemption.

CAMERON LOUGHLIN: Correct. In our view, there's no principled reason to exclude an independent contractor transporting goods and an independent contractor transporting a person, especially when taxis are exempt.

The Hon. DAMIEN TUDEHOPE: That really is the level playing field that you're looking for in relation to this outcome.

CAMERON LOUGHLIN: Correct, noting that we do pay payroll tax in respect of our employees in New South Wales. Obviously, we're a significant contributor to the broader tax system through taxes that we pay to the Commonwealth.

The Hon. DAMIEN TUDEHOPE: I take it your position is not that you shouldn't comply with the law.

The Hon. Dr SARAH KAINE: Well, they've got a mixed history on that, Damien.

The Hon. DAMIEN TUDEHOPE: The situation is that Uber does control the manner in which drivers choose where they work.

CAMERON LOUGHLIN: No. Drivers can choose to work wherever they want, as long as they're within New South Wales.

The Hon. DAMIEN TUDEHOPE: Well, you can deactivate drivers.

CAMERON LOUGHLIN: Correct.

The Hon. DAMIEN TUDEHOPE: There's a level of control there over the—

CAMERON LOUGHLIN: Obviously, we don't deactivate drivers for no reason because we have an interest in having drivers on the platform. Any principal who engages independent contractors can terminate the independent contractor, in accordance with the contract.

The Hon. DAMIEN TUDEHOPE: You apply ratings thresholds?

CAMERON LOUGHLIN: Correct.

The Hon. DAMIEN TUDEHOPE: You use algorithmic constraints in relation to drivers, do you not? You monitor the algorithms of the way the drivers are performing.

CAMERON LOUGHLIN: Not to control how work is sent to them.

The Hon. Dr SARAH KAINE: What do you use it for then?

CAMERON LOUGHLIN: We use the algorithm to try and match the best driver with the best rider. So if you've used the app before and you order an Uber and the car shows up on the right side of the road, particularly outside on Macquarie Street, that's all part of the algorithm that we use to try and have a smooth service. It's not a coincidence that your car might be on the same side of the road as you. That's the type of algorithmic control that we would use.

The Hon. DAMIEN TUDEHOPE: You use it for the purposes of fare structures and the like, do you not?

CAMERON LOUGHLIN: The fare is set by an algorithm, but by reference to a time and distance rate card.

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The Hon. DAMIEN TUDEHOPE: Effectively, the principal argument you use is that Uber acts as a digital platform which is an intermediary, rather than a direct employer.

CAMERON LOUGHLIN: Correct.

The Hon. DAMIEN TUDEHOPE: Except that there are some aspects of the relationship which don't fit neatly within an intermediary definition by virtue of the fact that you can deactivate.

CAMERON LOUGHLIN: We obviously deactivate to ensure safety on the platform. We're also a regulated business in respect of our rideshare business, so we have an obligation to ensure that the drivers on the platform comply with our regulatory obligation to provide a safe service. We also set prices on behalf of the drivers, and that's to ensure that the marketplace functions. The alternative would be to allow drivers to charge whatever they want, which I think we've potentially seen at Sydney airport with taxis. It breaks the marketplace immediately. If you didn't know how much the driver was going to charge you for a particular trip, you wouldn't use the app. It's consistent with many forms of contractual relationships. Franchisees are very similar. There's generally a pricing structure that's supplied so that when you go into a McDonald's, you know what to accept. There's some form of pricing uniformity.

The CHAIR: Mr Loughlin, with your apps, you have ratings. A driver can receive a rating of performance. How does Uber use that information? Does that guide what work that person is given?

CAMERON LOUGHLIN: It's used for riders. When you are a rider and you request a trip, you can see the rating of the driver. Many riders will choose to cancel the trip and re-request it if the driver's rating is too low, because they may believe that the low rating is indicative of a lower level of service. If a driver's rating drops below a certain level, they will be warned. If the rating does not improve, they may be deactivated.

The Hon. BOB NANVA: Is a passenger entering into a contract with the driver or with Uber?

CAMERON LOUGHLIN: They are entering into a contract with the driver.

The Hon. BOB NANVA: Directly with the driver?

CAMERON LOUGHLIN: Correct.

The Hon. DAMIEN TUDEHOPE: If you are successful, or your argument is successful, would the argument that you raise then apply across the board to labour hire, courier platforms, care platforms and other logistic-type apps that are currently available in the marketplace?

CAMERON LOUGHLIN: I believe some of those platforms would have the ability to rely on the exemptions. I would have to take that question on notice. I'm not sure of the downstream implications of us succeeding on our arguments in relation to what's a relevant contract.

The CHAIR: Thank you very much to Uber. That was super. We very much appreciate you making a submission, appearing before the Committee today and providing information to the inquiry. There were some matters taken on notice, which the secretariat will be in contact with you about in due course seeking an answer. We've extended the time, because of the Christmas break, into January for those answers to be provided. Thank you very much for appearing today and providing the evidence that you have.

(The witnesses withdrew.)

(Short adjournment)

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Ms EMMA CLARK, Chief Financial and Operating Officer, Mable Technologies Pty Ltd, affirmed and examined

Mr LIAM NILON, Head of Government and Stakeholder Engagement, Mable Technologies Pty Ltd, affirmed and examined

The CHAIR: Welcome back, everyone. Do you have an introductory statement you'd like to make to the inquiry?

EMMA CLARK: Thank you, Chair and members of the Committee. Mable is a health tech platform that offers a complementary approach to traditional aged care at home and disability support models. Mable gives older Australians and people with a disability more choice, control and flexibility to shape the care and support they receive in their own homes and in the community. This choice is made possible by over 21,000 independent contractors providing valuable and necessary care and support services via the platform. Founded in 2014, Mable now operates at some scale, with support providers on the platform providing care and support services to over 28,000 people with a disability and older persons. Since its founding in 2014, 25 million hours of support have been provided via the Mable platform.

On Mable, independent contractors set their own rate of remuneration, find their own clients and write their own contracts. Contractors on Mable have high bargaining power in negotiations relating to services contracts, are paid more on average than their employed counterparts and have a high degree of authority over how they perform their work. Like all companies, Mable pays payroll tax on behalf of its employees. The Attain Healthtech group, of which Mable is part, paid \$1.71 million in payroll tax in the last financial year. It is the strong view of Mable that the Payroll Tax Act 2007 does not apply to arrangements between clients and support providers using its platform. Even so, Mable is aware of attempts by the New South Wales State revenue office, or SRO, to capture more contractors working in the care sector.

Over the past year, a number of Mable's competitors have been audited and found liable for taxes that had never previously been charged on contractors working in the care economy. This position is supported by Mable's 2022 audit by the State revenue office, which identified no issues with the independent contractor arrangements on the platform. Perhaps for this reason, Mable has not yet been approached. Mable's strong view is that the New South Wales Government should not seek to capture independent contractors working via platforms. In Mable's view, any such action would harm workers, stifle competition and reduce safety for clients.

Approximately 90 per cent of all funds flowing through the Mable platform come from the Federal Government through the NDIS and Support at Home programs. Imposing a State payroll tax on these arrangements would mean Federal taxpayer money intended for care recipients and workers is being diverted to cross-subsidise the New South Wales Government's budget. Mable's platform fee is 16.6 per cent of the transaction value. A 5.45 per cent payroll tax liability would represent one-third of Mable's entire revenue base. It is financially impossible for Mable to absorb this cost. The inevitable result would be reduced remuneration for independent contractors, reduced care hours for older people and people with a disability, and increased costs to the Federal Government.

Mable's primary competition comes from off-platform, independent contractors operating directly with clients. Any move to impose payroll tax liability on platforms would create a significant competitive disadvantage for platform-based arrangements, despite the fact that platforms offer enhanced safety through verification and background checks, complaints and resolution mechanisms, insurance coverage, and NDIS and aged-care compliance support to independent contractors. The perverse outcome would be to push independent contractors away from safer, more transparent platform arrangements back to informal, unregulated direct engagement.

There is a simple solution that would protect care workers and recipients in New South Wales while ensuring appropriate use of taxpayer funds in New South Wales. The New South Wales Bulk Billing Support Initiative recognises that government funding for health care should be directed towards service delivery and practitioners, rather than being diverted to administrative costs and taxes. Mable proposes a broad-based exemption for all independent contractors in health care providing taxpayer-funded services. This would apply not only to platforms but also to allied health practitioners in practice models, nursing contractors and non-GP doctors working in practice models. An exemption would not result in any substantial loss in revenue. It would, however, minimise the impact on primary care by not exacerbating workforce challenges and help prevent hospitalisations, thereby preventing a reduction in hours of care received by older people and people with disabilities. A reduction in care could lead to hospitalisation of those clients. I am grateful for the chance to appear and welcome your questions.

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The Hon. DAMIEN TUDEHOPE: I understand your submission is not so much that you're not liable to pay tax but that you shouldn't have to pay it because you're a healthcare provider. Is that the thrust of your submission?

EMMA CLARK: The main thrust of our submission—thank you for the question—is that we believe that contracts that are established on the platform do not meet the definition of a relevant contract so, therefore, the Payroll Tax Act does not apply.

The Hon. DAMIEN TUDEHOPE: But even if they did, your secondary submission would be?

EMMA CLARK: That, effectively, this is just going to increase costs to the client in terms of reduced hours of care or the independent contractor is going to have to reduce the rates that they charge. It's government money, primarily—as I said, 90 per cent from the NDIS and aged care.

The Hon. DAMIEN TUDEHOPE: So you'd be encouraging a recommendation from this Committee to provide an additional exemption for contracts.

EMMA CLARK: Where it's taxpayer-funded, yes.

The Hon. DAMIEN TUDEHOPE: So if, for example the Uber decision went against Uber and they were found to be an employer for the purposes of the Payroll Tax Act, you could potentially see an argument that the same sort of arrangement would apply to Mable because they are a platform-based employment provider. In those circumstances, you may have a liability for payroll tax but then you would want an additional exemption because you're a frontline healthcare provider in the sense of enhancing the benefit of healthcare opportunities in the community.

EMMA CLARK: Correct. The only clarification I would probably add would be that—I don't want to speculate on where the decision with Uber might go. Obviously, that's a matter for the courts. I'm not a lawyer. But there are still quite substantial differences between how Uber contracts and how platforms like Mable contract.

The Hon. DAMIEN TUDEHOPE: Let me explore that. Just explain in some detail how the Mable contract exists with the consumer—I suppose the aged-care resident, potentially an at-home aged-care resident or the like, who uses your services. Just explain to me how that operates.

EMMA CLARK: It operates slightly differently across NDIS and aged care. Would you like me to provide an example of an aged-care recipient?

The Hon. DAMIEN TUDEHOPE: Yes.

EMMA CLARK: I always use the example of Mavis. She's a mythical person, but just to put a name to the face. Effectively, Mavis gets a Support at Home package from the Government. She has to engage an approved provider, now called a registered provider, under Support at Home to administer that package, and that registered provider is responsible for setting up Mavis's supports and also her overall clinical wellbeing. They charge a fee for that. As part of that, Mavis may choose to self-manage her package and, as a result, she may choose to advertise her own jobs for who comes into her house.

Let's say she wants someone to come in and provide some domestic assistance a few times a week. She'll come to Mable. She'll onboard to Mable as a client. She will then create a job for someone to come in for three two-hour shifts a week and say what she's looking for and where she's located. She'll either post that job onto the platform and then independent support workers will effectively say, "Hey, I would be interested in doing that work with you," or she may actually search for workers in her area and then send a worker a message saying, "Hey, I've got this job that I would like you to come in and do for me. Would you be interested?"

The Hon. DAMIEN TUDEHOPE: So it's like Airtasker?

EMMA CLARK: Very, very similar to Airtasker. We call them horizontal platforms, so very similar. Mavis then might have some meet-and-greets with some people who are interested or that she's approached. She'll end up selecting her person, so Mavis is absolutely selecting the person that she wants to come into her environment and help support her. When she does that, she and that independent support provider then negotiate their own contract. So the independent support provider will normally, when they are onboarded with Mable, provide indicative rates for services that they are both qualified and wish to provide. Mavis will engage with that person through Mable, set the rates, set when the shifts are going to be and also direct the support worker directly on what's to be done during those shifts. What Mable does is host the agreement and then facilitate the ability for the support provider to enter their support session that they've had for Mavis and then facilitate the flow of payments through the platform.

The Hon. DAMIEN TUDEHOPE: So does Mavis pay you or does the Government pay you?

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EMMA CLARK: The registered provider that Mavis has appointed pays Mable's invoices, and Mable's invoices go to that—

The Hon. DAMIEN TUDEHOPE: Mable in fact pays the contractor?

EMMA CLARK: Correct.

The Hon. DAMIEN TUDEHOPE: Can you elect not to take on a contractor?

EMMA CLARK: Yes. On the independent contractor side, at the moment approximately 1,800 people sign up to Mable a week, wishing to be an independent support worker on the platform. Of those, approximately 700 a week get approved and approximately 300 of those enter into an arrangement with a client. The reason that 700 are approved of the 1,800 that have signed up is because there's relatively stringent verification processes before they can actually be approved to seek work through the platform. At the moment, we've recently migrated to the NDIS worker screening checks. People need to have an NDIS worker screening check that's valid in order to be approved, and then there's 32 services that a contractor can choose to provide through the platform. Some of those require qualifications and some of those do not. Where they require qualifications, we need evidence of the qualification. It's a relatively robust process, multi-step, takes a little while to onboard an independent contractor and they have to meet all of our verification requirements.

