
Submission to the Parliamentary Inquiry on the Application of Deemed Employment Agency Provisions by Revenue NSW under the Payroll Tax Act 2007

By Building Service Contractors Association of Australia (BSCAA)

Introduction

The Building Service Contractors Association of Australia (BSCAA) ⁽¹⁾ has been in existence for over 60 years, beginning its journey as the Australian Cleaning Contractors Association (ACCA). BSCAA represents businesses in the building services industry, particularly in contract cleaning and contract security. It is widely regarded as the peak industry body for contract cleaning, with members employing thousands of cleaners in New South Wales.

This submission aims to address the aggressive application of the deemed employment agency provisions by Revenue NSW under the Payroll Tax Act 2007 and to advocate for a fair and reasonable resolution.

Purpose of Submission

BSCAA is making this submission to the Parliamentary Inquiry to highlight the significant issues arising from Revenue NSW's recent enforcement actions. Since December 2023, Revenue NSW has substantially increased its efforts to collect retrospective payroll tax payments under the deemed employment agency provisions. This has caused severe financial distress to many small and medium-sized enterprises (SMEs) in the cleaning industry. The submission seeks to demonstrate the shortcomings in Revenue NSW's approach and to propose solutions that will protect the interests of BSCAA members and the broader industry.

Historical Context of the Cleaning Industry

Contract cleaning is a relatively young industry. The first Award made by an Australian Employment tribunal in relation to contract cleaning was made by the Industrial Relations Commission of NSW in the early 1960s. The Miscellaneous Workers Union (now known as the United Workers Union) was represented in the Commission by Mr. N.K. Wran QC, who went on to become one of the longest-serving Premiers of New South Wales. The IBIS report ⁽³⁾ for the Cleaning Industry indicates that there are 38,000 cleaning businesses across Australia, involving 133,000 employees, of which 28.7% are in NSW. Cleaning is an essential but unheralded service for most businesses, so the rising cost of these services due to these deeming provisions is likely to have a significant inflationary impact.

The industry has a relatively low barrier to entry and is fiercely competitive as a result. The use of subcontractor labour has presented challenges for both the industry and the union. The usage of subcontractor labour became far more widespread as a direct result of the Global Financial Crisis (GFC) in 2008/9. Building owners and managers used the GFC to dramatically reduce the cost of cleaning, which in turn forced the industry to use subcontractor labour to remain viable on cleaning contracts where margins had shrunk to 3% of gross.

Interaction with the United Workers Union

The United Workers Union (UWU) has a long history of representing cleaners employed by cleaning contractors. The union represented cleaners when the first Award was made and continues to actively advocate for its members' interests. The pervasive use of subcontract labour has been a major issue for both the industry and the union. In 2024, subcontractor engagement in the industry was still substantial, which was a major reason why the deemed employment agency assault by Revenue NSW has been so damaging to the industry.

Impact on Members

BSCAA members are facing demands for substantial retrospective payroll tax payments, going back five years. These demands have pushed businesses towards insolvency. The aggressive pursuit of these payments is causing significant hardship for SMEs, which are crucial to the industry and the broader economy. The financial burden imposed by these retrospective payments is unsustainable for many businesses, particularly those operating on thin margins.

Medium-sized businesses have been receiving assessments of \$8 million to \$10 million. While Revenue NSW agrees to consider objections to its inflated assessments, business owners are still compelled to pay instalments of the amounts outstanding while Revenue NSW considers their decisions. This places an additional financial strain on businesses already struggling to manage their cash flow and maintain operations.

The potential insolvency of these businesses not only threatens the livelihoods of the owners but also has a ripple effect on the community. The likely loss of jobs will have significant economic consequences, affecting families and local economies. The loss of these businesses and jobs will reduce consumer spending, increase unemployment, and strain social services, leading to a broader economic downturn.

