

## Kosseck, Nicola

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**From:** Julie Mills <julie@apscoau.org>  
**Sent:** Wednesday, 22 November 2017 4:44 PM  
**To:** Kosseck, Nicola  
**Cc:** 'Elliott, Anna'  
**Subject:** RE: Questions taken on notice 19 Oct 2017 - EEYA Insecure Work Inquiry - APSCO [SEC=UNCLASSIFIED]  
**Attachments:** ACT Revenue Office Interim Response\_Sept13.pdf; Template Letter for Contractors 03082012.docx; ITCRA revised stat declaration 1.10.13.docx

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

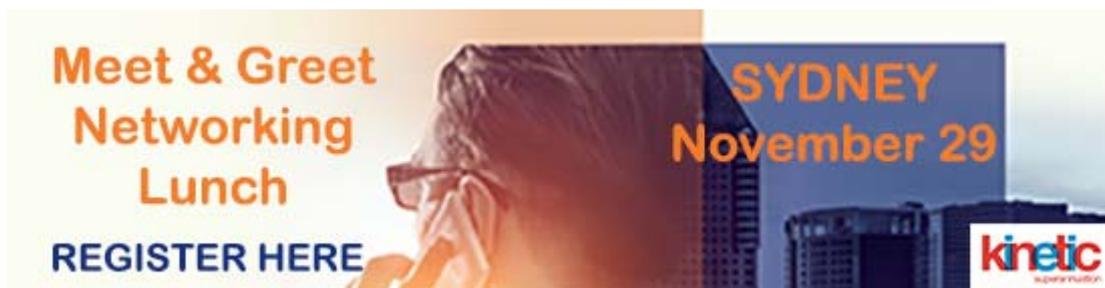
**Categories:** Insecure Work Inquiry

Thank you Nicole. Please see attached. There are many documents related to this subject but the key is that we worked closely with the ACT Revenue Office to ensure contractors financial situation were not put at risk by retrospective regulation. The success of this process ensured that no-one was at a disadvantage when the changes were implemented. This is a case study of the Association's commitment not only to its members but also the contractors and the clients and agencies who depend on their relationship with APSCo members to maintain their business continuity.

Regards

 **Julie Mills**  
*Managing Director*  
**APSCo Australia**  
p: +61 3 8622 4700 m: 0437 771 616  
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**From:** Kosseck, Nicola [mailto:Nicola.Kosseck@parliament.act.gov.au]  
**Sent:** Friday, 10 November 2017 12:18 PM  
**To:** Julie Mills <julie@apscoau.org>  
**Subject:** RE: Questions taken on notice 19 Oct 2017 - EEYA Insecure Work Inquiry - APSCO [SEC=UNCLASSIFIED]

Thanks Julie. Next week is also fine.

**Nicola Kosseck** | Committee Secretary | Standing Committee on Education, Employment and Youth Affairs | Office of the Legislative Assembly for the Australian Capital Territory | P 02 620 50435 | E [LACommitteeEEYA@parliament.act.gov.au](mailto:LACommitteeEEYA@parliament.act.gov.au)

Please note I am not in the office on Wednesdays.



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**From:** Julie Mills [<mailto:julie@apscoau.org>]

**Sent:** Friday, 10 November 2017 12:13 PM

**To:** Kosseck, Nicola; Julie Mills; 'Elliott, Anna'; [anna.elliott@squirepb.com](mailto:anna.elliott@squirepb.com)

**Subject:** Re: Questions taken on notice 19 Oct 2017 - EEYA Insecure Work Inquiry - APSCO [SEC=UNCLASSIFIED]

Thanks Nicola. I am out of the office so will aim to provide over the weekend.