The Hon. DAMIEN TUDEHOPE: So the relationship between you and the contractor is one where they've got to be approved by you and they are paid by you?

EMMA CLARK: Yes. Correct.

The Hon. DAMIEN TUDEHOPE: So if there is a complaint by the end user, by Mavis, about the service that she is receiving, in those circumstances can you in fact terminate that arrangement with that contractor?

EMMA CLARK: Yes. We do have the ability to ban a worker or ban a client. In the vast majority of cases that is because of an incident or a complaint where something has gone quite wrong for a health and safety reason. One clarification on the payment side of it is that the contract is struck between Mavis and the independent contractor. If the invoice is unpaid by the registered provider, Mable will help try and facilitate those payments to be made but Mable is not liable for the payment to the contractor because we are not a party to the actual agreement. We will best endeavour and make all efforts to try to find out why that invoice hasn't been paid and recover payment, but we are not liable for the payment to the contractor, which really is at the heart of our model. These independent contractors are running their own businesses and therefore are contracting directly with the client. The liability is between the client and the independent contractor.

The Hon. CHRIS RATH: What would it mean for Mavis if you did have to pay payroll tax? Would it mean a higher price charged to the end user?

EMMA CLARK: I'll take this one. I'm conscious I'm doing all the talking. Sorry, Liam.

The Hon. DAMIEN TUDEHOPE: You're the chief financial controller so it's a good question for you.

EMMA CLARK: It could manifest in one of two different ways. Either the contractor themselves—I'm trying to think of the simplest way to answer the question, because once again it depends on the regulatory environment in which this is occurring. With aged care, it is more likely that the contractor would keep their rates to what their rates are and we would have to apply 5.45 per cent additional charge on top of the invoice, and that would mean that each hour of care for Mavis is costing more and therefore she would get less hours of care in her package.

The Hon. CHRIS RATH: I notice you're not making super-profits exactly; you are struggling to break even at the moment, so it couldn't come out of profits.

EMMA CLARK: No. A couple of comments on that—I did actually ask, for a completely different reason about six months ago, how much has Mable invested in the platform over the 12 years that we've been in operation and it's north of \$300 million, which is why we haven't made profit. Technology business—there's 350-odd staff in Mable helping do features all the time.

The Hon. CHRIS RATH: Like almost every startup in Sydney.

EMMA CLARK: Exactly—and obviously we're paying payroll tax on all of those. But effectively, no, we've done 10 years of very solid investment. I know in our submission from a year ago we did talk about the fact that we were loss-making. For clarity, in the FY25 accounts, which we lodged in September, we're part of Attain Healthtech, in terms of from a Mable perspective, and that did actually post a \$1.1 million profit. Mable technology was still a \$1.1 million loss in the last year.

CORRECTED

The Hon. CHRIS RATH: Are you living in fear, so to speak, that any day you could get correspondence from Revenue NSW saying please pay payroll tax retrospectively? You're not currently paying it now. You're one of the stakeholder groups that we're hearing from that hasn't yet been hit with that invoice. Is that a real concern, or have you received guidance or clarification from them and it, essentially, hasn't been answered? What's been the relationship between you and Revenue NSW, if any?

EMMA CLARK: Nothing since 2022. As I said in my opening statement, we had an audit with them in 2022 and there were no questions raised about independent contractors on the platform at that time. That audit was fine, and we haven't heard from them since. In terms of your first question—"Does it keep me up at night?"—yes, because do we have the ability to pay it when we're a 16.6 per cent margin, particularly if it's back levy? No.

The Hon. Dr SARAH KAINE: Thank you for appearing and for your evidence. I've got some follow-on questions from what we've already heard just about how you do your work. The client pays Mable, so Mable is the one that issue invoices?

EMMA CLARK: Yes.

The Hon. Dr SARAH KAINE: Are they branded as Mable? How does the individual know it's coming from—is it Mable branded?

EMMA CLARK: Yes. The invoice is Mable branded. It's actually issued by a subsidiary called Mable Payment Services, which is part of the group. That's been the case ever since we were established. I think it was a couple of years after we incepted that we used Mable Payment Services as agents. They're done by Mable Payment Services but, yes, the invoices are Mable branded.

The Hon. Dr SARAH KAINE: Mable Payment Services. Is that a separate business?

EMMA CLARK: Yes, it is.

The Hon. Dr SARAH KAINE: I presume the email is from Mable Payment Services when the invoice gets sent? Okay. You mentioned debt recovery. You're not liable, but you undertake debt recovery on behalf of the contractor?

EMMA CLARK: Yes. We attempt to. It is in everyone's best interest for the flow of funds to be—as we know, if you think about workers working in a care economy, there are structural shortages. We obviously want more and more people to be able to work in the care economy. If they aren't getting paid for the services that they're delivering, needless to say they won't want to work in the care economy, so it's in everyone's best interest that we assist them, where possible, in those debt recovery efforts.

LIAM NILON: If I could just add to that, Dr Kaine, it might be helpful. One way to think about Mable is as a series of business tools, keeping in mind the vast majority of independent contractors that work in the care economy actually operate off-platform. They contract through Facebook or through word of mouth. In terms of why an independent contractor might choose to come and use Mable, part of it is to overall reduce the risk of non-payment, although not prevent it altogether. Ultimately, there is always in the care economy a risk that an independent contractor will not be paid. This is one of the fundamental differences and the choices people need to make when they're deciding whether they want to be an employee in the care economy or an independent contractor.

The Hon. Dr SARAH KAINE: Can I ask about that? Part of the way that the NDIS is set up is so that clients can individually manage, should they wish. They don't need to have a support coordinator—

EMMA CLARK: A registered provider.

The Hon. Dr SARAH KAINE: They can do it themselves. Whether or not you think it's a good thing, there is an intent in the policy that there is the ability for workers to be engaged directly by individuals, to cut out any middleman, so to speak. When you're raising that as a concern—I mean, that's not really a concern of us, the payroll tax. That's really an issue for you to raise about how you think care should be conducted through the Federal Government's NDIS scheme. It's not really a direct concern for us. That's about how care is delivered.

LIAM NILON: If I might, Dr Kaine, I would point out it is a joint scheme. Both New South Wales and Federal Government have a stake in the NDIS. Obviously, people have lots of differences of opinions about how people engage through the NDIS. Certainly, we're not saying that off-platforms should be prohibited or anything like that. We're just pointing out that there is a higher risk associated with that. Also, given that the New South Wales Government has been involved in initiatives to, for instance, prevent fraud within the NDIS, I would argue this is a joint concern of government.

The Hon. Dr SARAH KAINE: We could argue about that.

CORRECTED

EMMA CLARK: I would just add that I don't disagree with what you're saying; I think our point is more that it's anti-competitive. Whilst we definitely don't want to force people to use platforms at all—if you think about Mable, the business, in terms the hours of support that are being delivered, they're pretty evenly split across disability and aged care. Obviously disability is half of the business that's flowing through the platform. None of those people are being forced to use Mable, so they're clearly seeing value in the safeguards versus contracting directly. I think it's more just that imposing an extra 5.45 per cent on Mable, when off-platform is not having anything imposed upon them, just creates competitive pricing challenges.

The Hon. Dr SARAH KAINE: When you talk about anti-competitive or levelling the market, there is another model, isn't there, which is direct employment? That doesn't attract payroll tax. It's not as if there was off-platform and platform and no other opportunity to engage in the market. An option is a direct employment model. Clearly it's not Mable's business model. It's not like there's just the one or the two. There's an off-platform, which is potentially less regulated and potentially more dangerous. There is competition in the market in terms of business models as well, isn't there?

EMMA CLARK: Absolutely. We would contend that—and I'm pretty sure we said it in our submission—there is room for all models. We're not arguing that all models should be like Mable, but we also don't think that others should argue that all models should be like theirs either. I think there's room for everybody in such large schemes. The point I'd raise about the direct employment models is, generally speaking, they're charging a much higher overhead. The difference between what they're paying an employee, in those instances, versus what they're charging the client is running at more like 30 per cent rather than Mable's 16.6 per cent.

The Hon. Dr SARAH KAINE: Which is a protection for care workers, who we know are some of the worst paid in the economy. There is a benefit there which we see beyond the price, so we probably don't want to get into that.

The Hon. CHRIS RATH: Sorry, just a point of clarification—you set up your business model expecting that you wouldn't have to pay payroll tax.

EMMA CLARK: Absolutely.

LIAM NILON: Yes.

The Hon. CHRIS RATH: If you knew you had to pay payroll tax, then maybe you would have gone down the direct employment model.

The Hon. Dr SARAH KAINE: But they're not paying payroll tax.

The Hon. CHRIS RATH: But that wasn't a consideration at the time when you set up Mable. Your expectation, and the costs that you looked at, was that payroll tax wouldn't be a part of that.

EMMA CLARK: Our view is that these are genuine independent contractors. Their average hours on the Mable platform is—I think in the submission we said eight—currently 9.2 hours per week. No, we hadn't thought about payroll tax when we set up the business back in 2014, and our pricing models assumed that. Really, the business was set up to enable more hours of care to be delivered to people, and they get to choose the person that comes into their home. Those people end up earning a good rate of remuneration for the independent contracting work that they're doing. That was the ethos behind it, and the pricing models that were set up at the time.

The Hon. Dr SARAH KAINE: Can I just clarify the question from Mr Rath. So the business was set up understanding that it would avoid payroll tax by a set of arrangements which meant that workers could be viewed as—

EMMA CLARK: No, absolutely not. The business was set up—and I won't occupy too much time with my answer here, because it is a long story—by one of our co-founders whose mother was suffering with illness. He was with a traditional model. They were sending different people to his mum's house every day, and his mum was getting very upset about that, and his dad was getting upset about it as well. He was like, "Surely there has to be a model where my mum could actually pick her person to come into the house and provide care and supports." Obviously at that time traditional employment models did not offer that kind of flexibility, so that was the driving ethos behind setting up Mable. Payroll tax was not a consideration at the time.

The Hon. Dr SARAH KAINE: Can I ask something about your fee structure for the contractors. The point is, you're not paying payroll tax at the moment, are you? You've said you've been audited, so to Mr Rath's question about how you weren't expecting to pay payroll tax—you haven't paid payroll tax?

EMMA CLARK: Other than on our own employees—yes, correct.

CORRECTED

The Hon. Dr SARAH KAINE: That is not in question at the moment. But can you explain what fees Mable takes in terms of the contractor and—I don't know what language to use—what you provide for that fee?

The Hon. DAMIEN TUDEHOPE: It's 4.5 per cent, isn't it?

LIAM NILON: The fee amounts to 16.6 per cent, but it's actually charged in two increments. I'm an arts graduate, so I tend to use whole numbers when I try to explain this to people. If someone was billing at \$100, which is a bit above most averages, then the total paid by the client would be \$107.95. Of the amount—the set rate by the independent contractor—Mable would take 10 per cent. So if you add the \$10 from the \$100 and the \$7.95, divide that by 107.95 and you get 16.6 per cent.

EMMA CLARK: So the contractor receives \$90.

The Hon. Dr SARAH KAINE: What do you do apart from—I think Mr Tudehope compared it to Airtasker, but what else do you provide for contractors for that fee, apart from the platform to connect? Is there anything else that you provide?

LIAM NILON: Yes. There is a learning hub with 170 different courses, which is available to all independent contractors. There is a suite of group insurances. There is income protection insurance, which is included as part of a personal accident package. There's professional indemnity insurance, which includes medical malpractice. And there's public liability insurance as well. Any service delivered through the platform that is not—the only way to avoid that insurance is to commit fraud, for example. Otherwise, all services delivered through the platform are covered by those insurances. There are also services like counselling. There is tax advice, which is provided by an external provider. Of course, there's the invoicing.

There is some level of opt-in guarantee of pay. There are two separate programs that are available for that that we could talk you through, one of which is an invoice factoring service. But I think, overall, the thing that people value is the trust and safety. If you think about one of the biggest risks for workers, particularly in the NDIS—but it also obviously exists on the client side and in aged care as well—is the risk of some kind of harm coming to them. So both parties have the assurance that people are being screened, that people are who they say they are and that, if something goes wrong, there's a full-time trust and safety team there to support them.

The Hon. Dr SARAH KAINE: Can I ask a question about the insurance? What if a contractor came to you and said, "I've got my own insurance, so I don't want that taken out. Can we come to an arrangement because I've covered that and I've got my own?" Do you allow for that kind of flexibility and, if not, why not?

LIAM NILON: No, because we have gone to the market and we have sought to get the best insurance available. That is part of the guarantee provided to both parties. It would be a difficult thing for us to offer an opportunity for people to opt out of that. I'm not sure I would see the upside in that.

EMMA CLARK: Also, the client is utilising Mable because they know that there's that insurance coverage. If we say there is that insurance coverage for 20,500 of the 21,000 contracts and, actually, 500 have their own insurances and they differ from Mable's insurances in these ways across 500 different policies, that just becomes very confusing for the client to understand what protections they actually have or don't have.

