

The Double Whammy: How the Alienation of Personal Services Income legislation impacts on Professionals

an APESMA Connect report



**Connect – APESMA's
special interest group for
independent contractors
and consultants**

July 2007

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To access this report online, visit the PSI page at www.apesma.asn.au/connect.
Report author: Kim Rickard, Executive Officer, APESMA Connect, email connect@apesma.asn.au
Media comment: Geoff Fary, Executive Director, Industrial Relations, APESMA

1. Executive summary

This report details the impact of the PSI measures on contracting professionals. The report suggests that the PSI measures have penalised a range of genuine contracting professionals by either directly causing them to be denied legitimate business deductions, or creating ongoing uncertainty around their business status.

The report found that the uncertainty and precariousness of contracting has been compounded by the uncertainty involved in satisfying the PSI tests, and that there was a potential cost to industry with contracting professionals considering exiting the profession or seeking work internationally where PSI was perceived to be less of an issue. It also found that contracting professionals perceive the PSI measures alongside Government policies promoting contracting and outsourcing as a policy contradiction. With an increasing proportion of the highly skilled workforce of the next decade expected to operate through contracting arrangements or as self-employed businesses, the PSI measures were found to be a significant potential obstacle to creating a highly skilled flexible project-based workforce.

The report urges a review of the PSI rules to address the key issue of whether or not a contractor as a personal services provider is exposed to real commercial risk or receives an assured regular income and suggests that if this issue is addressed, contractors will not be subject of the most significant unintended consequence of the PSI measures - the double whammy - whereby contractors opt to operate through commercial arrangements and renounce the protection of labour laws only to be denied business tax status.

* * * * *

2. Introduction

The Government has forced hundreds of thousands into contracting through downsizing and outsourcing, yet is not prepared to recognise in tangible ways the resultant uncertainty and insecurity.

APESMA contracting professional

There has been no attempt to link the status of workers for income tax purposes to their status for industrial purposes.

**Professor Andrew Stewart, Flinders University,
Workforce, 24 August, 2006**

In effect you could have an employee opting to move into contracting, thereby losing entitlements such as leave, workers compensation, superannuation and professional indemnity cover, being engaged as a self-employed contractor and covering the costs formerly covered by an employer and more, but then having the ATO refusing them business deductions on the basis that they do not consider them legitimate businesses. APESMA has a major concern about the uncertainty that this double whammy creates.

**Hansard, APESMA appearance before the Employment,
Workplace Relations and Education Legislation Committee
3 August, 2006, Canberra**

The Association of Professional Engineers, Scientists and Managers, Australia represents over 25,000 professional engineers, scientists, architects, IT professionals, pharmacists, veterinarians, surveyors and managers throughout Australia, with over 3,000 of these members operating in a self-employed capacity.

The Alienation of Personal Services Income (PSI) legislation was enacted on 1 July 2000 in response to recommendations set out in the Ralph Report. While the legislation was intended to prevent individuals who generate income from their personal services from reducing their liability to taxation by diverting income through a company, partnership or trust, indications are that the legislation has unintended consequences which unfairly impact on professionals operating as independent contractors.

A 2004 study found that up to 400,000 workers classified by the Government as independent contractors actually do all their work for the one employer (O'Donnell 2004). The ATO would suggest that if contractors such as these do not satisfy the PSI tests, they fall into the category of taxpayer the measures were designed to cover. APESMA suggests that the status of those at the intersection of commercial and employment law should be adequately investigated, and on the basis of such investigation, the confusion and contradictions around employment and tax status to which the PSI measures have contributed should be resolved.

Since its introduction, the Association has sought feedback from members on how the PSI measures impact their contracting and consultancy operations. This report consolidates and presents this research data, and identifies the common areas of concern. The comments on the ATO and Government are presented in full and were not subject to any process of selection.

In a survey of its contracting members, APESMA found that the PSI measures were seen as a significant problem by 29.8 per cent of respondents and as a potential problem by a further 31 per cent. This investigation provides sufficient evidence to justify the major concerns APESMA has about the unintended consequences of the PSI rules.

3. Summary of members' comments

3.1 80/20 Rule

If 80 per cent or more of PSI comes from one source, the results test must be passed. Otherwise, the business is not a PSB and the PSI rules will apply.