Julie

Sent from my HTC on the Telstra Mobile network

----- Reply message -----

From: "Kosseck, Nicola" <[Nicola.Kosseck@parliament.act.gov.au](mailto:Nicola.Kosseck@parliament.act.gov.au)>

To: "Julie Mills" <[julie@apscoau.org](mailto:julie@apscoau.org)>, "'Elliott, Anna'" <[anna.elliott@squirepb.com](mailto:anna.elliott@squirepb.com)>

Subject: Questions taken on notice 19 Oct 2017 - EEYA Insecure Work Inquiry - APSCO [SEC=UNCLASSIFIED]

Date: Fri, Nov 10, 2017 12:08 PM

Dear Ms Mills and Ms Elliott

Thank you for your participation in the public hearing into Insecure Work for the Standing Committee on Education, Employment and Youth Affairs on 19<sup>th</sup> October.

At the hearing you indicated that you would provide the Committee with some history on payroll issues. I have included the extract from the Proof Transcript below to indicate the offer for more information. If you could please forward me that information I will circulate it for the Committee.

**Extract:**

**MR WALL:** *I am curious about some changes to payroll tax a couple of years ago that heavily affected your industry.*

**Ms Mills:** *Yes, the whole industry.*

**MR WALL:** *Given that we are talking about insecure employment—given the nature of employment that most of your members engage in—what impact did a regulatory change like that have on them and ultimately their take-home pays?*

**Ms Mills:** *That was the historical piece of payroll tax legislation that had been sitting around for a very long time—20 years, I think, from history.*

**MR WALL:** *Yes. It was intentionally designed and written that way; that is my understanding.*

**Ms Mills:** *Yes. It was to bring ICT talent into the ACT; there was a reason for it. What impact did it have in the beginning? It was done retrospectively and with a short turnaround. This is probably where it is well demonstrated that the association is helping and ensuring that everybody is treated fairly. I was in the middle of that for two years. I am not sure where your history is, but you probably know that.*

*When that was announced retrospectively it was extremely difficult and extremely concerning to the contracting space. Suddenly there was no payroll tax issue for them. Look at the history of those charts in this report. **The history is not here, but I can easily provide it to you.** In any of these reports, ACT contracting always had a much higher*

*salary than in any other state or territory because of that payroll tax. When that happened, all these people who had housing loans and other costs suddenly saw their take-home pay change because of the payroll tax issue.*

Please let me know if you have any questions.

Regards

Nicola Kosseck

**Nicola Kosseck** | Committee Secretary | Standing Committee on Education, Employment and Youth Affairs | Office of the Legislative Assembly for the Australian Capital Territory | P 02 620 50435 | E [nicola.kosseck@parliament.act.gov.au](mailto:nicola.kosseck@parliament.act.gov.au)  
Please note I am not in the office on Wednesdays.



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**ACT**  
Government

**ACT Revenue Office**

ABN: 45 096 207 205

Our File No:  
Your File No:

Ms Julie Mills  
Chief Executive Officer  
Information Technology Contract & Recruitment Association Ltd  
Suite 3, Level 3  
343 Little Collins Street  
MELBOURNE VIC 3001

Dear Ms Mills,

**Information Technology Contract and Recruitment Association Limited – (ITCRA) Payroll Tax Act 2011**

Since our meeting late last year, I have reviewed the meaning of *individuals* in schedule 2, part 2.3, subsection (g) of the *Payroll Tax Act 2011*. The ACT Revenue Office view is that *individuals* refer to both the plural and singular. We will review all published material to ensure it is consistent with this view 

In relation to the other key issue raised by ITCRA, with respect to requirements for compliance, I can confirm that this office will accept a statutory declaration testifying that the subcontractor is a 'genuine employer' made in lieu of other documentation not being available  however, the employment agent must be satisfied that the subcontractor is a 'genuine employer' under subsection (g). Some relevant factors to be taken into consideration in determining that the subcontractor is a genuine employer include whether:

- The subcontractor deducts income tax for its employees;
- The subcontractor pays workers compensation payments;
- The subcontractor pays the superannuation guarantee benefit for its employees;
- The subcontractor provides and maintains equipment used by the employees.