The Hon. Dr SARAH KAINE: It's a requirement of the contractor to have the insurance that you—

EMMA CLARK: It just comes with the platform, to Mr Nilon's point.

The Hon. Dr SARAH KAINE: It's a requirement, then, isn't it? You can't be on the platform if you don't sign up to that.

EMMA CLARK: Correct.

The Hon. DAMIEN TUDEHOPE: It appears to me that a lot of the decisions that the courts make in relation to the assessment of whether an entity is liable for payroll tax are on the basis of what the substance of the agreement is between the—for want of a better word—employer and, in your case, what you describe as the contractor. It may well be that, rather than the fact that you use certain words to—as part of the agreement between you and the contractor—seek to alienate their responsibility from you as an employer and contractor. So, rather than the form of those words, they look at the substance of what the arrangement is between you. Do you agree with the proposition that, if you looked at the substance of what agreement exists between you and the contractor, in substance, it looks like an employment contract?

LIAM NILON: No.

EMMA CLARK: No.

The Hon. DAMIEN TUDEHOPE: You don't accept that?

CORRECTED

EMMA CLARK: No.

LIAM NILON: Not even slightly.

The Hon. DAMIEN TUDEHOPE: What do you say differentiates you from an employment contract?

LIAM NILON: If I may, I'm not aware of any employment contract, Mr Tudehope, where a worker can set their own rate of pay, which is facilitated through the platform. Similarly, the service agreement contract that exists is one that is written by the independent contractor and sent to the client. There are other things. Obviously, you could make an argument that, for instance, casuals have the ability to dictate their hours of work, which is true, but there's no rostering element. That is all fully decided by the independent contractor.

The Hon. Dr SARAH KAINE: Can I just quickly jump in? I've done a bit of work in this. Are you suggesting that care workers write their own contracts?

LIAM NILON: Yes.

The Hon. Dr SARAH KAINE: Isn't it true that you have a number of clauses that are mandatory? Would it be, then, that those self-written contracts basically just contain Mable's mandatory clause? This is no disrespect to any care worker, but their skills and qualifications are in the giving of care and not in the writing of contracts. When you say they write their own contracts, forgive me if I'm a little incredulous, but I'm not entirely sure what you mean by that. Perhaps on notice you could provide to the Committee de-identified examples of contracts that have been written, and maybe a number of samples. I think it's a really interesting claim.

LIAM NILON: I would just say, Dr Kaine, obviously I appreciate that you haven't had the benefit of reviewing those, but a number of entities have, including the Fair Work Ombudsman. They didn't share your incredulity or your scepticism.

The Hon. Dr SARAH KAINE: They have seen them?

LIAM NILON: They have. In terms of how the process works, there are a couple of mandatory terms, one of which is, for instance, that you have to use the Mable platform to process payments. However, otherwise there are suggested terms which are based upon other contracts on the platform, but these are always provided as optionals. We don't expect people to write it from scratch, no. Some do. Some copy and paste over an agreement that they have off the platform and choose to use that, subject to a couple of mandatory terms as well. Other people pick and choose the terms that are available and suggested, although, again, there are always options and suggestions. It's a supported process whereby people are encouraged, for the protection of the independent contractor, to consider things like a cancellation term, for instance.

The Hon. Dr SARAH KAINE: If I'm a contractor and so I'm managing the contract between me and the client, do I have the ability to substitute someone else to do my work for me?

LIAM NILON: In a theoretical sense, yes. But in terms of a subcontracting ability, it is not a feature that has been built into the platform because, to date, we've never actually received a request for it. It's something we have considered over many years about whether that's something that would be helpful for independent contractors and clients, but it is not something that is featured in the platform at this time.

The Hon. Dr SARAH KAINE: So a contractor doesn't have the capability to outsource work to someone else that they were going to do? That part of it is not within their control, currently.

EMMA CLARK: Can I add that that's, in part, to make sure that everyone is meeting the regulatory obligations that we have with both the Aged Care Act and the digital platform provider.

The Hon. Dr SARAH KAINE: Say I'm a contractor. I could be just as compliant as you. I could make sure that whoever I contract to has the appropriate checks and balances. That would be something I might want to take on as a contractor myself, but you're saying your model doesn't allow that.

LIAM NILON: At this time. If we were to receive a request from an independent contractor to provide such a feature, we would seriously consider it.

EMMA CLARK: The other thing I would add is that, in terms of care contracting, it's largely a personal relationship. The concept of, "Mavis has selected me, but I'm now going to subcontract in someone else", is not the dominant—

The Hon. Dr SARAH KAINE: But Mavis may trust me and I say to Mavis, "I just can't do that day, Mavis, but I want to make sure that you're covered because I care about you and I have someone who I have vetted", and, because we have a relationship of trust, that is something that could work. There is a conceptual sense there that that's a possibility but, at the moment, you don't allow that.

CORRECTED

EMMA CLARK: People are not requesting it. What is the more common pattern is that, if that situation occurs, either the client or the support worker contacts the support worker and says, "I'm not available for the next three weeks", or the client says, "Dr Kaine is going away on a holiday", and Mable will say, "Okay, let's do another job post for you and assist you in finding another worker."

The Hon. Dr SARAH KAINE: I just want to summarise, though, so I understand that relationship. Granted, all of this is within the context that you haven't been asked to pay payroll tax. We're still talking in that context, I'm just wanting to clarify. Mable controls invoicing, insurance, client allocation and policy compliance and you determine whether someone can keep on working, I presume, because you could kick them off your platform if there has been some reason to. Is that right?

EMMA CLARK: No, client allocation is not correct. On Mable, support workers must find their own clients and clients must find the support workers. The two paths that that generally happens, I think I said this in one of the earlier responses, is when a client comes on, they may either—like, I might onboard as a client, as Mavis, and I may say, "Hey, I'm going to do a search for workers in my postcode." And then a list of workers comes up, and then I'll privately start messaging workers saying, "Hey, I've got something that I need some help with. Are you interested?" The other way to do it is I, as Mavis, will—

The Hon. Dr SARAH KAINE: Sorry, can I confirm that it's still the client looking for someone, and then you suggest people?

EMMA CLARK: We don't suggest, we just—there's a list of workers. If I was to type in my suburb—which happens to be Keilor East in Melbourne, so I type in 3033—a list of however many hundreds of workers or thousands of workers in that postcode or that say that they will provide service in that postcode will all come up. I can just look through this list of workers and decide who I wish to message. And then the other path is that I do a job, and I actually post that job like a job posting board, and then independent contractors will then look at those jobs and say, "I'm interested in actually providing that service," and they will effectively apply for that job. And then there'll be a place in the platform where I, as a client, can see all the people who've applied. And then, once again, I can commence a conversation with any of them. It can happen either of those ways.

LIAM NILON: I would also add that there is nothing to prevent an independent contractor from maintaining their own insurance policy in addition to the requirement to use the group insurance provided through the Mable platform. Indeed, our understanding—well, it's not a question we've asked, but certainly in informal conversations we've had with many people, because most contractors that use Mable also either work on another platform where purchasing a policy might be a requirement as opposed to the platform providing it, or they work off platform, so they also do often have their own policies.

The Hon. Dr SARAH KAINE: I appreciate that and I understand. It makes sense why they would do that. I was more interested in what your requirements are. That's fine. It's understandable that they would engage in that.

EMMA CLARK: The basis of the insurance policy on Mable is based on the amount of delivered hours that are running through the platform. When we engage in that policy every year, it's based on a certain number of hours being delivered. It's just coverage across all the hours that are delivered on the platform. We obviously have to assert to the underwriter insurer that the people are appropriately verified to do the work in line with our verification policy.

The Hon. CHRIS RATH: Do people review? Are providers reviewed on the platform, or given a testimonial from people that have—

EMMA CLARK: Yes, we call them star reviews. They're pretty rudimentary. The last time I checked, which was a couple of months ago, approximately 4 per cent of the independent contractors on the platform had a review. Most of those reviews were four or five stars. It appears on their profile, but it doesn't form any part of any matching or algorithm. It's just there as a trust signal if people wish to take notice of it or not.

The Hon. DAMIEN TUDEHOPE: Have you ever sought legal advice about this arrangement, about whether it might be subject to New South Wales payroll tax?

EMMA CLARK: No, not New South Wales payroll tax.

The Hon. DAMIEN TUDEHOPE: Or Victorian payroll tax? It's similar, I assume.

EMMA CLARK: We haven't been approached by the Victorian payroll—

The Hon. DAMIEN TUDEHOPE: So you haven't ever received legal advice in relation to this arrangement?

CORRECTED

LIAM NILON: If we had—I'm not a lawyer. To my mother's enduring shame, I never went to law school. But my understanding is if we had and we were to disclose that, that would have some implications.

The Hon. DAMIEN TUDEHOPE: Sorry?

LIAM NILON: If we were to state that advice exists, that's something that we would generally be advised not to do, when we have previously received legal advice. But I'm not aware of any advice being received.

The Hon. DAMIEN TUDEHOPE: I think I understand that if you have received it, you're not going to give it to us, but you're not aware whether you've got advice. Is that right?

LIAM NILON: My understanding is we have not.

The Hon. DAMIEN TUDEHOPE: Can you take on notice whether you have received legal advice in relation to this arrangement?

EMMA CLARK: Yes, we can. We'll take that on notice and respond to you, the same as Dr Kaine's request for evidence of individual contracts that have been drafted by—

The Hon. Dr SARAH KAINÉ: In addition, have you ever received advice about, if you became liable for payroll tax, whether that would have any implications for your employment model or any other obligations to workers in terms of industrial obligations?

EMMA CLARK: I can absolutely confirm we have not received advice regarding any of that—no other implications.

The Hon. Dr SARAH KAINÉ: Have you had internal conversations about that?

LIAM NILON: I'm not really aware of a way in which a payroll tax liability would have any implications for industrial relations.

The Hon. Dr SARAH KAINÉ: I'm just wondering. We've been talking all day about the multifactorial characteristics, which are not exactly the same, but there are echoes of it across the industrial relations system, across workers comp, across super. It's just a logical discussion to have.

LIAM NILON: Sure. I would say that similar factors feed into those assessments, but a determined liability in any given one doesn't necessarily have implications for others.

The Hon. Dr SARAH KAINÉ: No, of course, as Uber will attest.

LIAM NILON: And they are all somewhat different in terms of the Fair Work Act or any of those other potential liabilities.

The Hon. CHRIS RATH: It's not really that payroll tax specific. I was more interested in the NDIS and some of the problems that have been well ventilated in the media over the last 12 months or so. Does the platform you run give comfort to clients that they will be getting a higher standard of provider where some of the bad providers are weeded out and where they don't need to navigate the NDIS website? They might end up getting a dodgy provider. I assume there are, as you mentioned before, these additional checks beyond the existing checks that the NDIS already requires. You've got an additional standard above that. Is that one of the benefits? Is that why people would use the platform?

EMMA CLARK: My point to that, which also was a point in one of Dr Kaine's questions earlier, is that about half of the delivered care—currently there is about \$480 million a year of delivered care going through the Mable platform—is disability services. To the earlier point, in terms of the regulatory environment and disability, a person can choose to contract off platform, through a platform, through a direct employment arrangement—in a multitude of ways. Obviously, Mable is a low-cost platform, but there still is that 16.6 per cent charge. The fact that you've got \$200 million worth of service delivery through the platform I think is effectively proof that there are certainly a cohort of those 750,000 NDIS clients who very much value the protections that Mable brings. Frankly, they're prepared to pay for those protections.

The Hon. Dr SARAH KAINÉ: Can I ask a question which is related? Does Mable hire workers to aged care or disability providers as opposed to individual clients?

LIAM NILON: I would say that under no circumstances does Mable hire workers. There would be the language of employment.

The Hon. Dr SARAH KAINÉ: Sorry, say that again.

LIAM NILON: Under no circumstances does Mable hire workers.

CORRECTED

The Hon. Dr SARAH KAINE: Sorry, I didn't mean to say "hire". Do you facilitate the use of Mable contractors to aged care or disability providers as opposed to individual clients?

EMMA CLARK: Only where the registered provider is representing the client. If we go back to our original example of Mavis and her getting her Support at Home package, Mavis must select a registered provider to administer her funds. The invoice for that particular service will go to the provider—like UnitingCare, for example—for Mavis as the participant. It's coming from Mavis's package; it's just that the registered provider is effectively holding Mavis's funding.

The Hon. Dr SARAH KAINE: The invoicing and the fees still work the same.

EMMA CLARK: Correct. No change.

The Hon. Dr SARAH KAINE: There is no charge through to whoever that aged care or disability—

EMMA CLARK: No.

LIAM NILON: I would also add, just for your context, that in the NDIS it's not unusual for NDIS participants to use a plan manager.

The Hon. Dr SARAH KAINE: I know. I've got someone in my family on NDIS.

LIAM NILON: Or a support coordinator. Those people can also interact with the platform, as appropriate and permitted under the regulations, but the contract always exists with the client.

The Hon. Dr SARAH KAINE: What you're saying is those providers act a bit like support workers or coordinators in that they assist whoever is in the home or in the care facility with accessing a care worker.