The following comments indicate members' perceptions of the 80/20 Rule:

<i>Table 1 - Comments on the 80/20 Rule</i>
I feel that I'm being penalised only because my work takes about two and a half years to complete, whereas if I was doing nine month projects, I'd be fine. Seems a bit arbitrary to me.
The APSI arrangements are unfair. The reason that I have been caught up in this situation is that I have provided a service to my client that was well received, effective, reasonably priced and timely. Consequently the client 'demanded' more and more of my services to the point where almost 100 per cent of my company income was derived from this single client.
The legislation may adversely affect those legitimately working for themselves who have many tens of thousands of dollars tied up in hardware and software. These individuals may well have only one client, however they are not employees by any stretch of the imagination. They do work using their own equipment, are under no direct supervision, have to provide their own working environment (most work from home), have to provide all consumables, have separate phone/fax/email facilities, all at their own expense. Essentially they are given a task and it is up to them how they do it, when they do it and who they use to get the job done. It is these individuals I feel for as they are running businesses, but because they get more than 80% of their income from a single source, they get caught in the net.
I am a contract engineer (manufacturing) and I move around every year or so. My contract generally runs for more than one year as my clients frequently continue to offer jobs when one project finishes because they like my performance. The tax rule will force me to reject new contracts from my existing client if I have been with them for more than say 10 months, and forces me to look for another job elsewhere. Recently, I got a job with (name of organisation withheld) to help with their \$500 million project, which may run for 3 years. The tax regulation will consider me as an (withheld) employee but I am a true contract engineer.
The Rulings do not take into account annual and seasonal variations in demand.
Allowance should be made for projects in excess of one year. A Professional Engineer may take a project through from planning to the completion of construction as a Project Manager or Project Engineer.
To look at these sorts of issues in one year time frames is absolutely absurd.
The 12 months rule seems to be too arbitrary. The solution is some sort of averaging.
I have had to reduce the number of hours that I provided service to the client in order to attempt to diversify my client base and source of company income. (Company name withheld) would gladly utilise every hour that I have available and continues to request further services.
These new Rulings fail to deal with the reality of the contract market, particularly in the IT area.
It is a VERY simple view of what the contract industry is about, and it will have a harmful effect on the Australian economy.
I think the whole outlook from the ATO/Government is very narrow and simplified. In the real world life just isn't that simple.

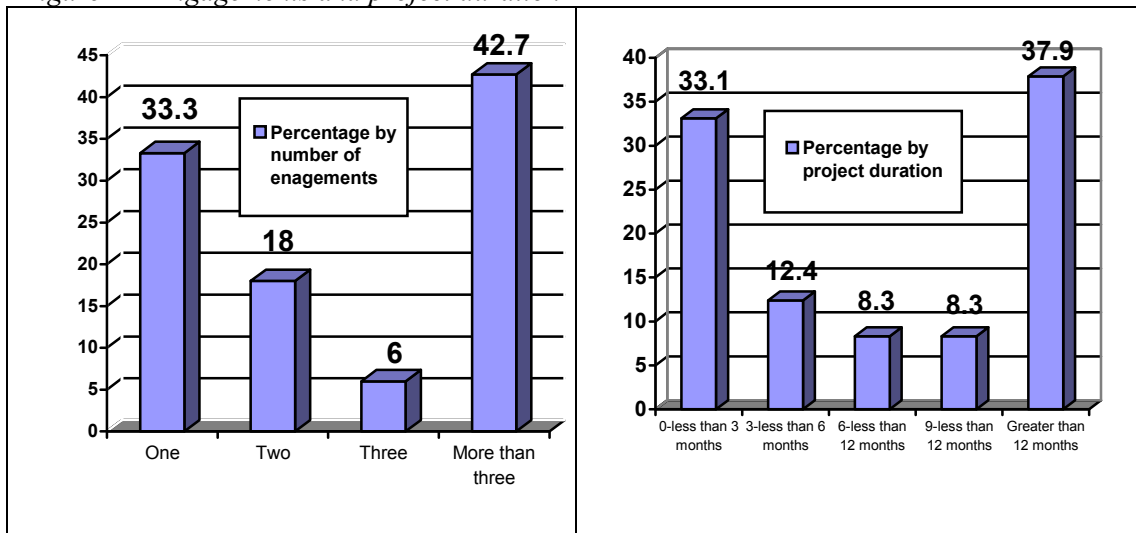
Such comments indicate that in spite of receiving more than 80 per cent of their income from a single source, these contractors perceive themselves as genuine contractors who enjoy neither the income security nor employment benefits accorded employees. The contractors were forced in some instances to refuse work they would have otherwise accepted so they could diversify their income sources solely because of the PSI tax measures. The comments

suggest that contractors perceive the PSI measures as failing to accommodate the complexity of their commercial arrangements which, while they may involve serial engagements with single clients, incur costs and do not provide the income security attached to standard employment arrangements.