Legal Context and Issues

The deemed employment agency provisions are part of the **Payroll Tax Act 2007**, specifically outlined in Division 8 of Part 3 of the Act (7). These provisions were introduced to clarify the payroll tax obligations of employment agencies and ensure that payroll tax is appropriately applied to wages paid to workers provided by these agencies.

However, this clarity has not been achieved. From 2016 to January 2025, there have been twelve (12) separate court decisions on the interpretation of these provisions, with inconsistent outcomes. The landmark case, Chief Commissioner of State Revenue v Integrated Trolley Management Pty Ltd [2023] NSWCA 302, has further complicated the issue by supporting an extreme interpretation that affects a wide range of service providers (2). The Integrated Trolley Management decision, handed down on 13 December 2023, affirmed that virtually any provision by any service provider to any client on any grounds could be deemed an employment agency (2).

This broad interpretation has significant implications for the cleaning industry and other sectors that rely on subcontractor labour.

Previous Audit Outcomes by Revenue NSW

In 2017, several medium to large cleaning contractors underwent audits by Revenue NSW and were found to be fully compliant with existing regulations. However, in a shocking and unprecedented turn of events in 2025, these same contractors have been abruptly reclassified as employment agencies solely due to their use of subcontractors. This reclassification has occurred despite no changes in the underlying laws, highlighting a drastic and unexpected reinterpretation by Revenue NSW. This reinterpretation has led to substantial and onerous retrospective demands, placing immense financial and operational burdens on these businesses. The contractors now face severe and unforeseen liabilities, which could potentially jeopardise their financial stability, disrupt their business operations, and threaten their very survival.

Communication by Revenue NSW with the Industry

Many cleaning contractors were taken aback by Revenue NSW's approach, as they received unexpected emails regarding investigations and assessments. These communications included demands for five years of retrospective payments. The surprise stemmed from the fact that Revenue NSW had not engaged with the industry or provided any prior notice about the new interpretation of the deemed employment agency provisions.

Revenue NSW's actions followed numerous audits, during which they identified common payroll tax errors in the cleaning industry. These errors often involved failing to recognize that cleaning contracts could be classified as employment agency contracts, leading to significant underpayment of payroll tax. Despite these findings, Revenue NSW did not proactively communicate with the industry to clarify the new interpretation or to provide guidance before issuing the retrospective payment demands. Any attempts at proactive communication came too late, leaving many contractors unprepared for the substantial financial implications of the retrospective assessments.

The impact and importance of the employment agency provisions were not communicated with adequate time, clarity, or relevant industry examples. This lack of early engagement and sudden enforcement left many cleaning contractors feeling blindsided and unprepared to address the significant financial impact.

Online Subcontractors Statement

The online Subcontractors Statement still inform taxpayers in writing that completing the statement relieves the principal contractor of liability for payroll tax. As of the date this submission was prepared, the online Subcontractors Statement (8), required by Schedule 2 Part 5 of the Payroll Tax Act 2007, indicates to the industry that signing this statement will, among other things, validate the subcontracting relationship and relieve the principal contractor from liability for payroll tax. This is notable because Revenue NSW does not consider this statement when determining whether an employer is classified as an employment agency. This discrepancy raises questions about the accuracy of the information provided.

Industry Impact and Legal Uncertainty

The cleaning industry is a vital component of the Australian economy, providing essential services to businesses, government institutions, and residential properties. The industry's low barriers to entry have enabled many small businesses to thrive, contributing significantly to job creation and economic growth.

However, the competitive nature of the industry also means that profit margins are often slim, making it particularly vulnerable to sudden increases in costs.

The retrospective application of the deemed employment agency provisions has imposed a significant financial burden on many businesses. The Integrated Trolley Management decision has effectively broadened the scope of what constitutes an employment agency, leading to increased payroll tax liabilities for businesses that were previously not considered employment agencies. This has resulted in substantial backdated tax assessments, which many SMEs are unable to pay without risking insolvency.