EMMA CLARK: They're intermediaries for the client. They're effectively acting as an agent for the client to be able to—

The Hon. Dr SARAH KAINE: In the same way that a support coordinator would be.

EMMA CLARK: Absolutely, yes. But there is no difference at all in terms of Mable's pricing model. Ultimately, the costs are borne by the client.

The Hon. DAMIEN TUDEHOPE: I think the core of your primary submission is that your model is such that if in fact payroll tax was imposed on your model of contracting, then it may make the business unviable. Is that correct?

EMMA CLARK: Yes, it may as a second- or third-order consequence. I think the primary consequence would be that, in most cases, people would be getting less hours of care, which would then make using the platform less attractive to them. Over time, does that make our business unviable? Yes. To your earlier question—the keeping me up at night and suddenly getting hit with an assessment—

The Hon. DAMIEN TUDEHOPE: It was Mr Rath's question.

EMMA CLARK: Yes. There is no ability to go and recover that from a contractor or go and recover that from a client. That definitely would—

The Hon. CHRIS RATH: If it's retrospective, in particular.

EMMA CLARK: That retrospective would definitely pose an existential risk.

The Hon. DAMIEN TUDEHOPE: So, effectively, the thrust of that argument is not so much that the law might be wrong but that we ought, as a matter of public policy, because of the service that you provide, provide an exemption for the sort of platform that you operate.

LIAM NILON: Yes. I would say our evidence here today is twofold: By our reading of the Act, we don't believe we should be captured, because the relationships on the platform do not at all resemble employment. But I also appreciate that other people have other opinions. We would say, as a public policy matter, it would be in the interests of this Committee to recommend in favour of a broad-based exemption for independent contractors working in health care.

The Hon. DAMIEN TUDEHOPE: Do you accept, though, that the some of the larger scale medical practices have similar sorts of arrangements to what Mable does, in that the invoicing is done by the head administration but each individual doctor runs their own practice with their own clients.

LIAM NILON: I do, and I accept that there's a precedent whereby the New South Wales Parliament has granted an exemption.

CORRECTED

The Hon. DAMIEN TUDEHOPE: They got a carve-out if they got 80 per cent bulk-billing.

The Hon. Dr SARAH KAINE: I thought it was 85.

LIAM NILON: For contrast, 90 per cent of all supports on the Mable platform are Commonwealth funded.

The Hon. DAMIEN TUDEHOPE: That gave rise, of course, to the intervention by the Government as a matter of public policy. They wanted to be able to keep those medical practices.

LIAM NILON: We would argue that it's in the interests of both workers and clients for a similar thing to be considered here, keeping in mind that one of the great things about Mable—one of the reasons I've chosen to work here, as a member of the Labor Party—is that contractors are able to earn, on average, above award rates, which I think is admirable.

The CHAIR: Thank you very much to Mable. We very much appreciate your submission and you taking the time today to give evidence. I don't think there were any questions taken on notice.

The Hon. DAMIEN TUDEHOPE: Yes, lots.

EMMA CLARK: Yes, there were two.

The CHAIR: Apologies for that. We will be in contact through the secretariat in due course to get some answers on those. There is an extended period for providing those answers because of the Christmas break. Once again, thank you very much for your submission and for coming here today to give your evidence.

(The witnesses withdrew.)

CORRECTED

Ms MARISSA SANDLER, Chief Executive Officer and Co-founder, Careseekers, affirmed and examined

Ms LAUREN HOCKLEY, Co-founder, Careseekers, affirmed and examined

The CHAIR: I welcome our next witnesses. Do you have an introductory statement you'd like to make?

MARISSA SANDLER: Thank you, Chair and members of the Committee, for the opportunity to appear at this inquiry and hearing today. Careseekers is an online platform connecting individuals and families with aged-care and disability support workers. Around 70 per cent of our activity relates to the NDIS and 30 per cent to aged care. We are a small business operating on very thin margins in a highly regulated area. Careseekers operates using an independent contractor model. We chose this deliberately and sought legal advice to ensure it was structured as a genuine contractor arrangement. The workers on our platform operate under their own ABNs, set their own rates, choose which work to accept and contract directly with the people they are supporting.

We provide platform infrastructure including insurance, invoicing and payment facilitation, and we do this for a small fee to ensure that workers retain the majority of what they earn and that public funding stretches as far as possible. We've always acted in good faith. We have an internal finance team, an external CFO, and our accounts are audited annually by a reputable mid-tier accounting firm, William Buck. At no point were we advised that payroll tax might apply to payments made by the independent contractors on our platform. Like many small businesses, we understood payroll tax to apply to wages, not these genuine contractor arrangements.

In October 2023, we were notified by Revenue NSW that we would be audited. We were told the specialist team had been established to review care platforms, and that a broader position on care platforms would be taken. The audit was paused for a period of time following the Supreme Court decision in Uber, and later recommenced. In April 2025, we were advised that Careseekers was liable for payroll tax on all contractor payments, with a five-year retrospective liability of more than \$900,000, once penalties and interests were included. We are expected to pay this liability, despite having lodged an objection. As you're aware, the High Court granted special leave to appeal last week in Uber. Even with a payment plan, the amounts we've been advised potentially may be required in each instalment would likely resolve in insolvency for a small business like us.

We recognise the importance of funding public services and want to be part of a fair and sustainable solution. The issue for us is the retrospectivity in the context of an ambiguous law. The current payroll tax legislation in its application to platforms like ours is not clear. Many small compliant businesses, advised by lawyers and accountants, have not understood that payroll tax could apply to genuine contractor models. Retrospective application in these circumstances doesn't change behaviour; it simply destroys small businesses. We're asking for clarity, prospective reform and fairness, not an outcome that penalises small businesses that acted in good faith. Having been through the process, we also have a number of suggestions around the current exemptions that we would like to raise during our question time, particularly relevant to the NDIS and aged-care sector.

The Hon. DAMIEN TUDEHOPE: I noticed you sat through the whole of the evidence of Mable Technologies. Is your platform much different than theirs?

MARISSA SANDLER: No. It's very similar. One point—and maybe it's just a clarification point, because I don't know exactly how Mable operates—in terms of that concept of the contractors writing a contract, which I think was Dr Kane's question, ours works a little bit differently. There's a blank templated document which, through a process of negotiation between the care recipient or their representative—it is usually a representative—and the worker, that template is filled in. It covers areas like what are the rates that are going to be charged? What are the days/hours worked?

Having said that, if there's a change to that—if they decide, "Oh, no, I'm going to come on a Tuesday"—it's okay. It's not set in stone to abide by everything in this contract. That's probably the only point that I would want to raise that is different. But it operates in the same way that people come to the platform to search for workers who we've vetted. They connect. They use our platform to message initially. The payment is facilitated through the platform—so very similar. One other point of difference: We are an NDIS-registered provider. So sitting on top of us as a business is that level of compliance that we have to meet. My most recent understanding is that Mable isn't an NDIS provider.

The Hon. DAMIEN TUDEHOPE: Although they do put all their contractors through an NDIS screening check. You would've heard them say that.

MARISSA SANDLER: Yes. There's so much compliance in terms of being an NDIS-registered provider.

CORRECTED

The Hon. DAMIEN TUDEHOPE: I must say that if you had given evidence first and they were sitting behind you, you'd have to think that they'd be pretty nervous about what would happen in relation to them being audited, wouldn't you?

MARISSA SANDLER: Yes. And they are aware that we have been audited.

The Hon. DAMIEN TUDEHOPE: One of the things that they've put to us today is that there should be a specific exemption for the healthcare industry, whether it be aged-care or NDIS providers—and, potentially, the medical industry as well, or medical service providers. I notice you didn't make a written submission to the inquiry, but is that your position?

MARISSA SANDLER: We're in a different position in that we are facing a tax liability that we're unable to pay.

The Hon. DAMIEN TUDEHOPE: I get that, but in terms of a policy position, would you say that you should be an exempt provider?

MARISSA SANDLER: I can see the benefits in us being exempt. We've gone through some of the hours, where we worked out if a person—I can name a few of the hours if you give me a moment.

The Hon. DAMIEN TUDEHOPE: How many employees do you have, by the way?

LAUREN HOCKLEY: We've got eight employees.

MARISSA SANDLER: What we worked out is that for somebody on a level 4 home care package who wanted to remain at home, with the imposition of payroll tax and the increase in the hourly rate, they would potentially lose 73 hours of care a year. A family supporting a child with a significant disability—we just used an NDIS package of \$100,000—would lose potentially 115 hours of support. We absolutely can see the benefit in carving that out, especially given that it is all government funded and all the support's on our platform. Our first point, though, is real concern about the retrospective nature of the application.

The Hon. DAMIEN TUDEHOPE: I'll come to that. That's the second arm of your potential argument—that as a matter of public policy, you potentially should be exempted. But because at the moment you've now got a bill from Revenue NSW and that covers previous years—I think you did say that you obtained legal advice at some stage about whether you had exposure for payroll tax.

MARISSA SANDLER: Can I talk to two points on that? The first is, when we first set up Careseekers, we really wanted it to be a contractor model. I'll explain why. I've worked in human rights law, women's rights and disability at a community legal centre for the past five years. In that role, I saw very strongly how wonderful it would be if there was a platform in place that allowed families to choose their support workers. I was representing parents who had their child being taken away from them because of their disability. A challenging part of that was putting in place a good support worker who could make an arrangement work.

It was so challenging when you'd call an agency and they would send a different worker every single day. I just thought that if the client could choose the worker themselves, this would be really different. Through all of those experiences, I also met many informal carers who were experiencing the financial difficulties that particularly women face when they are not in the workforce because they are caring for someone. The fastest growing group in poverty is older women. They're very anxious about going back to the workforce. With this idea of being an independent contractor, they can duck in and out. If that doesn't work for them, they're not obliged to an employer.

That really held an appeal. There was a role for it, like what Mable was saying. There's a role for all different types of businesses. This was the business model we wanted to choose. We got initial legal advice around making sure we were setting up a genuine contractor model. That was the first piece of legal advice we obtained. We didn't obtain legal advice around payroll tax. It did not occur to us that it would apply to this genuine contractor arrangement. In the past few years, as our staff has grown, William Buck has mentioned to us, "You are fast approaching the payroll tax threshold, so be aware of that." But they were talking directly in relation to our eight employees. Those are the two pieces of legal advice that we have received.

The Hon. DAMIEN TUDEHOPE: So the model of your business was never the subject of advice for the purposes of payroll tax?

MARISSA SANDLER: No, never.

The Hon. DAMIEN TUDEHOPE: Consequently, the retrospectivity aspect of it probably came as a bit of a shock. As a matter of policy, have you applied for a waiver of the penalties and interest?

CORRECTED

MARISSA SANDLER: Where we're up to is we've lodged our objection—which apparently was quite unusual, even before they've decided our objection—for our view on penalties and interest.

The Hon. DAMIEN TUDEHOPE: You have sought a waiver.

MARISSA SANDLER: We're in the process of seeking a waiver, but it doesn't look like we necessarily meet—we'll obviously put in that William Buck did mention that. But the payroll tax, it's 2020 to 2023, the retrospectivity. They didn't mention it in the documents in those years because we were a much smaller team. We are trying to put together a submission to get it waived. Of the close to 900,000, 800,000 is the principal, and then currently we have about 40,000 in interest and 50,000 in penalties, and that's not including interest and penalties for 2024-25. Just because of the timing, they haven't come to us with that yet.

The Hon. DAMIEN TUDEHOPE: Would you be asking for this Committee to make a recommendation that where payroll tax is imposed as a result of a court determination which had not previously identified the organisation as being subject to payroll tax, there not be a retrospective application of that payroll tax?

MARISSA SANDLER: Absolutely, to give a business like ours—we operate on very small margins—a moment to make changes that we need to to our fee structure, to how we want to operate, and understand this is the landscape we're operating in and therefore these are the business decisions we're going to make. Then we know so that we're aware of the situation.

The Hon. DAMIEN TUDEHOPE: A lot of the evidence which you're now giving we've just heard from the previous witnesses. It's a very similar model to Mable, and I can understand the issues which you raise.

The Hon. Dr SARAH KAINE: Thank you for appearing. I'm very sympathetic, Ms Sandler, to the reasons you were describing about the need for direct care and the flexibility it gives women who are carers to undertake paid work, so I am sympathetic to that aspect of it. I guess there are a couple of questions, and it does echo a little bit of what we've heard already. I just wanted to be sure, because Mable obviously is—I think there's private equity involved there. But you're also a for-profit business. It's a for-profit business, and you would engage, I'm presuming, accountants and others. While understanding that there were audits undertaken and then paused while court cases went ahead, prior to that case, there was also sort of a long history of cases of this tax being applied to businesses that had previously thought themselves to be exclusively contracting.

While we're kind of pretending—not pretending; that sounds too harsh. While we're talking about the Uber case as if it was ground zero for payroll tax being applied to contractors, there has been a series of cases over a period of time. I'm just wondering how even an accountant might not have said to you, "I'm just wondering if you've considered the potential payroll tax implication." I'm just wondering because then necessarily it's not just you and you've engaged with professional people whose area this is. While you've said the legal advice didn't come through, is there anyone else who you sought business advice from?