Engagements and project duration

The APESMA Connect Survey of Independent Contractors and Consultants indicated that there was a degree of polarisation in the area of engagements and project duration for the contractors surveyed. While just over 42 per cent of respondents undertook more than four contract engagements in the previous 12 months, just over 33 per cent had undertaken only one engagement in the same period. These figures were supported by the finding that 33.1 per cent were engaged on projects of less than three months' duration while around 38 per cent of respondents participated in projects of greater than 12 months' duration. This would suggest that contractor professionals are most likely to have either one client or more than four clients in a 12 month period.

Figure 1 – Engagements and project duration



These figures indicate that while over 40 per cent of respondents have a diverse client base and work to multiple clients, around 33 per cent worked to a single client. The impact of the PSI measures is clearly greatest for those who have a limited client base.

3.2 Results test

If less than 80 per cent of the PSI comes from one source, the business will be a PSB (and the PSI rules will not apply to that income) if the business can pass *any one* of the four tests.

To satisfy the **results test**,

- at least 75% of the income must be for producing a result:
- the entity or individual must supply the plant and equipment needed to perform the work to produce that result; *and*
- the entity or individual must be liable for the cost of rectifying any defect in the work

The following comments indicate members' perceptions of the Results test:

Table 2 - Comments on the Results test

Much of the work we do is less defined than engineering tasks (such as designing a bridge). It is more in the nature of providing expert business/commercial advice, e.g. advice re intellectual property, electricity market advice, etc., which is not rectifiable (very hard to provide if the advice is right or wrong) (IT contractor).

We enter into contracts for payment for our services on a daily rate basis rather than for a tendered amount to complete a defined task (IT contractor).
Whether the contract defines a specific tasks depends on what sort of contractor you are e.g. a software writer may provide a program but what result can a system administrator point to satisfy the test?
I could not meet the Results test as I get paid for hours performed not results. I am usually required to use the client's premises and hardware and software, and I have to attend during normal business hours as that is when the rest of the team that I work with is in attendance. I cannot delegate since I have been contracted based on my own experience and qualifications, and I am not liable to correct mistakes.
When I read about introduction of the Results Test would solve the problem, but when I read further it seems the ATO/Government wants to differentiate between supplying 'plant and equipment' and intellectual knowledge? If this is so, how absurd! Maybe it's not so absurd because the ATO and the Government probably think engineers only build things.
Producing a result could be a problem depending on definition. Through my company I am running a program for a Government department. The result will be satisfactorily completing the program which will probably occur on award of the last contract, although there will probably be some ongoing involvement through construction and commissioning.
The criterion of deriving an income from producing a result should not preclude provision of Professional Services (including advice).

These comments indicate that the reality of contracting practices in the information technology (IT) area in particular means it is difficult for contractors to satisfy the results test. Contractors highlighted problems with the terms of the results test which they saw as difficult to apply in the context of professional services.

3.3 Business premises test

To satisfy the **business premises test**, the premises occupied by the business must be:

- mainly used to conduct activities from which the PSI is gained;
- used exclusively by the individual or entity (in other words, not shared with anyone else);
- physically separate from any premises that the individual or entity (or an associate) uses for private purposes;
- “apt for the purpose”; and
- physically separate from any premises of an entity for whom the work is done or from an associate of that entity.

The following comments indicate members’ perceptions of the Business premises test:

Table 3 - Comments on the Business premises test
Many genuine small consulting businesses operate from a home office. They are simply not large enough, and work is not constant enough, to carry the overheads of an external office. While we sometimes work in the offices of our clients (attending meetings and the like), we frequently work from home using our PC's and the Internet.
In regard to the business premises test, I have the option of some work in Hong Kong. It can all be done from my own home. Why oh why do I need to buy a shopfront and contribute to congestion on roads and public transport travelling inside an Australian city when I will be travelling electronically to HK.
Home-based occupations should not be penalised.

