

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

The Australian Medical Association (NSW) Limited (**AMA (NSW)**) is grateful for the opportunity to make a submission to the Upper House inquiry into the Application of the application of the contractor and employment agent provisions in the *Payroll Tax Act 2007 (Act)*.

A. Executive Summary

1. AMA (NSW) is an independent medico-legal association that represents the State's medical profession. The strength of AMA (NSW) lies in its representative reach across the State's geographical zones and the profession's specialty groups, representing more than 8,000 doctors-in-training, career medical officers, staff specialists, visiting medical officers, specialists, and general practitioners in private practice.
2. As an organisation of employers AMA (NSW) is a registered industrial organisation under section 217 of the *Industrial Relations Act 1996* (NSW).
3. The mission of AMA (NSW) is to represent and advance the interests of medical professionals and patients through effective advocacy, being the State's peak medical-legal lobbying body.
4. Over the past six years, AMA (NSW) has worked closely with General Practitioners in relation to the issue of Payroll Tax and its impact on private general practice.

B. AMA (NSW) as a Stakeholder

5. AMA (NSW) has been a key stakeholder and advocate for medical professionals in relation to the imposition of Payroll Tax for medical practices.
6. In a letter dated 16 September 2020, then AMA (NSW) President, Dr Danielle McMullen wrote to the NSW Treasurer raising concerns regarding the imposition of payroll tax on medical practitioners in NSW following the Victorian decision of *The Optical Superstore Pty Ltd v Commissioner of State Revenue (Vic) [2019] VSCA 197 (Optical Superstore Case)*.
7. Since that time, AMA (NSW) has continued to work with other key stakeholders, including Revenue NSW, the NSW Treasury, and the Royal Australian College of General Practitioners (**RACGP**) and been part of the Working Group to ensure the concerns held by the medical professional are considered by the State Government.

C. The Relevant Case Law

8. The relevant case law has caused significant concern for medical practices and a sense of uncertainty regarding the application of Division 7 of the Act and what constitutes 'wages' under section 35 of the Act.
9. The relevant case law in this area is as follows:

The Optical Superstore Pty Ltd v Commissioner of State Revenue (Vic) [2019] VSCA 197

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10. The decision of the Victorian Court of Appeal affirmed the assessment of the Victorian State Revenue Office that the Optical Superstore, which owned and managed an optical store, was liable to pay payroll tax on monies paid to the optometrists who provided services to the general public using the facilities of the Optical Superstore.
11. The assessment was made on the basis that the Optical Superstore collected income from the optical sales and the provision of services (namely, providing eyes tests to customers) by the optometrists and paid a proportion of the income from the customers to the optometrists. The Victorian State Revenue Office found that the payments made to the optometrists represented payment for work performed under a 'relevant contract' which was affirmed by the Victorian Supreme Court.

Thomas and Naaz Pty Ltd v Chief Commission of State Revenue [2023] NSWCA 40

12. Thomas and Naaz Pty Ltd was a company operating 3 medical centres across New South Wales (**Applicant**). The Applicant entered into written agreements with medical practitioners to provide a room and access to shared services. Under the agreements, the Applicant processed the medical practitioners' Medicare Billings and collected payment for same into a bank account which was held in the name of the Applicant. Under the terms of the agreement, the Applicant retained 30% of the monies collected by way of a service fee and remitted the remaining 70% to the medical practitioner.
13. Following an assessment by Revenue NSW, it was determined that the written agreements between the Applicant and the medical practitioners were 'relevant contracts' for the purposes the Act and that the payments made to the medical practitioners were made 'for or in relation to the performance of work relating to a relevant contract'. Therefore, the monies paid to the medical practitioners were deemed to be 'wages' for the purposes of payroll tax.
14. The matter was first heard by the NSW Civil and Administrative Tribunal (**Tribunal**) which confirmed the assessment made by Revenue NSW and found that the written agreements between the Applicant and the medical practitioners were 'relevant contracts' under the Act. They also confirmed that the payments made to the medical practitioners constituted wages pursuant to section 35 of the Act, as the payments were made in relation to the performance of work under a relevant contract.
15. The matter was appealed to the NSW Court of Appeal which was later dismissed on the basis that there was no error of law in the previous decision of the Tribunal. However, in their judgment the Court of Appeal noted that the medical practitioners engaged by the Applicant who had received patient funds directly into their own bank account were not subject to the provisions under Division 7 of Part 3 of the Act.¹ At paragraph 73, Leeming J said:

[73] It may be that persons operating other medical practices have adopted similar administrative arrangements whereby medicare benefits which have been assigned by patients to the practitioners are collected by the operators of the centre and distributed to the practitioner. It may readily be seen how this might suit the operator (which will not have to rely upon the efforts of a practitioner to process claims and remit a percentage entitlement to the operator if the position resembles that in the present case). However, taking that course runs the risk of the deeming provisions in Division 7 of Part 3 of the Act being engaged. As is clear from the position of the three practitioners who processed their own claims for medicare benefits, there is a ready mechanism to avoid that result which is available.

¹ *Thomas and Naaz Pty Ltd v Chief Commission of State Revenue [2023] NSWCA 40* at 73.

Uber Australia Pty Ltd v Chief Commissioner of State Revenue [2024] NSWSC 1124.

16. The decision of the NSW Supreme Court considered the provision under Division 7 of the Act and whether the monies paid to drivers under a contract with Uber Australia Pty Ltd (**Uber**) constituted 'wages' under section 35 of the Act.
17. Revenue NSW had made an assessment that the monies paid to drivers under relevant contracts should be considered 'wages' as the contract between Uber and the driver, required the driver to perform work, including performing the trip requested by the rider and rating the rider following the trip.
18. Uber appealed that assessment to the NSW Supreme Court, which determined that the contracts between Uber and the drivers were considered 'relevant contract' under the Act as the services provided by the driver were for or in relation to the performance of work. However, despite this finding, Hamerschlag CJ found that the monies paid to drivers were not deemed wages under section 35 of the Act, as Uber made the payments to the drivers in their capacity as a 'payment collection agent' in respect of the rider's obligation to pay the driver. The amounts paid to drivers were not paid by Uber 'for or in relation to the performance of work' provided by the driver to Uber. AMA(NSW) understands that no further Appeal has been filed in relation to this matter.

D. PTA041 Payroll Tax Act - Relevant Contract - Medical Centres

19. On 11 August 2023, Revenue NSW issued ruling *PTA041 Payroll Tax Act - Relevant Contract - Medical Centres* which sought to provide guidance to medical centres in NSW following the *Optical Super Store* decision (**Ruling**)².
20. The Ruling sets out that a contract between a medical practice and a medical practitioner is considered a relevant contract under section 32 of the Act if a practitioner carries on a business of providing medical services to patients and in the course of conducting its business, the medical practice provides:
 - a. members of the public with access to medical services; and
 - b. engages a practitioner to supply services to the medical practice by serving patients on its behalf.
21. The Ruling also sets out the exemptions under the Act which may be applicable to contacts between a medical centre and a practitioner which includes:
 - The practitioner provides services to the public generally (**Public Service Exemption**);
 - The practitioner performs work for no more than 90 days in a financial year (**90 Day Exemption**); and
 - Services are performed by two or more persons.³
22. The Ruling specifically states, that amounts paid or payable under a relevant contract by a medical centre constitutes wages for payroll tax purposes if the payments are in relation to the performance of work relating to the relevant contract which is consistent with the *Optical Superstore* and *Thomas and Naaz* decisions.