MARISSA SANDLER: When we went to William Buck—they're a very reputable mid-tier firm—they never advised us along those lines. It never occurred to us, and I appreciate what you're saying about those other cases. But for us, in a way, the Uber case was a bit of a ground zero. Being a platform, we've always been interested in how Uber does things. When Uber was going on, we actually did sort of go, "Okay, let's make sure based on what we know about Uber, if this is being impacted by payroll tax, could this happen to us?" We actually felt that it couldn't. We felt we are so different. The workers set their own rates. They choose who they work for. They directly negotiate. They do meet and greets. It didn't at all feel from a commonsense—and as things were evolving, we were looking at every Uber case as it was coming out and taking our set of circumstances and comparing it. Once we were aware—

The Hon. Dr SARAH KAINE: But, in saying that, that was you doing that internally.

MARISSA SANDLER: Yes.

The Hon. Dr SARAH KAINE: You didn't seek legal advice. You were kind of trying to benchmark against what you were seeing coming out of the courts.

MARISSA SANDLER: Yes.

LAUREN HOCKLEY: We're a small business. As you can imagine, legal fees are astronomical. We do surround ourselves with real professionals like accountants. They always had our compliance in that respect. We're also NDIS registered so we are always doing audits. As a small business, we try and be across everything, but we relied on our accountants, who would've told us this because they told us about everything else and all the changes to superannuation and the way payroll is done through one touch. Everything like that came through, so we were never worried that we were getting the wrong information in regards to our accounting.

CORRECTED

MARISSA SANDLER: Which, in a sense, further shows the ambiguity of what we were operating in, because they have pointed out other things to us. Maybe it wasn't clear to them either that it would have applied to us.

The Hon. Dr SARAH KAINE: So there's a sense that you understood that there was potential there for what you do to be interpreted by Revenue NSW, at the very least, post-Uber as being liable?

MARISSA SANDLER: Yes, so we, by doing our own internal checks, felt that this is where we were strongly different to it. Platforms are new, and it's this whole new way of doing business and running businesses.

The Hon. Dr SARAH KAINE: Could you just explain a little bit? It came up initially. You're an NDIS registered provider. That differs from getting NDIS checks on your workers, doesn't it? Could you explain a little bit what that is?

MARISSA SANDLER: Absolutely. I think there are 20,000 NDIS providers. No, sorry, there is, I think, 100,000 NDIS providers. I can take it on notice and give you the exact numbers. I think, of that, maybe 16,000 are registered. To be a registered provider, you actually have to go through a formal audit process. It's done by external auditors, who put the application into the NDIS commission, and they will say yes or no to you being NDIS registered. You have to be audited every three years, and there's a mid-term audit of every 18 months. The NDIS worker screening check is a new check that's been introduced across Australia. Previously, it's all been done on police checks, and what they wanted to introduce was a check that would be five years in its length of time that was transportable across all States and Territories, whereas here, if you moved from Victoria to New South Wales, you had to get a New South Wales worker screening check. Increasingly, the NDIS worker screening check is starting to replace—in the NDIS, it's regarded as instead of a police check, and in aged care there's a move to using one or the other. So they're actually quite different, the NDIS worker screening check and being NDIS registered.

The Hon. Dr SARAH KAINE: Thank you very much for that.

The CHAIR: Thank you very much for your evidence today. We very much appreciate it, and we do hear your concerns loud and clear. Were there any questions taken on notice?

The Hon. Dr SARAH KAINE: There were a couple that Ms Sandler kindly offered.

The CHAIR: The secretariat will be in contact in due course to seek a response to anything taken on notice. Again, thank you very much for your submission and for the evidence you've given today. It is heard loud and clear.

(The witnesses withdrew.)

(Luncheon adjournment)

CORRECTED

Mr BRYAN de CAIRES, Chief Executive Officer, Australian Security Industry Association Ltd, affirmed and examined

Mr CHRIS DELANEY, Workplace Relations Advisor, Australian Security Industry Association Ltd, affirmed and examined

Mr GEOFF ALCOCK, Managing Director, MSS Security, affirmed and examined

Mr ROSS LEVIN, Partner, Mills Oakley, before the Committee via videoconference, affirmed and examined

The CHAIR: I welcome our next witnesses. In accordance with the standing rules and orders of the Legislative Council, with the prior agreement of the Committee, Mr Ross Levin will be appearing as a witness in his capacity as a lawyer assisting MSS Security today.

BRYAN de CAIRES: Chair, Committee members, thank you for the opportunity to address the Committee today. I'd like to make four points, briefly. Firstly, Revenue NSW's current interpretation of payroll tax provisions is not aligned with either the law or the reality of our industry, which works across every aspect of the economy. Security services support our clients, but they are not part of the clients' core business. If you look at a supermarket, a university or a hospital, they do not operate in the business of security. Security companies supply a distinct, professional, regulated and licensed service separate from and external to the client operations. The security officers don't work in and for the clients' business.

Second, security personnel operate under a strict regulatory regime, the Security Industry Act, which requires a range of licensing requirements. Crucially, section 38 (1) prohibits licence holders from delegating security activities to unlicensed parties. This means clients cannot lawfully direct or control security guards in the way they would direct an employee. The security provider must, by law, retain operational authority at all times. This makes it impossible for security guards to be working in and for the business—the critical legal test for payroll tax employment agency provisions.

Thirdly, Revenue NSW has recently applied its own, in our view, unreasonably broad and novel interpretation of the employment agency provisions in the Payroll Tax Act. This interpretation treats licensed security providers as employment agents, even though the courts have consistently recognised that ancillary services, such as those provided by security, do not meet the threshold of being a part of a client's business. Numerous case decisions—Diverse Security Group, E Group, UNSW Global—make clear that the courts say that each case of whether a company is an employment agent is assessed on a fact-specific test, and the circumstances of licensed security services simply do not satisfy that test.

Fourthly, and lastly, we ask that you remove retrospectivity. Revenue NSW has issued assessments that retrospectively apply its new interpretation based erroneously on the trolley collectors case. This imposes millions of dollars in tax liabilities, penalties and interest on conduct that was confirmed by Revenue NSW as lawful and compliant at the time. This undermines the principle of legal certainty and places an unreasonable financial burden on security businesses. We also note that section 40 of the Act currently deems non-labour costs—overheads, admin and even profit margins—to be wages. We submit that this is inappropriate and inconsistent with the purpose of the payroll tax, and should be reviewed or removed entirely. Payroll tax should only be payable or levied on payroll. I'd now like to hand over to Mr Levin, who is a legal specialist, to provide a legal perspective on some of the issues. Then Mr Alcock will say a few words.

ROSS LEVIN: I'll just say three things, members, then Mr Alcock is actually going to give you six specific suggestions, and give them to you then also in writing, as to what we think needs to be done to create some fairness in what I regard as an extraordinary overreach by Revenue NSW in the approach it is taking across the State. The three things I'm going to say—I'll just first say the way that Revenue NSW is misusing its power is it's taking an easy shortcut approach. You've got the courts—when clients have the resources—to challenge the assessment. The courts apply a factorial test: Is the person integrated, like an employee, into the business? Like a trolley guy, where the supermarket's saying, "Go and collect the trolleys," the supermarket manager is running them, controlling them, telling them what to do. They are integrated into the business, and they're working in and for the supermarket. We get all that.

But what's happening is, in real life, this is now being applied to everyone across the State. There's no step being taken—this is my point—by Revenue NSW to actually assess what is happening for a particular employer. MSS is now facing five years of retrospective analysis based on some of its contracts that are then extrapolated to say, "Pay us 12 million bucks." There is no evidence to begin with, other than contracts, for some situations. Nothing is happening at Revenue NSW that applies the approach that the courts take to determining whether there's liability, because it's easy for them to do what they're doing. That should not be the way an organisation with such power—where the onus then falls on the employer, the security provider, to disprove it.

CORRECTED

Second of three things: They have a policy which I find legally extraordinary. There is a section—basically they say, "Let's just look at the total of the amount that you got invoiced by your subcontractor." MSS has a subcontractor company providing some security people. They say, "Just pay the payroll tax on the amount of the invoice." Their published approach is, in my opinion, legally—and other even more experienced people than me agree—completely inconsistent with the plain words of section 40 which, respectfully to Bryan, they don't say that you assess it based on the total of the invoice. It says, "Wages are to be assessed."

The plain words in section 40 (1) (a) should just assess payroll tax on the wages. It's got some wider wording than that but, in short, across New South Wales payroll tax, Revenue NSW is saying that just means everything. Anything associated with the provision of those services is included and you have to pay payroll tax on that. Fundamentally, to all lawyers like me, you go, "The fundamental purpose of payroll tax is paid on the wages." There's some slightly wider wording that has always been there, and now they're saying, "Assess it on everything." Workers compensation is included, the profit margin is included, leave entitlements, equipment, training and uniforms—things that have got nothing to do with what the payroll tax component is. That should stop. It's fundamentally wrong. They've used some cases that they say support this approach, but it's really quite extraordinary. We will certainly be challenging it, but we say that this approach shouldn't be continued.

The third and last point I want to make is that—I know it's a lawyer thing—when you look at what the legislation is there for, you look back to why it was introduced. Second reading speeches—you would obviously be aware of them. When this was introduced in 1985—and the wording is almost exactly the same; it has just continued on—there was a purpose for this coming in, and it is not anywhere near the purpose now being applied by Revenue NSW. The purpose was to stop people who would get a subcontractor and have just enough employees that those subbies don't reach the \$3 million threshold where you pay payroll tax—and then you get another one, and then you get another one.

So you are supplying a whole bunch of people providing services for us—it could be security or it could be cleaning; it could be anything—but no-one is ending up paying payroll tax. In 1985, when they saw that this was going on, they put in these provisions about, "We'll deem you to be an employment agent." But what has now happened over the years, in conclusion, is that that is not the approach that has been taken to the interpretation. It has got nothing to do with that. In fact, that is exactly what has happened with MSS. It engages subbies from companies who have already paid the payroll tax—they're paying it—and then we get told, "You've got to pay it because you're an employment agent."

Apart from the fact that they're not working for a supermarket or JB Hi-Fi—they're not integrated into that business, so it's quite apart from that—we say it has already been paid, and they don't dispute that. They just say, "That's how the legislation works. Section 41 says you have to pay it, because if you're the employment agent, you have to pay it." It's a double dip. Thank you for listening. Pardon my passion about this, but there's really something quite wrong going on, in my opinion, about the breadth of the power being exercised.

GEOFF ALCOCK: I absolutely concur with my colleague's view. I would like to give you six real-life—what I think are very reasonable and rational—recommendations to this Committee for its consideration. One, suspend all Revenue NSW assessments that are based on the so-called employment agency assessments until this Committee has had its chance to make its recommendations and those recommendations are acted upon; and, two, until the 2025 Nova Security case appeal is heard—noting that that is being appealed by Revenue NSW, having lost the original argument. Those two things are real-life events right now.

We suggest that no assessments are undertaken—all are suspended—until those things occur. I ask this Committee: Is it fair and reasonable that Revenue NSW ploughs ahead, making multimillion-dollar assessments based on a flawed interpretation of legislation, while this Committee sits, finds its recommendations, and there is an active appeal in place right now to that very Act? Two, eliminate retrospectivity of all payroll tax assessments until at least the trolley case date, which was in late 2023. Three, eliminate what is blatant double dipping—as Ross explained, double dipping by Revenue NSW. My company pays payroll tax on its wages. My subcontractors pay payroll tax on their wages.

The approach at Revenue NSW is, effectively, double dipping payroll tax for the very same employee. Four, ensure Revenue NSW employment agency-based payroll tax assessments look at the actual relationship between the client, my company and my subcontractor in and for—as Ross said—not just the total invoice value but to take it out for what it is. Actually make the effort to make the assessment worthwhile and accurate, as I said, looking purely at wages cost. Lastly, remove the security industry from employment agency based assessments. As Ross said, the original legislation was set up for a particular purpose. The security industry does not operate in that environment and does not operate in that methodology.

We would ask for those six things. I would suggest to you that, of those six very reasonable actions—and we'll provide this for you in written form, for your interest—five of those apply well outside the security industry

CORRECTED

world. Five of those are specific to every industry in New South Wales that's under this current regime, and the sixth one being the security industry in particular. We are coming to you on behalf of not just my company but on behalf of the security industry and, for what it's worth, other industries that are caught up in this regime. We would ask that you seriously consider those recommendations. We would also ask that you, if the opportunity arises, put those very questions to Revenue NSW because I would dearly love to hear their response to them.

The Hon. DAMIEN TUDEHOPE: I want to get some clarity in relation to what is going on here. MSS provides, say, security for a sporting event at Sydney stadium. The relationship between MSS and the security provided is an employment relationship.

GEOFF ALCOCK: Yes, it's generally a direct employee of ours. We employ something like 8,000 staff. We supplement our workforce with subcontractor staff, depending on the service requirement, geographs—

The Hon. DAMIEN TUDEHOPE: So you're already paying payroll tax in relation to the 8,000 security people that you provide for the purposes of the event.

GEOFF ALCOCK: Correct.

The Hon. DAMIEN TUDEHOPE: In those circumstances, why is there a concern in relation to an assessment which you've received?

GEOFF ALCOCK: There's the payroll tax that we pay our own staff, and the subcontractor that we may engage to provide supplementary services as well pays payroll tax on its wages.