These comments indicate that for contracting professionals operating from a home-based office, satisfying the business premises test is problematic. With almost 65 per cent of APESMA’s professional contractors reporting that they operate from a home-based office, the relevance of the business premises test to contracting professionals looking to satisfy the PSI tests is limited (APESMA Connect Survey of Independent Contractors and Consultants 2004).

3.4 Unrelated clients test

To satisfy the **unrelated clients test**, the business must obtain its income from two or more entities that are not associated with each other or the business *and* the business must be effectively offering its services to the public.

The following comments indicate members' perceptions of the Unrelated clients test:

<i>Table 4 – Comments on the Unrelated clients test</i>
The legislation and Rulings should allow for large client organisations which may have several internal clients in separate sections and separate contracts for each.
A contractor can carry out a number of unrelated tasks for one client. As an example, our business often does work for completely unrelated research groups (with separate external funding sources) within one university, yet payments are administered by the university which could strictly be seen as being a single contracting entity.
More and more companies are associating these days. For instance, (name withheld) and (name withheld) have formed a joint venture to implement (details withheld). I previously contracted to each of these companies separately. Now that they have an association (just for one particular project), does this mean that I would fail the association rule if I did again what I did a few years ago?

These comments highlight the difficulties with defining unrelated clients under the PSI measure.

3.5 Employment test

The fourth PSI test is the **employment test**. To satisfy the test, the business must employ some person other than the person to whom PSI would be attributable if the rules applied *and* that person must do at least 20 per cent of the principal work of the business during the year or the business must have an apprentice for at least six months of the year.

Because of the nature of their specialist technical services which makes employment or sub-contracting less likely than in other occupational groupings, the employment test appears to be less relevant to professionals operating as contractors or consultants. No feedback was received from members on the employment test.

3.6 Member perceptions of uncertainty

The following comments indicate members' views on the uncertainty created by the PSI measures:

<i>Table 5 - Comments on uncertainty</i>
They have no idea how precarious contracting is. Last year was a good one for me, the year before I could not get anything – not for the whole year. You need to be able to average it out, which, of course, you can do with a company structure.
From my perspective as a small contractor, the changes are like a sword hanging over your head. If you self-assess wrongly, you may end up with huge back tax issues.
I have been a contractor running my personal services micro-business through my company for the last 20 years. Let me give you a real life example of how I could fail the 80/20 test one year, pass it the next and possibly fail it the next. My first contract was as an on-site construction manager on a building project which ran for 12 months from September (tax year 1) to August the following year (tax year 2). I was contracted for 10 months i.e. 83% in tax year 1 and would have failed the 80% income test. My second project with a different head contractor ran for 10 months from October (tax year 2) to January the following year (tax year 3). I was contracted for 9 months i.e. 75% in tax year 2 and would have passed 80% income test, but if I had taken a 10 month or longer contract in tax year 3, would have failed the 80% income test in tax year 3. A series of fail, pass, fail results. I was also contracted to the (name of organisation withheld) for 3 years and certainly would have failed the test.
If we are deemed to be employees then we are entitled to all conditions that apply to employees. We can't be

deemed to be an employee on the one hand and not on the other.
The rules are very vague on the issue - the ATO seems to be contradicting the Treasurer, and most accountants seem to be confused, and most lawyers think the rules are actually illegal.
It is all a bit confusing. The needs of small consultancy businesses which tend to have one major client at a time should be taken into account..
Another fundamental point which has not been aired to date is the issue of each tax year status compliance. Do we assume that say in the 2000-01 tax year with two clients and two people working for one of the clients, a business would pass the test for that tax year. Say at 28th June 2001 both clients have no requirement for ongoing work for the business. Now let us assume that on 1 July 2001 no work is on the horizon for both people in the business. In the middle of July 2001 one person obtains a client which could entail 6-12 months work. Does the business then review the forward position and deem itself to be not a business, clients would not engage a 'non-business entity', or does the previous tax year status continue, and for how long? The latest interpretation from Costello and Howard on contractor responsibility to rectify errors as being one of the test questions does not cover engineering feasibility studies which may carry on for 6-12 months with no outcome and the project may end up a non-viable proposition. In this case the contractor or anyone else involved has no responsibility for the ultimate outcome.

