

# The court case that threatens to unleash a payroll tax grab

**Tom McIlroy** *Political reporter*



Mar 2, 2023 – 4.16pm

State governments are preparing to turbocharge a payroll tax revenue grab, pending the outcome of a closely watched legal appeal against moves to crack down on employment arrangements of healthcare providers.

A hearing in the NSW Court of Appeal on Friday will determine if NSW can proceed with a contentious plan to treat medical centre landlords as employers, a move that would allow the collection of payroll tax for doctors who practise in their clinics.



The court challenge by a large private medical centre operator against Revenue NSW is being closely watched by state governments. **Getty**

The case has been described as one of the most significant in years, coming as the NSW government also faces anger over plans to slap a payroll tax on the mortgage

broking industry [<https://www.afr.com/link/follow-20180101-p5co6e>].

At stake is tens of millions of dollars paid to clinic operators through Medicare, after Queensland revenue officials started treating GPs as employees rather than contractors, based on long-standing service agreements.

The Australian Medical Association estimates 81 per cent of general practices in the state will be affected.

The case that underpins the move is set to be considered by the full bench of the NSW Court of Appeal on Friday. The challenge by Thomas and Naaz, a large private medical centre operator, against Revenue NSW is being closely watched by state governments.

Matthew Cridland, partner at law firm K&L Gates, [<https://www.afr.com/link/follow-20180101-p55744>] said payroll tax was nationally harmonised and the Queensland move was likely to be followed in most jurisdictions.

He said Queensland had put an amnesty in place until mid-2025, but the additional tax take could undermine efforts to boost bulk billing nationally.

Two key questions are being considered: are healthcare professionals providing services to clinic operators, and are funds distributed by clinic operators connected to the services.

“In my view, under a typical agreement between a clinic operator and a healthcare professional, no services are supplied to the clinic operator,” Mr Cridland said.

“The healthcare professionals are qualified and are solely responsible for patient care. The clinic operator cannot direct the healthcare professionals in how to provide care to the patients.

“A key point that should not be lost is that the money distributed by the clinic operators has been collected for and on behalf of the healthcare professionals. It is their money. It is a perverse outcome if payroll tax applies to a distribution of a healthcare professional’s own money.”

Currently, just 14 per cent of graduate doctors choose to work in general practice.

Mr Cridland said the Queensland amnesty would provide more time for the Thomas and Naaz decision to be finalised, but warned it was being applied too narrowly to cover only GP clinics.

“In circumstances where the money being distributed has been received from Medicare, imposing payroll tax would effectively mean there is state tax on Medicare.”

## Patients would ‘lose out’

Henry Bateman, chief executive of centre operator Cornerstone Health, said patients would lose out from the payroll tax grab through less access to bulk billing.

The company operates centres in Brisbane, on the Gold Coast and in NSW and Victoria.

“We pay payroll tax for our employees, but GPs historically haven’t,” Mr Bateman said. “If they roll this out in Queensland, our ability to keep bulk billing won’t happen.”

“As a business we will see about 1.5 or 1.6 million bulk-billed GP visits this year. The reality of it is unless we get a significant Medicare rebate rise, which is not realistically going to happen, and with this additional tax on Medicare, I can’t see us continuing the bulk bill.”

The Australian Dental Association’s chief, Damian Mitsch, said dentists had been excluded from the amnesty.

“They’re simply saying everybody in the practice, regardless of whether you’re a sole operator looking to take advantage of support structures or you’re a large organisation, that everyone is going to be treated the same for payroll tax,” he said.

“That runs contrary to the principles of payroll tax to start with.”



### RELATED

#### **Ampol pays \$157m in tax settlement over Singapore hub**

<https://www.afr.com/policy/tax-and-super/ampol-pays-157m-in-tax-settlement-over-singapore-hub-20230220-p5cluo>



### RELATED

#### **Medical payroll tax investigations stepped up**

<https://www.afr.com/politics/federal/medical-payroll-tax-investigations-stepped-up-20220224-p59z8m>

---

---

**Tom McIlroy** reports from the federal press gallery at Parliament House. *Connect with Tom on Twitter. Email Tom at [thomas.mcilroy@afp.com](mailto:thomas.mcilroy@afp.com)*