

## Appendix 2 - APESMA feedback on PSI legislation

### Comments on the 80/20 Rule

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 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 1 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.

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/Gov 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 Gov 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).

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.

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/Gov is very narrow and simplified. In the real world life just isn't that simple.