

21 February 2025

The Hon Jeremy Buckingham MLC
Chair
Portfolio Committee No 1 – Premier and Finance
6 Macquarie Street
SYDNEY NSW, 2000

via email: portfoliocommittee1@parliament.nsw.gov.au

Dear Mr Buckingham

Application of the Contractor and Employee Agent Provisions in the Payroll Tax Act 2007

The Australian Small Business and Family Enterprise Ombudsman (ASBFEO) welcomes the opportunity to respond to the New South Wales Legislative Council Portfolio Committee No. 1 – Premier and Finance inquiry into the application of the contractor and employee agent provisions in the *Payroll Tax Act 2007* (NSW) (Payroll Tax Act).

Small businesses provide jobs for approximately 5.2 million Australians (or two out of five private-sector jobs), while self-employment allows 1.6 million Australians to earn a reliable income, while preserving autonomy and choice as to when and how often they work.

We are concerned that self-employed Australians are inadvertently being captured by the interpretation of the contractor and employee agent provisions in the Payroll Tax Act. This is causing confusion, uncertainty, and unnecessary costs for many small businesses, as they seek to understand the application of the law and whether they need to account for payroll tax.

Many of our stakeholders have expressed concern about the immediate consequences of recent court decisions in NSW for small businesses and independent contractors who provide services to larger businesses. Further, conflating employment with contracting may have the unintended lasting consequence of undermining legitimate self-employment, business-to-business contractual arrangements and entrepreneurship.

We urge the Committee to:

- consider if the objective of the Payroll Tax Act, as well as the contractor and employee agent provisions, are clearly and sufficiently defined for parties to interpret them with confidence
- recognise the sound and longstanding common-law distinction between a contract of service (employer-employee relationship) and a contract for services (principal-contractual relationship) – a distinction enshrined in the *Independent Contractors Act 2006* (Cth)
- take into account the adverse effects on the multitude of small businesses that may supply services to another organisation, or rely on platform providers to conduct their business, and the consequential cost, service and value implications for their customers.



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If you require further information, please contact the Advocacy team at advocacy@asbfeo.gov.au.

Yours sincerely

The Hon Bruce Billson

Australian Small Business and Family Enterprise Ombudsman