This list is not exhaustive and other factors may be relevant to determine whether the subcontractor is a 'genuine employer'. The employment agent must consider carefully what assurances they are willing to accept from the subcontractor and must be confident that the subcontractor could prove that they are a 'genuine employer'  it is found that the subcontractor is not a 'genuine employer', payroll tax could be payable by the employment agent.

Yours sincerely

Kim Salisbury  
Commissioner for ACT Revenue

26 September 2013

# Summary of Comments on ACT Revenue Office Interim Response\_Sept13 (002).pdf

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- ⇒ Number: 1      Author: JMills      Subject: Sticky Note      Date: 27/09/2013 12:47:37 PM +10'00'

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This was a key point of clarification to assist Members.
- ⇒ Number: 2      Author: JMills      Subject: Sticky Note      Date: 27/09/2013 12:50:20 PM +10'00'

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Members are reminded this evidence is essential in an audit and a consistent process must be applied to all contractors.
- ⇒ Number: 3      Author: JMills      Subject: Sticky Note      Date: 27/09/2013 12:53:33 PM +10'00'

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This is the key sentence and I would suggest Members have a clear policy and procedure statement on what is acceptable for your business and that everyone adheres to this and records the relevant information on the contractor's file.

2 August 2012

**TO WHOM IT MAY CONCERN**

**Re: Payroll Tax issues in the Australian Capital Territory –  
Relations between employment agents and subcontractors engaged by  
employment agents for clients**

We are the taxation lawyers for the Information Technology Contract and Recruitment Association Limited (the “Association”).

The Association is a representative body for a number of employment agents. Its members engage persons and entities primarily in the information technology industry. The contractors are mainly appointed to various roles within clients of the employment agents. These clients include various government departments.

A schedule of the *Payroll Tax Act* which is operative in the Australian Capital Territory provides a payroll tax exemption for wages paid or payable by an employment agent to a person or entity (the subcontractor) under a contract between the agent and the subcontractor for work performed by the subcontractor for a client of the agent in a number of different cases.

There has been considerable controversy of late in relation to the normal sub-clause provision relied upon by the employment agents to make the payments by the employment agent to the subcontractor exempt from Payroll Tax. The sub-clause is sub-clause (g) under section 2.14(1). It provides as follows:-

*“A subcontractor is a genuine employer of the individuals who perform the work for which the wages are paid.”*

The ACT Revenue Office has taken the view in relation to this subsection that the subcontractor and at least one other person must be performing the work (together) for the specific client of the employment agent relevant to which the “wages” are paid.

The Revenue Office has also taken the view that the employment agent must obtain evidence from the subcontractor to establish this entitlement to exempt the payments made by the employment agent to the subcontractor. The evidence which must be obtained to support any assertion that the subcontractor has a minimum of two employees engaged in the work include:-

- Evidence of payment of PAYG tax for those employees.
- Evidence of payment of workers compensation payments for those employees.
- Evidence of payment of superannuation guarantee benefit for those employees.

These requirements of the Revenue Office are of considerable controversy and a number of Members take the view that the views are inconsistent with previous approaches taken by the office which was that the "work" could be interpreted as meaning that each employee had a separate IT contract to undertake and did not need to share the IT contract.

We have advised the Members accordingly of the view taken by the Revenue Office on the interpretation of the legislation and therefore, although this may be very inconvenient, you may be requested to provide the documentary evidence which is referred to above.

Yours faithfully,

**Peter Gell M Tax**

Email: [peter@petergell.com.au](mailto:peter@petergell.com.au)

## ITCRA Template for Statutory Declaration by Sub Contracting Companies in ACT

I, (insert Directors name) of (insert address) Australian Capital Territory make the following declaration under the Statutory Declarations Act 1959 (Commonwealth) : as follows:-

1. I am a Director of (insert company name) Pty Limited. I have the authority to make this declaration for and on behalf of (insert company name) Pty Ltd and I execute this declaration in the understanding that it will be relied upon by (insert ITCRA Member company name) in contracting with and making payment to (insert company name) Pty Ltd.

