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**From:** [REDACTED]  
**Sent:** Thursday, 10 March 2005 6:29 PM  
**To:** Committee, EWRWP (REPS)  
**Subject:** Fw: independent contractors and labour hire arrangements

10.03.05

Dear Sir/Madam,

I have attached copies of my current contract arrangements.

There are certain criteria to determine whether you are deemed a contractor or not. As you will see in the contract it will state that we are contractors, however I can point out some differences.

### The prime contractor determines

Where we work

- The hours that we work
- That we cannot perform work for other transport companies
- That we do not have a separate place of work
- That we cannot advertise for other work in their hours
- That we have to wear the company uniform, have signage, and 2 way radio's in the vehicles.
- They pay work cover for sole trader drivers

Please see attachment regarding Superannuation Guarantee Act in relation to Contractors. It states that according to the conditions mentioned above, we are regarded as employees under the Superannuation Guarantee Act and are entitled to Super as we are paid 100% by the one employer. As per our contract, it also states that Super is being paid. No where does it mention details such as amounts or Super Fund it is being paid into. Invoices are recipient created and do not show an itemised account of any Super ever being paid for the last five years. There have also never been any statements issued from the company or any Super Fund that Superannuation has been paid.

They do not pay super, even for sole traders. They now get around super and work cover by making new drivers form companies , thus absolving themselves of any costs or blame.

17/03/2005

Areas of the agreement that are of interest

Clause 3.1 (b) The supply of uniforms

Clause 3.6 You can use a substitute driver , only if the prime contractor approves

Clause 3.8.2 Installation of 2 way radios

Clause 3.8.3 Sign writing

Clause 4.2 (c) Rates include superannation

Clause 15 States that this agreement comes into effect on the 25<sup>th</sup> of September 2000 for 36 months. However it may continue at their discretion. Which it has now for 4 and a half years with no rate increase.

The hourly rates on page 12 from September 2000, are still the current rates, which include super payments, even though the SG has increased from 8% to 9% in that time.

So even as contractors, our work, just as employees are, is determined by our prime contractor in all respects. Only we do not get sick pay, holiday pay, and more importantly super.

The drivers are making , after costs, \$25,000 to \$30,000 a year with no benefits. And NO ONE is paying super. The drivers cant afford to, and the transport companies, through slick contract wording wont.

Regards,



## Superannuation guarantee—contractors



The requirement for employers to report payments under the Superannuation Guarantee (Administration) Act 1992 has been removed for all employers. Employers will no longer be required to report SG payments to eligible employees on a quarterly basis under the new superannuation guarantee laws.

We are in the process of reviewing/updating the information below. Please call 13 10 20 if you have any questions about your rights or obligations around SG reporting.

### What superannuation obligations do I have if I employ contractors?

As an employer, the superannuation guarantee requires you to contribute towards the superannuation support of most employees and some contractors.

### What is the superannuation guarantee?

The superannuation guarantee has been in place since 1 July 1992 and requires employers to provide sufficient superannuation support for their employees.

For the 2002–03 financial year and beyond, the superannuation guarantee requires you to contribute 9% of each eligible employee's earnings base to a superannuation fund or retirement savings account (RSA).

From 1 July 2003, employers must make their superannuation contributions at least every quarter. For more information, refer to Quarterly Superannuation Guarantee.

### How does the superannuation guarantee apply to contract workers?

Under the superannuation guarantee, an employee includes a person engaged under a contract that is wholly or principally for labour. This means that a contractor (the party to the contract) can be considered to be an employee under the superannuation guarantee.

A contract is principally for labour if more than half of the value of the contract is for the persons labour.

Even if the contractor quotes an Australian business number, they may be considered an employee for the purposes of the superannuation guarantee. The other party to the contract is the employer.

### What does labour mean?

For the purposes of the superannuation guarantee, labour includes mental and artistic effort as well as physical work.

### What is a contract for labour?

A contract can be either made orally or in writing, and needs to state clearly (or imply) that the work must be performed by the party to the contract.

The superannuation guarantee does not apply when a contract is made with someone other than the person who will provide labour. For example, you have no obligations under the superannuation guarantee if the contract is with a company or partnership.

You also have no superannuation guarantee obligations if the person you have contracted is free to engage other people to perform the work. In this situation, the contract is not for the labour of the individual.

### If my contractors are deemed to be employees, what do I need to do?

If your contractors are employees for the purposes of the superannuation guarantee, you must provide a minimum level of superannuation support which, for 2002–03 and beyond, is 9% of their base earnings.

Calculate your contributions only on the labour component of the contract and contribute this amount into a complying superannuation fund or RSA by the due date.

If you do not make the required contributions by the due date, you must lodge a superannuation guarantee statement and pay the superannuation guarantee charge to the Tax Office. This charge is the total of each individual contractor's shortfall, a nominal interest component, and an administration component.

## How do I work out the labour part of the contract?

If the values of the various parts of the contract are not detailed in the contract, we will accept their market values and will take into consideration the normal practices within the industry.

If you cannot work out the labour portion of the contract, base your superannuation contributions on the total value of the contract.

Last Modified: Wednesday, 12 January 2005

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