These comments indicate that contractors may be confused by the rules and that the uncertainty of contracting may be compounded by the uncertainty created by the PSI measures.

3.7 Perceptions of Government and the ATO

The following comments indicate members' perceptions of Government and the ATO in relation to the PSI:

<i>Table 6 - Comments on Government and ATO</i>
This should be an election issue if it is not resolved beforehand.
This Government is completely ignorant of modern IT.
The APSI legislation is truly petty and mean.
The attitude of the ATO seems to be anti-small business ...
These new Rulings fail to deal with the reality of the contract market, particularly in the IT area.
It is a VERY simple view of what the contract industry is about, and it will have a harmful effect on the Australian economy.
The ATO has definitely got this one wrong.
How more inept can the ATO and Government be? They have no understanding of how businesses operate and of commercial reality! Along with many others, I'll be making my feelings known at the ballot box.
The problem is that the ATO and Government don't understand that in business language long-term consideration of matters means a time frame greater than election intervals.
Like many others I face the prospect of the Government changing the rules while the game is in progress!
If I wasn't a contractor, I probably wouldn't have a job or it'd be at a significantly lower rate. It's me who takes the risk that I can maintain myself and now the Government says that if I'm successful in that, then it'll screw me. No votes there from me I can tell you.
As if a person is not busy enough making a living, keeping computer equipment and other stuff alive, keeping up to date in skills, contacts and opportunities, we now have to engage with our own Government to justify ourselves.
I think the whole outlook from the ATO/Government is very narrow and simplified. In the real world life just isn't that simple.

The effrontery, double standards and cynicism of the Government on this issue is difficult to accept to say the least:

It is prepared to classify contractors as employees but still have them charge GST for the personal services rendered.

It is prepared to classify contractors as employees for the purposes of personal income tax but not recognise their status as a contractor nor relieve them of the onerous administrative burdens placed on small companies by Government, let alone compensate them for those burdens or the natural and ever-present risks run by small business.

Yet the Government has recognised that the legislation would force an increase in fees by their own contractors, attempting to compensate for the loss of net income, so has declared that its own Departments are to be considered as separate entities for the purposes of the legislation.

Companies and Government often will not deal with contractors - big or small, whether suppliers of goods or personal services – without the firewall of having a company between them and the provider of the services. Therefore, on one hand, the Government forces providers of personal services to work through private companies and, among other things, carry at least three types of insurance (workers compensation, professional liability and public liability) but, on the other, will not afford them recognition as such.

The Government has forced hundreds of thousands into contracting through downsizing and outsourcing, yet is not prepared to recognise in tangible ways the resultant uncertainty and insecurity. In particular, there has been no consideration of more senior professional people who, having suffered the consequences of redundancy, who are very unlikely to win other permanent employment and who have no choice but to offer their services as a contractor.

The Government could well be reminded that it is not just the contractors that it is irritating and alienating but also their spouses and voting-age children.

In its Alienation of Personal Services Income legislation, the Government has implemented what is a simple objective (to eliminate a tax-minimisation avenue open to some people) in a totally unnecessary manner with draconian effects on many thousands of legitimate small contractors.

These comments indicate that members' perceive the Government as having double standards - by removing access to business deductions but still expecting contractors to collect GST on their behalf, and legislating in favour of contracting and forcing professionals into contracting by downsizing and outsourcing, while at the same time penalising them by removing their access to business deductions.

The feedback also indicated that the ATO is perceived in negative terms. Contractors reported that they believed the ATO had misinterpreted the PSI legislation, and saw the ATO as inept and anti-small business.

3.8 Consequences of PSI measures

These comments set out some of the consequences of the PSI measures as reported by members:

Table 7 – Comments on consequences of PSI measures

I have stopped practising as a contract engineer .. I found working as a contractor a necessity as I could not find full-time engineering employment or even long projects .. I felt as I progressed through my fifties it would become increasingly difficult to find continuity of work especially if the economy went into recession. I also found with a company structure I had formed, myself or my wife were not entitled to unemployment benefits from the Government unless the company was closed. If I closed the company then this made it more difficult if not impossible to find work regularly. Further, workers compo insurance rate went from 0.75% to 7.5% of fees when large consultants only pay 1.5%. Recently the issue of taxation if more than 80% of income came from one source was another reason for stopping. Everything was against, so I thought 25 years is enough.