**Commented [ACW1]:** There is a need to ensure that the information is factually correct with regard to wages paid in the period in respect of which the exemption is claimed

2. I am informed and believe that (insert company name) Pty Ltd at all relevant times employs and has employed a minimum of two employees, at least one of whom performs and has performed services of a type that is ordinarily provided by the subcontractor ("the **Core Employees**"). The pseudonyms, hours of work and basic job descriptions of the Core Employees are set out as follows;

**Commented [ACW2]:** Ditto

Name	Hours of Work	Job Description	Relevant Period
Employee-pseudonym	Hours_of_work	Job_description	Work_period
Employee-pseudonym-	Hours_of_work	Job_description	Work_period

**Commented [ACW3]:** Ditto. It is contemplated that the declaration should be submitted with each payment claim. The risk, if this is not done, is that genuine employer status may have been lost.

3. I am informed and believe that (insert company name) Pty Ltd pays (or is liable to

pay) PAYG withholding tax for and on behalf of the Core Employees and of the individuals who perform the work for which the wages are paid. ~~Annexed to this statutory declaration and marked with the letter "A" (or as provided to (insert ITCRA Member company name) on (insert date) is a (document) evidencing the last payment (if any) of that tax.~~

**Commented [ACW4]:** Because the time for payment may not have arrived at the time the declaration is signed.

**Commented [ACW5]:** The "Core Employees" are "those employees" as that expression is used in the revenue circular. The revenue circular is ambiguous; but the correct construction of it seems to be that they are the employees selected to demonstrate "genuine employer" status. They are not necessarily "the individuals who perform the work for which the wages are paid". There remains a need to establish that the contractor is the genuine employer of those individuals. This is therefore picked up the next phrase

**Commented [ACW6]:** Because the frequency of PAYG payment may not correspond with the frequency of contractor claims.

4. I am informed and believe that (insert company name) Pty Ltd has effected a worker's compensation policy to cover its potential liability for workers compensation for the Core Employees and of the individuals who perform the work for which the wages are paid. ~~Annexed to this statutory declaration and marked with the letter "B" (or as provided to (insert ITCRA Member company name) on (insert date) is a copy of the certificate of currency.~~

**Commented [ACW7]:** Ditto

5. I am informed and believe that (insert company name) Pty Ltd pays (or is liable to pay) the superannuation guarantee for the Core Employees. ~~Annexed hereto and marked with the letter "C" (or as provided to (insert ITCRA Member company name) on (insert date) is a copy of (document/s) evidencing the last payment (if any) of the superannuation guarantee benefits for the Core Employees and of the individuals who perform the work for which the wages are paid.~~

6. I am aware of the terms of Schedule 2, part 2.3, section 2.14(1)(g) of the Payroll Tax Act 2011 (ACT) and of the ACT Revenue Office's Revenue Circular PTA074 – Exemptions for Employment Agents. I believe, having regard to the totality of the work relationship between the parties, being a matters of which I have been informed and believe that within my own

**Commented [ACW8]:** A summary of the common law approach to determining employment status.

knowledge, that (insert company name) Pty Ltd is the "genuine employer" of the Core Employees and of each of the individuals who perform the work for which the wages are paid within the meaning of the expression, "genuine employer" as used in that part.

Commented [ACW9]: To establish the basis of belief.

I understand that a person who intentionally makes a false statement in a statutory declaration is guilty of an offence under section 11 of the Statutory Declarations Act 1959 , and I believe that the statements in this declaration are true in every particular.

TAKEN AND DECLARED by the )

Above named Declarant at )

on the )

day of (month) 2011 )

Before me :- )

\_\_\_\_\_

[Signature of person before whom the declaration is made as prescribed by Regulation 4 of the Statutory Declarations Regulations 1993]

\_\_\_\_\_

[Please print, full name, qualification and address of person before whom the declaration is made]