The Hon. DAMIEN TUDEHOPE: So a subcontractor that you go out to and say, "We don't have someone for this event"—and you might, for example, engage another firm to provide someone. You're concerned about getting an assessment based on the subcontract that you've entered into for providing that service.

GEOFF ALCOCK: Correct, on two fronts. It's actually three fronts, but on two fronts—one is the assessment now. Ross and Brian, please assist here if I get this slightly wrong. The assessment is based on the total invoice value from the subcontractor, only a portion of which is actual wages. So there's that point.

The Hon. DAMIEN TUDEHOPE: I know, I get that.

ROSS LEVIN: May I add, when you've got the subbie, and you've got—let's call it XY security. We engage them. They provide some other staff at the event that you're at.

The Hon. DAMIEN TUDEHOPE: These are not part of the 8,000.

GEOFF ALCOCK: No.

ROSS LEVIN: They're in addition.

The Hon. DAMIEN TUDEHOPE: These are additional people, over and above the 8,000.

ROSS LEVIN: They are.

The Hon. DAMIEN TUDEHOPE: You've received an assessment for those, have you?

GEOFF ALCOCK: Yes.

ROSS LEVIN: Yes. What we get told is—

The Hon. DAMIEN TUDEHOPE: What was the value of that assessment?

ROSS LEVIN: It was \$12 million.

The Hon. DAMIEN TUDEHOPE: Have you appealed that assessment?

ROSS LEVIN: Yes. We have objected, and we have said—the first stage, sir, is you object to the assessment, and then that's considered. But, in the meantime, you're still paying—interest is still clocking up.

The Hon. DAMIEN TUDEHOPE: Interest is still running.

ROSS LEVIN: What their argument is, sir, is that they would say, let's say it's at Optus Stadium, "Those people—your client—you are providing staff, in the form of subbies, that are integrated into Optus Stadium's business." We say that that is absolute nonsense. They are not working in and for Optus Stadium. They work for us. They don't report to them. They don't get told what to do by Optus Stadium supervisors. Their security licence people can only respond to directions that we give them. The Revenue NSW people say, "Look, we've looked at the contracts. We're not looking at what actually goes on on the ground." That is their approach—to look at the contracts. They say, "For all of those extra staff, even though X or Y security company has already paid payroll

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tax for them, you should be paying payroll tax." We go, "Hang on, payroll tax has already been paid." They go, "It doesn't matter. Sections 40 and 41 say you're the deemed employer. You've got to pay it."

The Hon. DAMIEN TUDEHOPE: Because they do answer to you, at the end of the day. Isn't that the argument that they would run—that they are subject to your direction and control?

ROSS LEVIN: No, what they're arguing, sir, is that those subbies are not answering to us, which would be fine, but are reporting to our client—to Optus Stadium. It's like the trolley collectors, where the argument was sustained that the people in the red vests and green vests who are out collecting trolleys for Safeway were integrated into the actual store's business, following what the supermarket was telling them to do each day, and were integrated and working in and for Safeway or in and for Woolworths or Coles, not working for the security company. You can understand why they would say that.

Whereas, for security people working in the same scenario, the store manager there or the particular person running the stadium would have no idea if the person is a subbie or not a subbie or an employee of MSS or not. We are just being told, "We are adding up all of your last five years; we say that when you engage"—and this is all of them, sir. This is what is extraordinary. They just say, "Five years, every invoice for all of the subjects." All of them, they say, were not reporting to MSS. These subbies were reporting to JB Hi-Fi or to Amazon or to all the places that we provide security.

The Hon. DAMIEN TUDEHOPE: With whom you did have a contract.

GEOFF ALCOCK: Yes, MSS does.

ROSS LEVIN: Yes. If you have a contract, you're being assessed.

The Hon. DAMIEN TUDEHOPE: The submission that you made relies heavily on the findings of Justice Ward in *E Group Security Pty Ltd v Chief Commissioner of State Revenue*. Do you recall the submission that you made?

ROSS LEVIN: Yes, that is absolutely correct, but they're even going beyond the trolley case.

The Hon. DAMIEN TUDEHOPE: But it goes further than that. There is an appeal from that decision, which you don't reference.

ROSS LEVIN: Yes, it came afterwards. There are a couple of cases that, after our written submission, went in favour of the security company, one of which was Nova. Again, the tribunal said these people were not working in and for the hotel where the security bouncers were. They were reporting to the security company, not to the actual hotel. They've appealed that. Obviously, they don't like the outcome. It's the same as the E Group case. It's the same as the Infinity case. What we're saying is that surely they should suspend assessments against security companies until the New South Wales Court of Appeal has heard that and decided it. They're pushing ahead regardless.

The Hon. DAMIEN TUDEHOPE: Mr Levin, I understand the point which you are making. In fact, I think the submission is clear that it runs along a number of lines in relation to whether the employment situation is correctly interpreted. It runs in relation to the manner in which it's being assessed in terms of the interest and penalties which are incurred. You're also arguing that assessing payroll tax in relation to an invoice is an incorrect measure of measuring payroll tax in terms of whether it's wages or not. I understand that argument completely. Mr Delaney, how many members do you have?

CHRIS DELANEY: We have approximately 2,600 members. Not all of those are working in what we call protective services. Some, of course, are members who provide technical services like CCTV and so on. But on the protective services side, I couldn't be certain of the number of members, but there would certainly be 60,000 to 70,000 employees in New South Wales.

The Hon. DAMIEN TUDEHOPE: Most of your members would be paying payroll tax, I assume?

CHRIS DELANEY: Absolutely.

The Hon. DAMIEN TUDEHOPE: As part of the requirement for membership of your organisation, do you take any steps to ensure that they do comply with their obligations to pay payroll tax?

CHRIS DELANEY: I'd have to defer to Mr de Caires on that.

BRYAN de CAIRES: We don't audit them for that. We did have a role of doing that up until about 2002, when there was a co-regulatory environment, when we used to do that on a regular basis with face-to-face audits. But that was removed and the legislation was changed, so the co-regulatory model was shifted.

The Hon. DAMIEN TUDEHOPE: You do have the ability to exclude tax avoiders?

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BRYAN de CAIRES: We have a range of different processes in place. If a member transgresses—whether it's a labour issue, whether it's a tax issue—we can take certain measures to suspend or expel a member. We do that. Not on an everyday basis, but multiple times a year, we will expel members.

The Hon. DAMIEN TUDEHOPE: I want to ask you about the MASG group. They've been in the news recently. You're aware?

BRYAN de CAIRES: They were, yes.

The Hon. DAMIEN TUDEHOPE: They're a member of yours?

BRYAN de CAIRES: Yes.

The Hon. DAMIEN TUDEHOPE: Have you taken any steps to have them excluded from your organisation?

BRYAN de CAIRES: We are bound by our constitution. We have taken a number of measures. We have a complaints and dispute resolution process, which we have commenced.

The Hon. DAMIEN TUDEHOPE: You've commenced that?

BRYAN de CAIRES: Absolutely. We will go through a process.

The Hon. DAMIEN TUDEHOPE: They were a sponsor of yours last year, were they not, at your awards ceremony?

BRYAN de CAIRES: Yes, we seek sponsorship to help fund those events.

The Hon. DAMIEN TUDEHOPE: And you'd be aware that the reporting in relation to this group involved tax evasion.

BRYAN de CAIRES: There are allegations of that. I suppose it needs to be stated: We're not the regulator. There are a number of regulators across different jurisdictions who are tasked with regulating the industry, whether it's tax office, labour hire authorities or security industry regulators. But we certainly have taken measures to instigate—we have a disciplinary committee, which is investigating the matter as we speak.

The Hon. DAMIEN TUDEHOPE: As I understand some of the reporting in relation to this particular security company, it is alleged to have run a large, unofficial workforce of thousands of migrant workers through front companies using corrupt payroll firms. Workers are allegedly underpaid and denied entitlements and set up, as said, to minimise or avoid tax—front companies who reportedly collapse when the ATO seeks recovery, and directors then disappear or refuse to cooperate. Are you aware of that allegation?

BRYAN de CAIRES: Absolutely. But we have a constitution, which we have to follow, which is the due process, and we are going through that process as we speak. As far as I know, no State or Territory regulator has taken action.

ROSS LEVIN: I think we've discussed this with ASIAL, and ASIAL doesn't support breaches of any laws by any of its businesses. There are rogues in all industries. These people have had allegations. They appear to be rogues. We've got to give them due process about their membership. But what we're here about is the interpretation of the Payroll Tax Act. People like this are not going to affect how the Payroll Tax Act works. They are alleged to have had just an appalling series of breaches, but they're entitled to due process.

The Hon. DAMIEN TUDEHOPE: Thanks for that, Mr Levin. Aren't you coming along here today asking this Committee to give consideration to the security industry as an industry which we should be giving special cognisance of in relation to its liability for payroll tax? Against that background, I want to put some of this material to you to comment on in respect of the way the security industry works in terms of its obligations relating to payment of payroll tax.

ROSS LEVIN: In the proposals that are going to be given to you in writing, I can tell you that you will see at the end of it that, in Mr Alcock's proposal, it actually specifically says, "However, it excludes anyone involved in tax avoidance." We are not seeking a blanket exclusion for everyone in the security industry, and we specifically have proposed that there be that exclusion so that they can be properly prosecuted.

The Hon. DAMIEN TUDEHOPE: What's the test that you would apply?

ROSS LEVIN: I can read out the specific exemption that I've recommended for cases of fraud, any scheme of a pyramid subcontract, and anti-avoidance of any payroll tax.

The Hon. DAMIEN TUDEHOPE: Who monitors that? Does ASIAL? Does your organisation monitor that?

CORRECTED

ROSS LEVIN: No, of course not.

BRYAN de CAIRES: We don't have the authority.

ROSS LEVIN: A membership association belonging to any club, or any membership association belonging to AIG, doesn't mean that they haven't got rogues. The point is we condemn any cases of illegality, but specifically what we're saying is the security industry should be protected from assessments other than where Revenue NSW determines there's a case of fraud or any scheme that's a pyramid subcontract or any attempt to avoid payroll tax. We've carved those out because we share your view about how no-one should be excluded from assessment where they are doing the wrong thing.

The Hon. Dr SARAH KAINE: Just jumping in from Mr Tudehope's question, I'm a bit confused, because how would you prospectively include those companies that you thought might be engaged in those practices? I don't understand. If you were seeking to exclude companies that were engaged in that kind of illegal or poor practice, how would that—

The Hon. DAMIEN TUDEHOPE: I think they're asking for an exclusion generally for their industry as part of the legislation.

The Hon. Dr SARAH KAINE: Yes, but then, as I understood it, you were arguing that that exclusion wouldn't apply to bad actors. But how would you know in advance who the bad actors were so that they wouldn't get the benefit of that exclusion?

The Hon. DAMIEN TUDEHOPE: So don't give them the exclusion.

ROSS LEVIN: The way it works is exactly how it works now for the Income Tax Assessment Act, for your tax, for anyone's tax and for any liability in the employment world. When it comes to the attention of a regulator that something has been done wrong, they don't get excluded. Right now, the assessments being done by payroll tax in New South Wales are being done on the basis of where they say payroll tax ought to be paid. In this case, if they come across a rogue actor they say, just like they do now, "You are not part of the overall exclusion because we have determined"—right now, they've got the power to include everybody. What I'm saying is give them the power where they determine it, just like the anti-avoidance provisions for all of our income tax. If you're involved in what Revenue NSW says is fraud or not paying payroll tax by a scheme of pyramid payroll tax avoidance, that's exactly how it works. It's always prospective. You don't have a liability until you're assessed, and the cheats get caught by the regulator. But right now, they're going too far.

The Hon. DAMIEN TUDEHOPE: Let me ask you about getting caught by the regulator. MASG used student visa holders in ways that allegedly breached their visa work limits and potentially migration law. Internal rosters and visa records show student visa guards on sites such as Coles, Amazon and Geelong Grammar working up to seven days a week, despite visa rules allowing only 48 hours a fortnight. One insider described a deliberate system where subcontractors funnel cash payments and rotate payroll companies annually to hide GST and tax fraud, and to exploit workers in breach of visa conditions. How does the security industry monitor that?

The CHAIR: Who is your question to, Mr Tudehope?

CHRIS DELANEY: Can I jump in here? We do not have the power that regulators have. You've got labour hire licensing in Victoria, who have done nothing. You have LRD in Victoria, who provide licences to security companies. They have done nothing. You have the wage theft authority in Victoria, who has done nothing. And you've got the Fair Work Ombudsman, who've also done nothing. All of those groups have far more power than an industry association can wield. We are following a proper process, based on our constitution, to deal with allegations against a particular organisation—horrible allegations, as they are—and we must follow our constitution in that way. It is not our role to be the regulator. There are plenty of regulators that can do that.

The Hon. DAMIEN TUDEHOPE: Do you acknowledge that the issues which have been raised in relation to this company which has been exposed raise serious questions about the governance and risk management in the sector generally?

CHRIS DELANEY: No. I acknowledge that they create serious concerns about a particular organisation, but not the industry as a whole.

The Hon. DAMIEN TUDEHOPE: Do you say that this doesn't exist anywhere else in the security industry?

CHRIS DELANEY: Of course it does. I would suggest that it probably exists somewhere in this building.