I wish there was some way of making the government realise that self-employed professionals are there to make a living too. We often have no job/contract security whatsoever, and can only dream of 69% superannuation, yet our tax claim entitlements are melting to the point that soon I will ask myself whether it is all worth it.

We incorporated 'knowledge workers' need a result here. And I don't mean a worthless 'compliance' easing with no change to the arbitrary, underlying 'rules'. I'd suggest a complete failure of governance by the Federal Cabinet and Minister here, and plenty of self-employed (that will be a dead term soon) IT professionals will just head off

These comments indicate that members have considered exiting the profession or obtaining work internationally as a consequence of the PSI measures.

4. Implications

4.1 Policy contradiction

The comments by contracting professionals suggest that they perceive the PSI rules alongside policy measures promoting contracting as a policy contradiction.

Use of contractors

The APESMA Survey of Independent Contractors and Consultants sought information on contractors' perceptions of the reasons they are utilised in business.

92 per cent of those surveyed indicated that they believed contractors were brought in to cover busy/peak times and 98.1 per cent reported that, in their view, contractors were used in workplaces to cover specialist functions. At the same time, 64.1 per cent reported that they believed that contractors were used in workplaces as a cost-cutting measure, while 75.2 per cent indicated that they believed that contractors were used sometimes, often or always to avoid their employment obligations.

These figures suggest that the perceived Government policy contradiction is also reflected in contractors' understanding of the contradictory reasons for which they may be utilised by business.

4.2 Double whammy

Professionals who decide to operate as independent contractors may be hit with the double whammy. Independent contractors must cover expenses such as salary continuance or income protection, superannuation, professional indemnity insurance themselves, but these items are not regarded by the ATO as determinants of whether contractors are operating a personal services business. The ATO can make a Determination that the contractor is not a personal services business in spite of these indicators, meaning the contractor has no access to legitimate business deductions. Their only recourse is to appeal through a costly and legalistic process.

Professor Andrew Stewart from Flinders University confirmed the double whammy when he suggested that "Workers can be taxed as employees under personal services income (PSI) provisions, yet denied protection of many labour laws." (Workforce, 24 August, 2006). Conversely, many contractors can opt to operate through commercial arrangements choosing to renounce the protection of labour laws only to be denied business tax status.

APESMA put these concerns to the Senate Workplace Relations, Employment and Education Committee hearing on the Independent Contractors Act in August 2006. In describing how the double whammy might arise, APESMA suggested that "in effect you could have an employee opting to move into contracting, thereby losing entitlements such as leave, workers compensation, superannuation and professional indemnity cover, being engaged as a self-employed contractor and covering the costs formerly covered by an employer and more, but then having the ATO refusing them business deductions on the basis that they do not consider them legitimate businesses" (Hansard, Employment, Workplace Relations and Education Legislation Committee on Independent Contractors Bill 2006 and Workplace Relations Legislation Amendment (Independent Contractors) Bill 2006, 3 August, 2006, Canberra).

APESMA has a major concern about the uncertainty that this double whammy creates.

4.3 Skills shortage

Comments of the contractors set out in section 3 suggest that the complexity and lack of understanding of the PSI legislation could potentially exacerbate the skills shortage by acting as a tax disincentive to contractors who may otherwise disperse their skills across Australian industry.

The Productivity Commission estimates that 10 per cent of contractors are professionals, a high proportion relative to other occupational groupings (Productivity Commission 2001). This would suggest that a significant proportion of the highly skilled workforce of the next decade may operate through contracting arrangements. The comments of contracting professionals suggest that the PSI measures are likely to operate as a disincentive to professionals from deploying their specialist technical expertise across industry. Dispersal of expertise across industry is vital as one of a range of measures which will help address skills shortages in the short and long-term. By acting as a disincentive to contracting, the PSI measures have the potential to constitute a significant obstacle to creating the highly skilled flexible project-based workforce needed in the coming decade.

4.4 Tax revenue and retirement savings

While the PSI legislation was introduced in 2000 as an anti-avoidance measure, the comments set out in section 3 suggest that the PSI measures may have implications for tax revenue and retirement savings.

