



ROSS HUMAN DIRECTIONS

Submission to the House of Representatives Standing Committee on Employment, Workplace Relations and Workforce Participation Inquiry into Independent Contracting and Labour Hire Arrangements

TERMS OF REFERENCE

1. The status and range of independent contracting and labour hire arrangements;
2. Ways independent contracting can be pursued consistently across state and federal jurisdictions;
3. The role of labour hire arrangements in the modern Australian economy;
4. Strategies to ensure independent contract arrangements are legitimate.

EXECUTIVE SUMMARY

- Ross Human Directions Limited is the largest publicly listed; Australian owned and operated, Recruitment and Human Resources services business. We operate in over 25 locations in the following countries:
 - Australia
 - New Zealand
 - Hong Kong
 - Singapore
 - United Kingdom
 - Ireland
- As part of our suite of services to client organisations and candidate customers, Ross Human Directions provides temporary labour hire services as well as placement of independent contractors with client organisations.
- In a highly competitive global market, flexibility and response times are crucial and as a result, demand from companies for labour hire and contractor placement services is increasing. Labour hire/recruitment companies therefore perform an important role in the economy by facilitating flexible and competitive commerce and trade.
- It must be recognised that the labour hire industry provides a valuable service in the economy by matching the labour requirements of companies with the work requirements of individuals. This function will be even more important in the future when the following trends have an increased impact;
 - (i) Australia's shortage of skilled labour
 - (ii) Encouraging mature age people back into the workforce or to stay in the workforce longer.
 - (iii) The global competition for jobs and the need for Australia to compete against large scale outsourcing arrangements in developing countries.
- In the current global commerce environment, and the associated highly mobile workforce, any definition and regulation of independent contractors and labour hire employees in Australia needs to take into account overseas developments and practices in this area.
- With the current skill shortages facing businesses, many professionals will only provide their services as an independent contractor. We believe claims that employee are being coerced into signing "contracts for service" in order to get work are not applicable to the clients of responsible members of the recruitment industry.

- Ross Human Directions supports a system of common law contracts involving genuine independent contractors and see a role for recruitment services companies to facilitate matching their requirements with client needs.
- Independent contractor arrangements are neither applicable nor suitable for a majority of temporary labour hire placements which tend to occur in the blue and pink collar environments. The Australian economy requires a balanced mix of permanent, labour hire and contractor arrangement to suit its varied needs.
- Ross Human Directions does not support the use of contractual arrangements to undercut entitlements under relevant legislation and awards. In general, independent contractors using our services do not perform work covered by an award.
- The people who become labour hire employees or contractors predominantly have different characteristics and goals compared to those in the permanent workforce and the taxation and legal system should be simplified to continue to offer them a choice.
- We believe that the actions of certain unions and state governments to increase regulation of the labour hire industry will result in higher unemployment, as labour options become increasingly limited for companies, rather than an increase in permanent jobs being offered.
- Consideration should be given to having only one definition of independent contractor for the purposes of common law contracts, Workcover, taxation law and industrial relations. This definition should be the current ATO definition, except the timeframe for the assessment of the 80/20 income rule should be increased to reflect the existence of long term projects.
- Ross Human Directions recommends a system whereby independent contractors sign a declaration stating they meet the contractor definition "tests", similar to the form proposed in for the Workcover scheme in NSW. Penalties should be applied to the contractor for any false statements and labour hire companies should be able to recover any employment related costs incurred.
- Where a genuinely flexible labour hire arrangement is required by organisations using temporary staffing services to assist in the management of costs and resources, the contractor should not be able to later claim to be an employee for the purposes of workers compensation, unfair dismissal, unfair contract and accrued employee entitlements such as annual leave.
- We support a legal avenue that allows a review of contractual arrangements where there is evidence of a lack of legitimacy, provided both parties have penalties applied to them if they are found to have made false statements or coerced the other party.



DISCUSSION

1. The status and range of independent contracting and labour hire arrangements.

The breadth of independent contracting support at the professional/management/technical level required by our clients is wide-ranging across many industry sectors, locations and skills bases.

The utilisation of pink collar temporary labour hire services is a little less broad ranging in terms of skills base, however in terms of industry sectors supported and locations of demand, the demand from client organisations is also very broad.