GEOFF ALCOCK: Yes, I would agree with that. I know what Chris is saying there. The allegations that I've read in those articles are damning and very, very worrying for the industry as a reputational thing. I support

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what Chris says in terms of the industry generally speaking. For the larger players that I'm aware of that I compete with on a regular basis, that's not an issue. But there are rogue operators and there will always be rogue operators. I would hate to think we all get tarred with the same brush. We are getting tarred with the same brush by Revenue NSW right now.

The Hon. Dr SARAH KAINE: That was an important line of questioning, but I want to jump back to get a better understanding of—I think Mr Alcock was talking about this—double dipping. One of the reasons I want to ask the question is because my understanding at the moment is a bit different, in that I thought that Revenue NSW had determined that they will sit the liability in the point in the chain that is closest to the end user, and that they didn't, when there's that chain of hire, go down and have that liability down the chain. I just wanted to check, because, given the example you gave, it sounded like you're suggesting that both you and your contracted business paid payroll tax on the same employees for the same contract.

GEOFF ALCOCK: I'll let Ross answer that, if you don't mind, and then I might come back.

The Hon. Dr SARAH KAINE: That's okay. I'm just trying to be clear, because that's not my understanding.

ROSS LEVIN: That is exactly correct. The way it works under the legislation is that it sits the way you described it. The person closest to the client pays. But what occurs in reality in cleaning and security across the State is that, because you don't get your assessment until later, the employer is employing its subbies and they pay their payroll tax. They assume as the employer that they have to, which they do. But what happens—and this is why it's so extraordinary and why there needs to be a legislative change here—is that they say to MSS, "The legislation says you have to pay, because you're at the top of the chain." So you're right. That is exactly the problem. We say that out of the \$9 million that we've been assessed, most of that is for invoices where almost all of it is for employees. The subbie, the person on the ground, has already had payroll tax paid by their employer that we engaged. Revenue NSW says, "Yes, but that's just how the legislation works. Bad luck."

We're here to assist you. What we say as a policy thing is, surely they should say, "Well, we've got a discretion here. We don't have to prosecute you and assess you. If we can see that we've already had all these employees' payroll tax paid already, we won't assess you." But they do anyway. That is the exasperation that all of the industries in New South Wales are currently facing. Revenue NSW just points to the legislation and says that the top person pays, the one closest to the client pays. We say, "You don't dispute that you've already had payroll tax paid." They go, "No, we don't dispute that. But that's not up to us. If you want to try to get that back from them, you can." Of course you're not going to be able to get it back.

The Hon. DAMIEN TUDEHOPE: In relation to that, though, when you make the allegation that they are double dipping, the subcontractor is in fact getting the benefit of a tax-free threshold, aren't they?

ROSS LEVIN: But everyone has it once, so everyone gets—

The Hon. DAMIEN TUDEHOPE: No. MSS will get its threshold, but the subcontractor, who you say has already paid the payroll tax, has got the benefit of a tax-free threshold. Effectively, the argument that you're making is that they've already paid the payroll tax. They haven't paid it at the same rate because they've got the benefit of a tax-free threshold, have they not?

ROSS LEVIN: If you're talking about it at the very tiniest margin, yes. The amounts we're talking about—that threshold of \$3 million at 4 per cent—that's not what's going on here across the State. What's going on across the State is we are engaging other employers with hundreds or thousands of staff who are way above the threshold. The threshold is not the issue here; it's double dipping. They're getting payroll tax from both. There is a tiny piece at the bottom of the threshold.

The Hon. STEPHEN LAWRENCE: I have one question for you, Mr de Caires, in relation to this MASG group. Are you investigating them in your internal processes in relation to anything that's occurring as a result of their contracts in Nauru?

BRYAN de CAIRES: No. We have no jurisdiction beyond Australia.

The Hon. STEPHEN LAWRENCE: It just occurred to me, as one of your colleagues spoke, that all the regulatory bodies that exist in Australia that you were talking about don't exist in Nauru. Is that correct?

BRYAN de CAIRES: Yes.

The Hon. STEPHEN LAWRENCE: There's a company that is primarily from Australia that's operating in Nauru. If they're misconducting themselves here, they're doing it there as well perhaps. I'm sure you'd agree.

CORRECTED

BRYAN de CAIRES: I think they have a different structure in place there, but we don't cover that territory. One of the things that we've been pushing for for close to 30 years is to have nationally consistent licensing requirements, which would address the issues of getting rid of the access to a licence, which in New South Wales you can't if you're a student visa holder or a backpacker. You have to be a permanent resident or a citizen. We have been pushing for that for 20 to 30 years.

The Hon. STEPHEN LAWRENCE: But in terms of your internal processes and the way that you handle complaints, do you think that there might be cause to expand it to look at what Australian security companies do overseas? You might assume, for example, that regulatory bodies in Nauru might not be able to properly look at matters.

BRYAN de CAIRES: It's possible, but our constitution is based on Australia, not New Zealand and not Asia. We have a number of global companies that are members. We just do not have the remit to do overseas. We're not a huge corporation. We have 12 staff. We've got an industry where we have about 2,700 members, employing about 150,000 people. We are trying to hold all those to account.

GEOFF ALCOCK: It would be wonderful if we could.

The Hon. STEPHEN LAWRENCE: Couldn't you make it a condition of membership, though, that a company not misconduct itself outside of Australia?

BRYAN de CAIRES: We have a professional code of conduct. We have to go through a due process, and our constitution dictates what we have to do. We do have, as I said, a disciplinary committee, which is chaired by an independent legal expert. We go through a process. We do expel members every year, but we go through a process. It's not a kangaroo court; it is a due and fair process.

The Hon. DAMIEN TUDEHOPE: Are you accepting membership fees from this company still?

BRYAN de CAIRES: Every member has to pay membership fees.

The Hon. DAMIEN TUDEHOPE: So you're still accepting their fees.

BRYAN de CAIRES: They're still a member.

The Hon. Dr SARAH KAINE: Could I ask what percentage of the industry are members of yours?

BRYAN de CAIRES: Across Australia, there's about 13,000 security companies with a security licence of some form. New South Wales has about 6,000 of those. We have, as Chris said, about 2,500 organisations that are members. But in terms of value, that would be about 80 per cent of the industry by market value, not by number of companies.

The Hon. Dr SARAH KAINE: And the subbies, are they members or is it just that you lead for them? Does it go down the chain?

BRYAN de CAIRES: The majority of our members are SMEs. The nature of the industry, it's an on-demand service, so if there was a Lady Gaga concert last week, we'd need 300 or 400 guards for two or three nights, and they would not be needed for three or four nights and then something else comes up. It is an on-demand service. Occasionally companies will need to subcontract to supplement their workforce.

The Hon. Dr SARAH KAINE: What I'm trying to get at is if, for example, the MSAG was excluded from your organisation, would that mean anything for them in terms of their capacity to contract or do business?

BRYAN de CAIRES: Absolutely, in some jurisdictions but not this one. But certainly in Queensland and the ACT membership of an association is a condition of having a licence, so the revocation or suspension of their licence would make them unable to operate in that particular jurisdiction. It was the case in New South Wales, but that was removed in 2002 when the co-regulatory approach was dismissed.

The CHAIR: Thank you, Mr de Caires. That ends the time for questions. We very much appreciate you appearing today to give evidence on behalf of your association and your companies, and for the submission that we have received from you. I don't think there were any questions taken on notice. Thank you very much for your attendance and your appearance today. It is much appreciated.

(The witnesses withdrew.)

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Mr PETER WHITE, AM, Managing Director, Finance Brokers Association of Australasia Ltd, affirmed and examined

The CHAIR: Mr White, welcome. Do you have some introductory remarks or an opening statement that you would like to make?

PETER WHITE: Through the Chair, if you see me go for my ear or my phone, my phone is connected to my hearing aid, so I may need to make an audio adjustment, but it's nothing more than that. My phone is on silent. By way of opening statement, I guess I'd like to read from this. The association was surprised to hear the initial ruling that has been brought down by the courts of recent, and particularly that would be in relation to the Loan Market Group, which is one that's now basically concluded, I guess. The characterisation of a broker providing services to an aggregator as a contractor runs completely counter to how the arrangements work and why they were created in the first place. To be clear, the relationship between an aggregator and broker is not structured to avoid tax or obligations of either party.

The arrangement is not a sham to circumvent employment laws. Aggregators provide services to brokers. Aggregators exist to help self-employed brokers, of which there is currently around and just over 22,000, have access to a wider range of panel of lenders so that brokers can provide services to their clients. Brokers find the client and have a direct relationship with each one. Aggregators have no relationship with the individual clients of the brokers. They merely provide mechanisms for which brokers can lodge applications to a wider range of lenders solely for the benefit of a client. After the mortgage broker best interests duty was legislated, the ability to lodge applications with a wider range of lenders became even more crucial. Mortgage brokers must hold accreditations with multiple lenders to be able to comply with the best interests duty obligations under the NCCP Act.

Without an aggregator, every broker would need to be credited with every lender for who they want to be able to recommend loans. Historically, lenders required individual brokers to pay to become accredited and thereafter submit a minimum number of loans every month, quarter or year to maintain that accreditation. If a broker did not lodge enough applications, they would lose their accreditation and have to pay to become re-accredited. Naturally, an individual broker trying to hold accreditations with many lenders would be under tremendous pressure to place enough applications with each lender to keep their accreditations. Aggregators help brokers comply with this very important obligation by maintaining accreditation with each lender and then permitting brokers to lodge loan applications on behalf of the broker's customers. Thank you.

The Hon. CHRIS RATH: In terms of these aggregators, you argue that the brokers are essentially the customers of aggregators. Is that right?

PETER WHITE: Yes.

The Hon. CHRIS RATH: Could you explain that relationship a little bit more, how that works, and why Revenue has a different interpretation of that?

PETER WHITE: That piece, I don't know if I can answer, but—

The Hon. DAMIEN TUDEHOPE: Do you want to take it on notice?

PETER WHITE: Yes. I can't really determine why Revenue NSW are making the determinations they're making.

The CHAIR: You're taking the part about Revenue NSW on notice, not the part of the mortgage brokers.

PETER WHITE: The relationship, or the interactions, if you like, with the aggregator and the brokers, the brokers are actually submitting loans on behalf of their clients, not on behalf of the aggregator's client. It's not Peter White Home Loans or Finsure Group Home Loans. It's Peter White Pty Ltd Home Loans. The aggregator doesn't come into it. It's not a party to it. It's a mechanism to be able to supply the loans or supply loans into specific lenders. It's not the other way around. The brokers are not providing the service to the aggregator.

The Hon. CHRIS RATH: How long have mortgage brokers used aggregators? How many years?

PETER WHITE: It's interesting. I'm into my forty-seventh year in this industry, in banking and finance in Australia. I was involved in some of the early businesses that got involved in aggregation, and so in its very early stages, it was around the late 1980s, but more so as we stepped into the early '90s.

The Hon. CHRIS RATH: In the late '80s and early '90s, mortgage brokers start to use aggregators, but from that point until, I assume, the Loan Market case, the working assumption from the industry is that you were not liable for payroll tax in that instance. That was the assumption that mortgage brokers had?

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PETER WHITE: I think it was more than assumption. The industry—we were not involved in this; I'm speaking from knowledge rather than being in the middle of it—engaged the likes of PwC to make sure they are meeting their obligations in an appropriate manner and making sure that they are paying their taxes, whatever that may be. Their guidance, from my understanding, was that, "You are meeting your obligations. You're not liable for payroll tax."

The Hon. CHRIS RATH: That was the auditor's—

PETER WHITE: Viewpoint, yes.

The Hon. CHRIS RATH: So up until the Loan Market case, you didn't have any reason to believe that you might become liable for payroll tax in the future?

PETER WHITE: No, I don't believe so. I established the first RAMS Home Loans offices back in 1993. I know there were discussions, although I wasn't directly involved in them, around were contractors employees or were they contractors. It was deemed by the mechanism that company went through at the time that they were truly contractors and not employees. That was a long time before that, or the time before that.

The Hon. CHRIS RATH: Has Revenue NSW given any advice to your members about what has been the impetus for this change? Or have they just essentially said, "Here's your bill"?

PETER WHITE: As far as I'm aware, they've simply said, "Here's the bill," and that's why industry is very concerned about it. It's not just, "Here's the bill."

The Hon. CHRIS RATH: "Here's your retrospective bill."

PETER WHITE: We are looking retrospectively in the loan market back to 2012, so it's a significant bill. We're saying, "Wait a sec. As far as we're concerned, from an industry point of view and from a business point of view, we are compliant to our obligations." None of them are out to avoid paying their tax—and they pay their tax handsomely, as much as they want to complain about it, but that's the way life is. It's been that way since that period of time. It was a shock when this started to come down, in my opinion. Remember—as an industry association, I am not in the middle of this, so I am looking at it from my perspective.

The CHAIR: Just a bit of history, Mr White. You said that aggregators emerged in the 1980s—

PETER WHITE: Late.

The CHAIR: Late 1980s, but at whose behest—was it the lenders or the brokers?

PETER WHITE: It was the lenders.

The CHAIR: So it actually was from the lenders' point of view?