The legal uncertainty surrounding the deemed employment agency provisions has further exacerbated the issue. The twelve separate court decisions on the interpretation of these provisions have produced inconsistent outcomes, leaving businesses unsure of their obligations. The lack of clarity has made it difficult for businesses to comply with the law, leading to disputes with Revenue NSW and significant financial penalties.

The ongoing UBER case in the NSW Supreme Court highlights the continued legal uncertainty surrounding employment classifications and payroll tax obligations. In a recent ruling, the NSW Supreme Court determined that Uber was not liable for payroll tax on payments made to its drivers, as these payments were not considered "taxable wages" under the relevant contract provisions of the Payroll Tax Act 2007 (NSW) (3). This decision has significant implications for the gig economy and the classification of workers, raising questions about the applicability of existing tax laws to modern business models.

Adding to the complexity, a senior judge of the Supreme Court of NSW was critical of the Integrated Trolley Management decision, which involved the classification of payments to subcontractors for trolley collection services as "taxable wages" under the employment agency provisions. The judge's criticism highlights the inconsistencies in the application of these provisions, and his decision is now on appeal (2). This case underscores the urgent need for a comprehensive review of the deemed employment agency provisions to provide clear and consistent guidelines for businesses operating in diverse sectors.

The current legal framework fails to adequately address the nuances of modern employment relationships, leading to uncertainty and potential financial liabilities for businesses. A thorough review and reform of the deemed employment agency provisions are essential to ensure that the law keeps pace with evolving business practices and provides a fair and predictable regulatory environment. Such reforms would not only benefit businesses by offering clarity and reducing compliance costs but also protect workers by ensuring their rights and entitlements are clearly defined.

The ongoing UBER case and the appeal of the Integrated Trolley Management decision highlight the pressing need for legislative clarity. A comprehensive review of the deemed employment agency provisions is necessary to establish clear, consistent, and fair guidelines that reflect the realities of contemporary employment arrangements.

The BSCAA urges the Inquiry to recommend a review of the collection strategies employed by Revenue NSW. Historical precedents, such as the Robodebt scandal involving the Federal agency Family and Community Services, illustrate the severe consequences when government collection agencies do not maintain objectivity and proper purpose. The Robodebt scandal was marked by significant issues as the agency proceeded with assessments it knew were flawed.

In the current situation, Revenue NSW's stance against SMEs and large companies, despite the Supreme Court of NSW being divided on the matter, is causing significant distress. This approach is impacting businesses and individuals, leading to potential insolvency and loss of livelihoods. The resolution of Robodebt took years, and New South Wales cannot afford a repetition of such detrimental behaviour by a

government collection agency. It is imperative that these collection strategies are reviewed to prevent further harm.

The enforcement actions by Revenue NSW have had a substantial impact on the cleaning industry. Many businesses have been forced to consider liquidation. The financial distress caused by these actions is not only harmful to individual businesses but also to the broader economy. The loss of jobs and the potential closure of businesses will have a ripple effect, affecting suppliers, clients, and employees.

Health Sector Precedent: Supporting Our Submission

The Royal Australian College of General Practitioners (RACGP) has successfully advocated for significant concessions from state revenue departments across Australia, providing much-needed respite for businesses depending on their location. These precedents highlight the effectiveness of such measures and suggest that similar actions should be considered for New South Wales (NSW).

The Queensland Revenue Office has implemented a 2-year amnesty, ending on 30 June 2025, which allows practices ample time to review their circumstances and offers exemption from retrospective action. Their Public Ruling PTAQ000.6.2 further clarifies that no payroll tax liability exists if there is no direct payment to the practitioner, aligning with the initial ruling in the Uber case (9).

Similarly, Revenue SA has introduced a 1-year amnesty, ending on 30 June 2024, which provides exemption from retrospective action for those who apply. This measure ensures that businesses have the opportunity to comply without facing the financial burden of retrospective payments (10).