² Revenue NSW, *Payroll Tax Act - Relevant Contract - Medical Centres* PTA041, 11 August 2023

³ *Payroll Tax Act 2007* (NSW), ss 32(2)(b)(iv), (iii), (c)(i)

E. Current Position in NSW

23. On 18 June 2024, when delivering the 2024-2025 State Budget, the NSW State Government announced a series of legislative amendments to the Act which were aimed at providing relief from payroll tax for medical centres who engage General Practitioners as independent contractors.
24. The Commissioner of State Revenue later released a Practice Note explaining the amendments which were introduced under the *Revenue Legislation Amendment Act 2024 No 83* (NSW).
25. The relief provided to NSW medical centres included the introduction of:
 - a legislated exemption for any unpaid payroll tax that was payable on wages paid or payable to General Practitioner contractors under a relevant contract prior to 4 September 2024 (**Unpaid PRT Liabilities Exemption**).⁴
 - a legislated rebate for payroll tax on wages paid or payable to GP contractors on or after 4 September 2024 when certain conditions are met (**Bulk Billing Rebate**)⁵; and
26. The NSW Government confirmed the additional relief is intended to supplement the existing exemptions under the Act available to medical practices, including the 90 Day Exemption and the Public Service Exemption.⁶

Unpaid PRT Liabilities Exemption

27. Any unpaid payroll tax that was payable on wages paid or payable to General Practitioners under a relevant contract prior to 4 September 2024 are exempt from payroll tax liabilities.
28. Although the additional relief provided for under the Unpaid PRT Liabilities Exemption and the Bulk Billing Rebate and are not applicable to Non-GP Specialist medical practitioners, AMA(NSW) and its members are comfortable with the position for Specialists as the Public Service Exemption and / or the 90 Day Exemption under the Act are typically applicable to Non-GP Specialists.

Bulk Billing Rebate

29. Medical centres that engage General Practitioners and meet prescribed bulk billing thresholds may be eligible to claim a rebate on wages paid or payable to General Practitioners under a relevant contract.
30. In order to claim the Bulk Billing Rebate, medical centres located in Metropolitan Sydney must bulk bill at least 80% of their GP services. Whereas for medical centres located in other areas, only 70% of their GP services must be bulk billed to attract the Bulk Billing Rebate.
31. It is AMA (NSW)'s understanding that the Bulk Billing Rebate is in the form a repayment to a medical centre once the applicable payroll tax has been paid.

F. The Position in Other Jurisdictions

32. Across Australia, following the decisions in the relevant case law, a number of jurisdictions have adopted differing positions in relation to the imposition of payroll tax on medical centres.

⁴ *Payroll Tax Act 2007* (Cth) sch 2 cl 10D

⁵ *Payroll Tax Act 2007* (Cth) sch 2 cl 10C

⁶ *Payroll Tax Act 2007* (NSW), ss 32(2)(b)(iii), (iv)

33. For completeness, we have included a brief summary of the position of each state below.

Victoria

34. The Victorian Government legislated an exemption from payroll tax for wages paid or payable to contractor and employee General Practitioners in relation to bulk-billed consultation from 1 July 2025.⁷
35. Medical practices in Victoria were also provided with relief in relation to outstanding and future assessments issued for payroll tax on payments to contractor General Practitioners for any period up to and including 30 June 2024. For the period up to 30 June 2025, general practice businesses who have not obtained advice regarding their payroll tax liability by 22 May 2024 may also be eligible for relief in relation to payments made to General Practitioners.

South Australia

36. The South Australian Government initially introduced a 5-year retrospective amnesty for medical practices who engage General Practitioners. However medical practice were required to apply for the amnesty and if successful are not required to pay tax on payments made to contracted General Practitioners between 1 July 2018 and 30 June 2024.
37. A legislated exemption from 1 July 2024, only applies to 'relevant wages' of a General Practitioner and is calculated based on the proportion of bulk billed items relative to the total number of billed items by General Practitioners. The overall percentage deducted is then applied against the medical practice's total annual General Practitioner wages bill.

