

I previously made a submission to the committee for the enquiry into increasing participation in the workforce. It is my pleasure to respond to your recent invitation and place a submission before the committee on independent contracting and labour hire arrangements.

I am perhaps in the unique position of having hired Independent Contractors to work in my own business and of having worked as an Independent Contractor as a Professional Engineer in the field of Industrial Construction. I therefore appreciate the benefits and pitfalls from the perspective of both parties.

The role of the independent contractor has risen significantly over the last 10 years within Australian Industry. This in my opinion was and remains an entirely predictable outcome as the free market economy responds to pressures of the market place.

Australian industry has had two (2) significant forces applied to it over this period of time. Firstly, a continuance of rising employee entitlements including aspects which have made employment much harder and more expensive to terminate. These entitlements appear to be administered in a system that drastically favours the employee and bears no relationship to that which would otherwise be construed as being reasonable in any other legal jurisdiction. Simply put the hiring of employees should be avoided if at all possible.

Secondly, Australian industry has faced sustained pressures to cut cost in the face of lower tariffs and an increasingly competitive internal and external market place.

Summarising the above. The use of an independent contractor offers a lower cost, lower risk option for any organisation that finds itself in need of more people.

The Nature of the Independent Contractor

Independent Contractors can be segmented into two (2) groups. Those who run what appears to be a regular business servicing a large number of clients and those who generally work for a single organisation.

The Government has tended to view the first group as genuine contractors and the second group as tax evaders. This over simplified analysis is entirely wrong and entirely unjust.

There are a number of factors which determine the way in which the Contractor works.

The nature of the work plays a significant role. If the work is capable of being divided into discrete packages which are small enough to be completed by a single person and don't require continuity between tasks then a single contractor can perform this work for a multitude of organisations. However in some cases the work requires continuity, which requires a substantial commitment from the individual involved over a significant time period.

Examples:

Medical Practitioner: The workday is divided into independent consultations. While continuity may be desirable it is not necessary. Therefore a Contractor Medical Practitioner may provide services to a number of establishments in sub-increments of the day.

Nurse: A nurse takes on a nursing shift in a hospital consisting of 8 hours of work. The patient continuity is ensured by means of a "handover period" at the commencement and conclusion of each shift. The nature of the work means that it would be impractical for the nurse to work for several organisations during the same day. However, each shift is essentially a separate work package and therefore the Contractor Nurse can work for different organisations on different days.

Lawyer: A lawyer handling a small legal case may be able to work on the same basis as the nurse. However, as the size and complexity of the case increases it is necessary for him to make a full time commitment to ensure that continuity and efficiency is maintained. It is therefore reasonable to expect that for the duration of the case (which may run into years) he may work for only one organisation.

Similar parallels exist for other professions, which require continuity of labour resources over long periods of time. Eg. Software development, Construction project management etc.

Furthermore the structure of the work may also have an influence. For example seasonal arrangements such as Christmas sales and Ice cream vending in summer. In other cases the work arrangement may be have a fixed start and finish, for example a building construction project.

Finally the skills component may determine the requirement. Many organisations have short-term requirements for people with skills that are either not present in their organisation or for which they have experienced a temporary shortfall due to additional demands.

Why Contracting?

The reasons for a person becoming an independent contractor are many and varied. In my own case I embarked on the independent contractor road because I had to make a simple choice between being unemployed or becoming a Contractor. This had advantages and disadvantages.

Advantages

1. Allowed me to gain a wealth of experience in a very short period of time
2. Increased my income
3. Assisted me in developing a wide network of industry connections

Disadvantages

1. Lack of any form of job security limited my ability to take financial risks and restricted my capacity to borrow money
2. Lack of job security caused significant stress and disruption to the family
3. No holidays
4. No sick leave
5. I found myself being effectively blacklisted when applying for full time employment with the general attitude from interviewers being that Contractors are just greedy
6. Generally regarded as an outsider by regular employees
7. I found that I was never offered a period contract and consequently I could be and in several cases, was, terminated without notice.

It has been my general observation that most employees, including the managers hiring contractors, have no real understanding of the value of the entitlements they receive from the company as employees. This has some noticeable outcomes. Firstly they don't understand the real cost to the business of themselves on staff and in many ways they see the money charged by the independent contractor as being high, this can make for tough negotiations!

A Business Perspective

Within my own business, which involves the servicing of swimming pools, I have hired Independent Contractors on a number of occasions using different models. I believe that payment on a piece or per job type basis represents a very fair, reasonable and sound basis for both parties involved, providing that each party approaches the arrangement honestly.

This mechanism, to the best of my knowledge, is not available to the employer. It appears to me that any failure on the part of the employee to meet what may be regarded as fair and reasonable in terms of quantity and quality of work is continually excused. Where an employee fails in his/her duties the prevailing government/regulatory attitude is that it is the fault of the employer and that as such he is obliged to counsel the employee, provide further training and provide lord knows what else before the employer is entitled to finally fire the employee.

As such the Independent Contractor represents an opportunity to redress this manifestly unreasonable situation by making a person both accountable for their work and to provide an incentive for good performance.