In contrast, Revenue NSW has only paused action for 12 months, until 30 June 2024, without offering protection from retrospective action (11)(12). This limited pause does not provide the same level of assurance and financial relief as the measures implemented in Queensland and South Australia.

These precedents provide the Building Service Contractors Association of Australia (BSCAA) with a strong basis to advocate for a similar pause in action by Revenue NSW. It is crucial for Revenue NSW to offer assurances against retrospective collections, ensuring that businesses are not blindsided by sudden financial demands. The impact and importance of the employment agency provisions should be communicated with adequate time, clarity, and relevant industry examples to allow businesses to prepare and comply effectively.

Recommendations

1. Immediate Cessation of Retrospective Collections

- **Action:** Revenue NSW should immediately cease the collection of retrospective payroll tax payments.
- **Rationale:** The cleaning industry can cope with change, but it needs time to adjust. This will provide relief to affected businesses and prevent further financial distress. The retrospective application of the law is particularly unfair given the lack of clarity and consistency in the court decisions.

2. Review and Clarification

- **Action:** Conduct a comprehensive review of the deemed employment agency provisions to provide clear and consistent guidelines.
- **Rationale:** The goal should be to achieve the clarity that the Payroll Tax Act 2007 originally intended to provide. Clear guidelines will help businesses understand their obligations and ensure compliance, reducing the risk of disputes and financial penalties.

3. Stakeholder Consultation

- **Action:** Engage with industry stakeholders to develop fair and practical solutions that support compliance without imposing undue burdens on businesses.
- **Rationale:** This consultation process should include representatives from the cleaning industry, legal experts, and other affected sectors. Involving stakeholders will ensure that the solutions are practical and address the unique challenges faced by different industries.

4. Support for SMEs

- **Action:** Implement measures to support SMEs in the cleaning industry, such as tax relief or payment plans, to help them adjust to any changes in the law.
- **Rationale:** SMEs are the backbone of the industry, and their survival is crucial for maintaining employment and service standards. Providing support will help SMEs manage their financial obligations and continue to operate sustainably.

5. Economic Impact Analysis:

- **Action:** Conduct an economic impact analysis to understand the broader implications of the deemed employment agency provisions on the cleaning industry and the economy.
- **Rationale:** Highlighting the potential inflationary impact and job losses will provide a stronger case for reconsidering the current enforcement approach. This analysis will demonstrate the significant economic effects of increased costs in the cleaning industry, which could ripple through the community and affect various sectors.

6. Amnesty and Concessions:

- **Action:** Advocate for an amnesty period similar to those offered in other states, such as Queensland and South Australia, to allow businesses time to review their circumstances and adjust to the new interpretations without facing retrospective action.
- **Rationale:** The precedents set by the RACGP's advocacy show that amnesty periods can provide much-needed relief and protection from retrospective collections. This approach will give businesses the opportunity to comply with the law without facing immediate financial penalties.

These recommendations are essential to ensuring a fair and balanced approach to enforcing the deemed employment agency provisions. They aim to protect businesses from undue financial distress, provide clarity and consistency in the law's application, and support the continued viability of the cleaning industry.

Conclusion

The BSCAA's submission highlights the significant issues arising from Revenue NSW's enforcement of the provisions for deemed employment agencies. The retrospective application of these provisions has created substantial financial burdens for many businesses, particularly SMEs in the cleaning industry. The lack of legal clarity and the inconsistent court decisions have further compounded the issue, making it difficult for businesses to comply with the law.

The Building Service Contractors Association of Australia (BSCAA) is concerned that the current approach by Revenue NSW may represent an overreach of authority. We request an immediate review of the collection strategies being employed. The BSCAA urges the Parliamentary Inquiry to recommend a more balanced and fair approach that considers the unique challenges faced by the cleaning industry. By doing so, the Inquiry can help protect the livelihoods of thousands of cleaners and ensure the continued viability of the industry.

Respectfully submitted,



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