Australian Capital Territory (ACT)

38. The ACT Government confirmed that it will waive any potential payroll tax liabilities for medical practices which have not paid payroll tax on payments to General Practitioners up until 30 June 2023 due to the general lack of awareness regarding potential payroll tax obligations.
39. In addition to the waiver of historical liabilities, the ACT Government is providing a temporary payroll tax amnesty until 30 June 2025. The amnesty is only available to medical centres (Practices) who engage General Practitioners and bulk bill at least 65% of services, are registered for MyMedicare and registered to receive the amnesty by 29 February 2024.

Queensland

40. On 12 December 2024, the *Revenue Legislation Amendment Bill 2024 (Bill)* was introduced to the Queensland Parliament which proposes to amend section 14 of the *Payroll Tax Act 1971 (QLD)* to include an exemption on wages (defined to include amounts paid or payable under a contract for labour) paid by a medical practice to a General Practitioners.⁸
41. On 6 December 2024, Queensland Revenue Office released its fourth Public Ruling which specified that all wages paid by a medical practice (other than a hospital) to a contracted or employed General Practitioner are exempt from payroll tax from 1 December 2024.⁹
42. The Queensland Government has also confirmed in its Rulings that payments made directly by patients to individual practitioners will not be considered liable for payroll tax. That is, the

⁷ *State Taxation Further Amendment Act 2024 (Vic)*

⁸ Revenue Legislation Amendment Bill 2024 (QLD) cl 28

⁹ Queensland Revenue Office, *Payroll tax exemption for wages paid to general practitioners* PTAQ014.1.1, 6 December 2024

Queensland Ruling specifically states that such payments are not wages for the purposes of the relevant legislation.

G. Role of a General Practitioner

43. AMA (NSW) would like to emphasise that due to the role a General Practitioner has in relation to the care and treatment of patients and the ongoing nature of the relationship a practitioner builds with a patient, they are limited in their ability to provide services from multiple locations or provide services to patients for less than 90 days in a relevant year at a particular medical practice. This means General Practitioners are unlikely to qualify for the Public Service Exemption and/or the 90 Day Exemption under the Act which typically may be available to Non-GP Specialists.

H. Group Practices

44. General practitioners are encouraged and incentivised to work in group practices, including by the Federal Government and Regulatory bodies. However, the uncertainties surrounding the imposition of payroll tax creates significant concern for medical practices and whether or not working in group practices is financially viable for General Practitioners and medical practices.
45. The Federal Government provides General Practice Incentives, including the Practice Incentive Payments (**PIP**) and the Workforce Incentive Payments (**WIP**) to eligible medical practices.
46. Medical practices engaging General Practitioners can be eligible to receive PIP payments in relation to certain categories such as providing after hours services, teaching and quality improvement.
47. WIP payments are also provided to eligible medical practices with aim to build a sustainable and high-quality workforce, particularly in rural and remote areas. The amount a medical practice receives in relation to WIP payments is dependent upon the practice size, the type of health professional, and the average hours worked by the health professional.
48. Further, regulatory bodies such as the Medical Council of NSW, encourage Doctors to work in group practices as it facilitates peer support and ensures doctors do not become professionally isolated from their colleagues. Group practices provide real and direct benefit to patients as well by ensuring continuity of care for patients when their regular GP may be on leave or urgent care is required and the patient's regular GP has no availability to see the patient on an urgent basis, there are others who can provide care with ready access to the patient's records and history.
49. The imposition of payroll tax on medical practices in relation to contractor General Practitioners undermines the incentives (financial and otherwise) for General Practitioners to work in, and medical practices to conduct, group practices.

I. Conclusion

50. In circumstances where the Queensland Government is legislating a payroll tax exemption for all General Practitioners in medical practices, AMA(NSW) calls on the New South Wales Government to replicate the arrangement in New South Wales to avoid the potential loss of general practices and General Practitioners in New South Wales where there remains uncertainty regarding payroll tax liability on General Practitioner contractor arrangements.

51. AMA (NSW) is happy to provide further comment should the Inquiry request same.

A handwritten signature in black ink, appearing to read 'Fiona Davies', with a stylized flourish at the end.

Fiona Davies
Chief Executive Officer
7 February 2025