

Introduction

The ACT government strongly supports flexibility, economic growth and the need for a balance between work and family responsibilities. However, we consider that the most appropriate way for businesses and workers to achieve these goals is via the industrial relations system. Australia's recent economic growth has occurred under Australia's unique industrial relations system.

The ACT Government has made a clear statement that it will encourage and develop profitable and sustainable business in the ACT. In particular the government has made a commitment to make the ACT the most small business friendly jurisdiction in the ACT¹. The Government is not interested in building an economy based on low wages, with large powerful businesses abusing their market power to drive unfair outcomes.

Independent contractors

Independent contracting is appropriate when it involves real and genuine independence and the contractor has a meaningful choice about their employment arrangements. Clearly more Australians are now working under these arrangements². The ACT Government uses a range of independent contracting arrangements to meet a variety of functions of government. To ensure fairness in these situations the ACT Government established the Ethical Procurement Guidelines. These Guidelines require that all contracts made by the ACT Government over \$20,000 must meet applicable employee and industrial relations obligations.

While the ACT Government supports the role that genuinely independent contact work plays in the ACT economy these arrangements are not appropriate when the contractor is not genuinely independent from the principal contractor.

¹ The Economic White Paper For the ACT P 23
<http://www.business.act.gov.au/economicwhitepaper.pdf>

² Waite, M and Will, L. 2001, *Self-employed contractors in Australia: incidence and characteristics*, Productivity Commission Staff Research Paper, AusInfo, Canberra. P32

The ACT Government has noted that there is an emerging class of independent contractors who could be more accurately characterised as dependant contractors. A 'dependent' contract is one where one party is not truly independent, and work under the contract is in reality performed in a similar way to work under a contract of employment³. Compared to truly independent contractors these workers tend to be those who are more vulnerable in the labour force - they work in lower skilled occupations⁴; are young⁵; and female⁶.

While independent contracting is a choice many people make this emerging group seems to have little choice but to accept employment that is not subject to regulation of the industrial relations system. The needs of these people must be addressed when considering any policy and legislation on independent contractors.

In response to concerns about vulnerable independent contractors, the ACT Government has introduced the Fair (Work) Contracts Bill 2004 which allows contractors, or principals to apply to the Fair Work Contracts division of the Consumer and Trader Tribunal to have the fairness of the contracts reviewed. Under the Bill, the Tribunal will be able to make an order to reinstate or vary the contracts to address the unfairness. This scheme will protect vulnerable contractors from having their health, safety wages and conditions from being undermined due to a poor bargaining position.

Labour hire

Labour hire arrangements originally came into being to address short-term gaps in the labour market and to provide labour in peak periods. However, research has suggested that some employers have used labour hire as a substitute for employees to

³ Waite and Will *Ibid* P vii

⁴ Waite and Will *Ibid* P46

⁵ Waite and Will *Ibid* P41

⁶ Waite and Will *Ibid* P41

avoid costs such as superannuation, and to avoid industrial obligations such as occupational health and safety requirements⁷.

While labour hire arrangements play an important role in the labour market, the growth of these arrangements as a form of work has had significant consequences for those earning their income from these arrangements. The nature of these work arrangements means that jobs vary in length and security; little attention is paid to the training and development needs of the workers; career paths are limited and there is evidence that these workers have poor conditions in comparison to employees who work under a contract of service.⁸

In the ACT all employment agents, including labour hire companies, have to be licensed under the *Agents Act 2003*. This requirement maintains accountability of these organisations and also provides that workers cannot be charged for using this service (*Agents Act 2003* s96). This scheme provides greater certainty and fairness for workers using these services.

Expansion of these arrangements would mean erosion of economic security for Australian workers and their families. It is significantly more difficult for families to achieve goals such as home ownership if the family does not have a steady source of income and poor job security. High levels of household debt and the recent rise in interest rates compound the problems of insecure employment.

Work and family responsibilities

While the inquiry's terms of reference do not refer to the issue of work and family balance the letter inviting submissions does. The ACT Government does not see these types of arrangements as being the best way of addressing work and family balance. The ACT Government is proud to have family friendly provisions in the public sector. The Government has increased maternity leave from 12 to 14 weeks in the ACT Public Service. Employees returning from maternity leave can access regular part-time employment for a period up to two years from the birth of their

⁷ Hall, R *Labour Hire in Australia* Working Paper 76 ACIRRT April 2002 P11

⁸ Hall, R *Ibid* P5-7

child. Maternity leave may now be taken non-continuously in situations where a new-born child requires hospitalisation. Access to annual leave and long service leave on half pay can be taken in conjunction with maternity leave.

In addition, primary care giver leave for an employee who is the primary care giver of a new born or adopted child is available for 14 weeks.

Home-based work can also be accessed on a regular basis as agreed between public servants and their managers. Computers linked to the Government network are often supplied for home based work.

In the private sector a payroll tax exemption was included in the 2004/05 ACT Budget for private sector employees who access paid maternity, primary care-giver and adoption leave. This includes full time and part time employees and would be available for a maximum of 14 weeks. The exemption commences on 1 July 2005, and will apply while employees are on leave.

The Canberra Plan was launched on 11 March 2004. The Canberra Plan commits the ACT government to promoting family-friendly work solutions. The Economic White Paper, part of the Canberra Plan, also included a commitment for the Government to undertake a feasibility study of shared work-based childcare for ACT businesses. This project manager commenced in November 2004 and it anticipated that the feasibility study will be completed in June 2005.

The responsibility for childcare in most families still rests with women⁹ and while women have made significant inroads to the labour market they still earn less than men¹⁰ and, overall, hold less senior positions. While many women who are true independent contractors have significant market power women who work under dependant contract and labour hire arrangements are among the more vulnerable in the workforce. If anything an increase in dependant independent and labour hire arrangements are going to make it more difficult for Australian families to balance their work and family responsibilities rather than make them easier.

⁹ See research reported in the launch of *Striking the Balance: Women, Men, Work and Family* http://www.hreoc.gov.au/media_releases/2005/04_05.html#3

Conclusion

As outlined above the ACT government is committed to small business and supports that there is a role for non-standard work arrangements in the ACT. The ACT Government is also committed to fairness and does not accept that the erosion of conditions for workers and their families is necessary for a strong and dynamic economy.

¹⁰ *Agreement making in Australia under the Workplace Relations Act: 2002 and 2003* Department of Employment and Workplace Relations and the Office of the Employment Advocate Commonwealth of Australia, 2004 P99