PETER WHITE: What happened around that time was the broking market was starting to grow. We had the banks try to shut various things down, but at the same token they found that they needed to work with them—the problem, though, becoming, as things started to scale, it was a lot for the actual institution to handle. They then encouraged this idea of an umbrella group, an aggregator, to funnel things through to give them greater capabilities to manage the volumes that had got to their end. So it was largely technology, education and training based, and then the lender would push down the commissions back through their portals and then they were distributed out.

The Hon. CHRIS RATH: You wrote to the Premier's Department in April 2024, which is a large part of your submission. Did you receive a response?

PETER WHITE: No.

The Hon. CHRIS RATH: No reply? Have you written to anyone else, Revenue NSW or Treasurer, Premier?

PETER WHITE: Premier, yes. Once this went to court, the people who were at court said, "Hey, step aside for a bit. We've got King's Counsels, Queen's Counsels involved. They're arguing the case. Let them run it." So we stepped back a bit but we put our position paper back then, which I have copies of here if others don't have a copy of it, together with some research data, if it's of interest. We hadn't made any further submissions. I had spoken with the Premier at a small function—I think it was about six weeks ago—and then I received the invite to be here.

The Hon. CHRIS RATH: So you represent 13,000 finance and mortgage brokers. What proportion of the—is it an industry or profession? It's sort of both, isn't it?

PETER WHITE: It's an industry, I guess.

CORRECTED

The Hon. CHRIS RATH: What proportion of the industry—

PETER WHITE: As of this morning my memberships team advised me we just crossed the threshold of 13,800 members. The industry itself, based on some research I have here for you if you want it, there is as of September this year over 22,002 individual brokers in Australia. When we look at our membership numbers, we look at it from a natural persons point of view. Many brokers have companies. We don't count that in our membership number; it's purely a natural person piece.

The Hon. CHRIS RATH: So basically Revenue NSW wasn't correctly enforcing the law for 30 years and they've only just started to enforce it—and retrospectively—or they've changed their view, they've changed their interpretation?

PETER WHITE: Correct. This is a part of the challenge. The industry says, "If we are out of lockstep, regardless of the advice we got, if the actual law stated something and we weren't compliant to it, why wasn't this addressed many years ago?" Back to 2012—this is where the fee collection revenues that they are chasing or have been paid. Why is it now? Why wasn't it all that part back in time. Of course, everybody gets a little bit nosy about it—"Oh, we're trying to pay for the pandemic," and all this sort of stuff. The reality is, if there was a problem, it should have been dealt with ages ago.

If there's a change in law or in legislation, we're all big enough to understand that this happens. But the appropriate and fair thing is to say, "We are drawing a line in the sand. You may not like this,"—and industry probably won't but they'll get over it—"There's a line in the sand. From now on it looks like this, and you're going to pay payroll tax. You've got 12 months, two years, to adjust," or whatever that time frame is. With 22,000 people in the industry, there's a lot of things that need to be worked through to make sure everyone's compliant because everybody wants to comply.

The Hon. CHRIS RATH: It might be difficult, except by way of example, but what's the scale of the retrospective payroll tax bill that a mortgage broker might need to pay?

PETER WHITE: I don't think I can actually answer that.

The Hon. CHRIS RATH: But it's considerable?

PETER WHITE: The bill to the aggregators—because this is a tax on aggregators; it's not on the broker. What happens is the aggregator passes it down the line, so it affects these 22,000 people who are all small businesses just trying to make a living. A lot of them are not just small businesses; a lot of them are microbusinesses. They are mum-and-dad businesses operating out of home. All of a sudden, there's enough complaints about the ombudsman's fees increasing or the levies increasing, and so on. This just adds to the quantum of that measure, makes it more difficult for these people. Misrepresentations in the media—these brokers don't earn millions of dollars. Most of them are on an average wage of about \$85,000.

The Hon. CHRIS RATH: If you could provide on notice maybe an example or two of a mum-and-dad mortgage broker company. They might have a couple of people, but they've been hit with whatever it might be. You don't need to disclose actual—

PETER WHITE: The only challenge is things are still not out of court, so the end determinations are still up in the air.

The Hon. CHRIS RATH: If you can.

PETER WHITE: I should be able to get a quantum measure for you on those and come back to you.

The Hon. DAMIEN TUDEHOPE: In the RAMS home loan example that you used, RAMS was like the aggregator. Is that correct?

PETER WHITE: RAMS was very unique in its time. It was the first true non-bank lender. They were securitising and raising bonds out of the capital markets. They had more of a franchise network together with a broker distribution network as well. With the broker distribution network, it acted more like an aggregator because it wasn't enforcing just its own product.

The Hon. DAMIEN TUDEHOPE: Who was getting the payroll tax bill?

PETER WHITE: There was none at that stage.

The Hon. DAMIEN TUDEHOPE: If they were today?

PETER WHITE: It should have gone to RAMS.

CORRECTED

The Hon. DAMIEN TUDEHOPE: Effectively, RAMS would pay a payroll tax on the basis of all the brokers who it engaged for the purposes of providing—

PETER WHITE: Subject to that determination and what fell within the agreements as to—

The Hon. DAMIEN TUDEHOPE: It would then pay the fee to the broker. It isn't the individual broker who's getting the payroll tax bill. It would be the aggregator.

PETER WHITE: Correct. It's a tax on aggregation. It's not a tax on the individual broker, but it does get pushed down.

The Hon. DAMIEN TUDEHOPE: Since 2024 and when the Loan Market case was decided, have you got any figures on how many of your members have, in fact, received payroll tax assessments?

PETER WHITE: No, I don't.

The Hon. DAMIEN TUDEHOPE: Or audits?

PETER WHITE: I could investigate that for you. I don't have that number.

The Hon. DAMIEN TUDEHOPE: There is another case which is currently on appeal called Finsure.

PETER WHITE: Correct.

The Hon. DAMIEN TUDEHOPE: Are you aware of when that case might be decided?

PETER WHITE: The information I've been given is that it's probably going to take until September next year before it concludes. One of the things that's important—and I don't know if Revenue NSW has got their head across this—is not everybody's under the same agreement. One of the challenges for Loan Market was that within the diversification and structure of their business there were multiple entities, and some most certainly were liable for the payroll tax. That was in their franchise areas. That's a very different model to the vast majority of brokers in Australia, and the problem is the same brush has been tarred for everybody.

The Hon. DAMIEN TUDEHOPE: In fact, my understanding of the way the broking industry works is you go to a broker who will, potentially, access loans from multiple organisations, rather than just—

PETER WHITE: Correct. Unless it's a franchise. They may have different arrangements, but I'm not up to speed on the franchise model.

The Hon. DAMIEN TUDEHOPE: The franchise model is a different model. But the aggregator model, if it is funnelling it through one source only then, potentially, there is an argument that they are subject to the control of that—

PETER WHITE: This was expanded through the best interests duty legislation when it was enacted. We argued at a Federal level because, obviously, brokers are governed by the NCCP which is a Federal Act that ASIC sits as regulator across. It gave the ability for brokers to be able to give—and be governed by law to give—more options than just the one or the two. Although, there are some cases where there is only an option of one or maybe two that we gave to the legislators and back to Treasury at the time. It does give that broader depth of opportunity. The challenge, from my point of view—and the beauty of the best interests duty—is that there's not a requirement on the broker to deliver volume unless they're just not operating.

If they haven't written a loan for six to 12 months, they'll lose their accreditation. That's not volume based; that's risk based. The risk is they're not up to speed with the current requirements and credit policies of the lender so they shouldn't be, basically, using their product. It removed that conflict of interest of being driven by a volume necessity to be able to maintain your accreditation, which was not a good thing in the day when those things were happening. I'm very pleased we're past that.

The Hon. DAMIEN TUDEHOPE: So the submission you make to the Committee is that there should be an exemption for brokers?

PETER WHITE: Correct, yes.

The Hon. DAMIEN TUDEHOPE: How do you see that operating?

PETER WHITE: You need to change the law.

The Hon. DAMIEN TUDEHOPE: How would you draft the change, specifically for your industry?

PETER WHITE: I would have to speak to my colleague who's back in the office as to how we would draft that. I'm happy to take that on notice. I'm not a regulatory writer; I am the person who sits here to make comments—you get my meaning.

CORRECTED

The Hon. DAMIEN TUDEHOPE: The second representation you make is that, to the extent that there is retrospectivity involved in relation to assessments, that should be—

PETER WHITE: Excluded.

The Hon. DAMIEN TUDEHOPE: —not pursued in terms of giving people an opportunity in new industries to potentially get their affairs in order for the purposes of paying the payroll tax.

PETER WHITE: As I mentioned before, draw a line in the sand. But I can draft it for you. My colleague is ex-ASIC. He has written many regulatory policies for them in the past.

The Hon. Dr SARAH KAINÉ: I have a quick question in terms of the industry. Just to be clear, we've had submissions from a number of organisations that represent mortgage and finance brokers.

PETER WHITE: Yes, the MFAA, I'd imagine.

The Hon. Dr SARAH KAINÉ: I just want to understand if there is a difference. What you seem to be saying seems to be pretty much the same. I just wonder what the break-up was, or the difference.

PETER WHITE: I can only give it to you from my understanding. We've probably landed close to the same place. I think some of the logistics and logic that we applied to the reasons why are probably different. That is because the two associations come from a different place, if I can put it that way. We're known to represent the individual broker at the coalface, and we don't take sponsorship from major banks. The other side have lots of money that comes from the banks. That may sometimes change perspectives on things.

The Hon. Dr SARAH KAINÉ: That's what I wanted to understand—the difference in your associations.

PETER WHITE: That's why people choose one. I've worked hard over many, many years. I've been with the association since 2003 in some shape or form. But people need to have a choice, especially when you're talking about small business people. If you're in business for yourself, you want to make the choices of your own decision. You don't want to be dictated to by somebody saying, "You must do this; you must do that." I'm all about choice, and this gives choice.

We have that different underlying ethos as to how we go about things and how we approach things, but we're still united on the best interests of the industry—to make sure that it's professional. We went back through when we changed from the UCCC to the NCCP—because there were roads back then in the industry, through the late '90s and into the mid-2000s era, that led to the outcome in 2009 for the NCCP—to get rid of the holes in the fence, because people who want to do bad would just say, "That's okay. That's now too hard, so I'll just go this way because it's easier." We don't want those people in the industry, and we're all united on that.

The Hon. Dr SARAH KAINÉ: In terms of size or market share, in terms of your memberships and the MFAA, do you have any information about that?

PETER WHITE: Yes, I have information here in regard to market size. I've made enough copies for everybody, should you want them. In regard to market share, I can give you—I'd have to send it through separately—a recent piece of research that we've had independently done by a global research house called CoreData, who do a lot of our stuff, whereby the media and maybe the MFAA will tout that brokers are around 78 per cent market share. Unfortunately, their research is not all-encompassing of all loans that are done. They have missed—don't hold me to the exact number, but I think it is around \$27.5 billion worth of transactions in the banking system that brokers don't get to see. They could be internal changes and so on.

But with the presence of brokers, they should have the opportunity of that. It falls more in line with APRA's recent data that says it's around 62 per cent market share. There's nothing good or bad about that; it is just what it is. When the media gets hold of these numbers and says it has 78 per cent market share, the regulator gets a bit concerned that the risk level has gone through the roof and so on. The Ombudsman has started through AFCA. I think the current rate of total cases against mortgage brokers to the total case numbers they see is around 0.3 per cent.

We know the ASIC did an audit into the best interests duty about a year and a half or two years ago and stopped because they couldn't find anything. I even asked for the data that they'd collated to that point. They said, "Yes, we haven't even done that." They've reinstated that again, so that's already underway from earlier this year—that audit back of broker loan files under the best interests duty. So far—touch wood—there's nothing come ripping out of the market saying we have a serious problem here. I dare say our regulator, being the policeman and watchdog that they are, will go on to find something. I don't believe there'll be anything systemic, but there are probably things we need to tidy up. No-one's perfect, so we thoroughly expect that that will be the outcome, or something like that.

CORRECTED

The industry is actually very professional and one of the most highly regulated in the world. I actually sit on and founded what's called the IMBF—the International Mortgage Brokers Federation. I established that in 2016, between myself and Canada. It's a collaboration of six countries—and hopefully eight by the end of 2026—working to look at best practice, challenges and issues in mortgage broking through third-party distribution around the world, and we have the highest standards. I see that every day because they all say, "We don't want to come and work there." They liked how we survived the pandemic—that was a good point—but they didn't like the regulatory frameworks we got. From our point of view, we love it—bring it on. The more the better. Every time we've changed legislation, we have increased and improved our industry.

The CHAIR: Thank you, Mr White. There were a couple of matters that I think you took on notice and some documents that you'd endeavour to get to us.

The Hon. DAMIEN TUDEHOPE: There were three or so.

PETER WHITE: They will come through in the transcript, will they?

The CHAIR: Yes, they will. The secretariat will follow those up with you. We'll make sure they reach out and get those from you.

PETER WHITE: I have some other information here, if you want it, that I spoke about now. I've got them in hard copy should you want them.

The CHAIR: Yes, you can hand them around now. Thank you very much, Mr White. We appreciate your attendance today and the evidence that you have given the inquiry.

(The witness withdrew.)

The Committee adjourned at 15:00.