In the case of my own business, the implementation of a contractor based system has resulted in the elimination of employee related problems and issues, improved profitability, reduced fixed costs and generally led to a much happier (less stressed) owner.

Exploitation

At the broader community level it is unfortunate that there are a small number of organisations and individuals who pursue the path of independent contract labour with a view to exploiting people. The fashion industry is probably the best known of all industries for this exploitation.

It appears to me that most of this exploitation occurs with people who are at a disadvantage with respect to their economic, social or ethnic situation. I believe that no amount of legislative or policing action will completely remove this problem. However, I do believe that legislation empowering ASIC or a similar organisation to publish the names of all involved in the practice, including and most importantly the individuals and companies who are at the very top of the food chain would encourage those companies to be far more interested in the conditions under which the products, that they are retailing, were produced.

Recommendations

1. Recognition of different styles of Contracting relationships – a reform of the very tight and inaccurate measures currently used. The current system penalises people who like myself were unable to get work and assumed the Contractor role in order to work.
2. Employment reform – rebalancing the employer/employee relationship will encourage employers to return to more traditional employment styles/methods i.e. permanent full time employment rather than casual or contract arrangements.
 - i. Removal of unfair dismissal laws and redundancy entitlements. The mechanisms for dealing with non-performing employees are totally unsatisfactory. Interestingly enough a study by no less an institution than the World Bank found that a decrease in regulation resulted in rises in productivity and real wages (refer attached article).
 - ii. Reform sick leave – less days per year but bankable with an external organisation, similar to superannuation. (This will encourage employees to not take sickies, lower the overall cost to employers and provide ongoing benefits to a much more mobile workforce. Under such a system responsible employees would build up substantial entitlements that would not be jeopardised in the event of enterprise failure or movement to a new employer. Finally employees would have the additional benefit of having sick leave available when they need it most.... as they get older)
 - iii. Abolish long service leave and replace with 1 additional week of holidays each year (5 weeks holiday each year would replace the current 4 week standard). Recognising family commitments and the more mobile workforce.
 - iv. Abolish other “silly ideas” i.e. quotas for minorities and other disadvantages groups and unpaid / paid leave for other items – these entitlements can cause severe disruption to a small business along with associated costs that quite simply cannot be passed onto consumers in ever increasing prices.
3. Improve participation in the workforce. Employment should not be considered as optional but as mandatory. Workforce participation was of course examined in the committee’s earlier review, however action needs to be taken to correct the currently highly unacceptable situation which makes the acquisition and retention of employees far more difficult than it otherwise would be if people felt an obligation or necessity to work.

Economist

The prosperity trade-off

CHRIS RICHARDSON
a director of Access Economics



When does the protection of individual rights start to hurt society? This question pits two old foes against each other: efficiency versus fairness. If we are more fair today in slicing up the national pie, do we risk slower growth in tomorrow's pie? Unfair-dismissal laws look like going back before the Senate sooner rather than later. The Government's oft-rejected proposals (which will not affect many workers) involve a basic trade-off — that by reducing the current degree of protection available to a dismissed worker, these reforms would deliberately reduce fairness today (by increasing the risk that a worker will be wrongfully dismissed) with the intention of achieving better results tomorrow (notably, more jobs). I am strongly in favor of that trade-off.

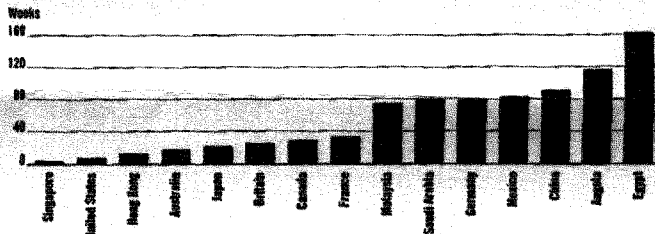
The economic evidence is, as always, mixed. For what it is worth, most studies find that the harder it is to fire, the fewer workers who are hired. But not all studies looking at the effect on jobs over time have been conclusive, so the World Bank has recently stepped into this breach by conducting a thorough study across nations (rather than across time).

The World Bank's results are firm. The more restrictive the regulation of firing (such as the level of mandated severance pay):

- The fewer the jobs created.
- The lower the average national income.
- The larger the black economy.

YOU'RE FIRED

Average weeks of severance pay



SOURCE: WORLD BANK

- The greater the likelihood that female unemployment will be higher.
- The greater the likelihood that youth unemployment will be higher.

The underlying rationale for those results is simple enough — markets work. When regulations make it difficult for businesses to fire someone who is not up to scratch, then they also discourage hiring. As the World Bank noted, "heavy regulation of dismissal is associated with more unemployment ... Flexible labor markets, by contrast, provide job opportunities for more people, ensuring that the best worker is found for each job. Productivity rises, as do wages and output."

The implication for Canberra policy makers is that Australia's current unfair-dismissal legislation may be protecting some individual rights, but at a relatively high (and unnecessary) cost to future prosperity and job growth. ●