Self-assessment in such a complex area of tax law was shown to create uncertainty for contracting professionals. APESMA concurs with Professor Andrew Stewart who in July last year asked the question - does the Government really want thousands of workers to suddenly “self-declare” as contractors?

The consequences of potentially diminishing income tax revenue and retirement savings was acknowledged by Senator Andrew Murray in the Australian Democrats' Minority Report which came out of the Senate Inquiry into the Independent Contractors Act. The report suggested that it was the responsibility of Government to determine the likelihood and impact of such “cost shifting”, whether to the contractors themselves or the public purse, if it was a consequence of the legislation.

The potential for diminishing tax revenue arising out of the PSI measures will potentially add to the existing problems with outstanding tax debt for small business.

5. Conclusions

APESMA has over a period of seven years since the introduction of the PSI legislation in 2000 expressed its concerns over the unintended consequences of the legislation.

Whilst introduced as an anti-avoidance measure, this report demonstrates that the PSI measures have penalised a range of genuine contracting professionals by either directly causing them to be denied legitimate business deductions, or creating uncertainty around their business status.

The 80/20 Rule was shown to effectively limit the type and duration of contracts which genuine independent contractors and consultants can take on. The legislation presupposes a “usual” contract length of less than 12 months. However in many cases described in section 3, this simply does not reflect the reality of commercial practice with many infrastructure projects and contract renewals meaning genuine contractors are often contracted to one client for a period longer than 12 months in the one financial year. The PSI legislation forces contractors to reduce the number of hours provided to a client in order to diversify their client base and sources of income, or potentially lose the capacity to claim a range of legitimate

deductions.

The results test was generally perceived as problematic in the business and professional services context, particularly when, as is predominantly the case in the IT industry, contractors are paid on a daily or hourly rate according to custom and practice in their industry rather than according to predetermined results. The PSI measures penalise contractors according to contract duration at each end of the scale.

Contractors' comments suggested that the business premises test was irrelevant for the purposes of satisfying the PSI rules for the large proportion of professionals operating from a home-based office, and that there was uncertainty around the definition of unrelated clients in the case of the unrelated clients test.

That the uncertainty and precariousness of contracting is compounded by the uncertainty involved in the PSI tests was clearly evidenced in the feedback of contracting professionals. There were initial indications that there was potential cost to industry with contracting professionals considering exiting the profession or seeking work internationally where PSI was perceived to be less of an issue.

The impact of the PSI measures on contracting professionals' perceptions of the ATO and the Government was also evident.

This research confirms that contracting professionals perceive the PSI measures alongside Government policies which promote contracting and outsourcing as a policy contradiction. Frustration at the potential for the PSI measure to deliver a double whammy which removes contractors' access to employee entitlements whilst denying them business deductions was reported extensively by respondents. The study also confirmed that in the wider context the PSI measures may operate as a tax disincentive for professionals who may otherwise use contracting as a basis for dispersing their specialist skills across industry in areas of skills shortage.

Difficulties with widespread PSI self-assessment in such a complex area of tax law was also suggested by this study. Confusion around compliance requirements and the complex legalistic process required to contest the ATO's interpretation of PSI measures has the potential to add to the already significant problems in relation to small business tax debt.

APESMA urges a review of the PSI rules to reflect the major finding of this study which is that the PSI measures fail to address the key issue of whether or not a contractor as a personal services provider is exposed to real risk, has an assured regular income and incurs expenses not normally incurred by those in standard employment arrangements. Reflecting this in the PSI tests would ensure that professionals engaged in contracting are not subject to the most significant unintended consequence of this legislation – the double whammy.

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APESMA contact details

HEAD OFFICE

Street address	163 Eastern Rd, South Melbourne Victoria 3205 Australia
Mailing address	GPO Box 1272, Melbourne Victoria 8060 Australia
Telephone	+61 3 9695 8800
Facsimile	+61 3 9695 8846
Email	info@apesma.asn.au
Websites - APESMA	www.apesma.asn.au
Websites - Connect	www.apesma.asn.au/connect

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Acknowledgements and disclaimer

This report was wholly prepared and published by the Association of Professional Engineers, Scientists and Managers, Australia (APESMA) and Connect – APESMA's special interest group for Independent Contractors and Consultants. For further information about Connect, visit the website at www.apesma.asn.au/connect.