Following is a breakdown of the labour hire and independent contracting staffing services our clients seek from the Ross Human Directions brands;

Division	Service Type	Roles Recruited
	<p>Generalist Recruitment Services (Permanent, Temporary, Contract and Casual.)</p> <p>Workforce Management services.</p> <p>Managed/Master Vendor Services.</p> <p>Assessment centre and Bulk/Volume Recruitment.</p>	<ul style="list-style-type: none"> • Customer Service • Administration • Secretarial Support • Reception • Personal/ Executive Assistants • Call Centre • Tellers • Data Entry • Clerical • Hospitality
	<p>Specialist Recruitment Services (Permanent, Temporary, Contract and Casual)</p> <p>Workforce Management services.</p> <p>Managed/Master Vendor Services.</p> <p>Assessment centre and Bulk/Volume Recruitment.</p> <p>Outsourced workforce services.</p>	<ul style="list-style-type: none"> • Accounting • Financial Services & Banking • Accounting & Finance • Superannuation • Legal • IT • Human Resources • Sales & Marketing • Corporate Services (HR, OH&S, L&D Procurement) • Technical and Engineering • Medical and Healthcare • Education • Property and construction

	<p>Executive Recruitment Services (Permanent, Contract and Executive Leasing)</p> <p>Consulting Services –</p> <ul style="list-style-type: none"> • Executive Search and Selection • Graduate Recruitment • Business Psychology • Learning & Development • HR Consulting • Career Transition Management • Succession Planning • Coaching • Mentoring • Executive Development • Psychological Appraisal 	<ul style="list-style-type: none"> • Advertised Search • Search and Selection • Senior and Executive Management • Board Appointments <p>Firstwater operates on a cross-industry basis, and is well credentialed in sectors including:</p> <ul style="list-style-type: none"> • Professional Services • Banking & Financial Services • Telecommunications • Government • Mining • Infrastructure • Transport • Manufacturing
	<p>Contract and permanent recruitment in the business and technology sector</p> <p>IT project management, business process outsourcing in fields including payroll management, executive learning and development, workplace education and training.</p> <p>Unbundled Recruiting Services and Selection Process Management: large volume and graduate campaign management, assessment centre facilitation, scribe services, contractor payrolling, HR consultancy including performance management and resource planning.</p>	<ul style="list-style-type: none"> • All levels from graduate through to senior management • Information Technology • Business • Call Centre

Independent Contracting

A significant part of Ross Human Directions' operations is in IT and professional/specialist recruitment and the provision of outsourced functions. As such we are in contact with many people wanting to offer their services as independent contractors and accordingly are well informed in this area regarding their motivations. Independent contractor arrangements average around 50% of our technical/specialist on-hires.

The predominant situations we face daily as a provider of independent contracting services are;

1. People requesting to be engaged through their company, often ABN registered sole traders.
2. Clients requesting fixed term or project based service providers, to give them the flexibility to meet operational needs as required. Given the short term nature of these assignments compared to the commitment required of an on-going employee, it is not feasible for clients to take on the additional liabilities and time delays associated with employee entitlements, such as redundancy, annual leave and long service leave.

Ross Human Directions, facilitates these market transactions by matching the needs of the parties. All of the independent contractors we use are professionals and specialists in their field, perfectly capable of negotiating the terms and conditions of the work they are performing for the client. The work tends to not be covered by any award, or if it is the conditions negotiated are above award.

It is important to note that it is not only the client sector that specifies the preference for an independent contracting arrangement when they request our assistance, it is the individuals themselves requesting these arrangements, mainly for the flexibility and other advantages they offer. With the current skill shortages facing businesses, many professionals will only provide their services to us as an independent contractor. We believe claims that employees are being coerced into signing "contracts for service" in order to get work are not applicable to the recruitment industry.

It is important to note that each contractor is free to find a role elsewhere as an "employee", if that is the arrangement they want.

Given the confusion created by different definitions of an "employee" and a "contractor" used by state and federal government departments, the recruitment company often has to pay Workcover premiums, superannuation and payroll tax for these contractors in any case, so cannot be accused of contriving arrangements to avoid tax or costs.

Labour Hire Employees

Ross Human Directions is an ethical employer with up to 6,000 temporary employees deployed to client sites at any one point in time, mainly employed as casuals, but with many on fixed term contracts and receiving leave benefits.

Ross Human Directions takes its obligations as an employer seriously and recognises that independent contractor arrangements are not applicable to the vast majority and should not be used to undermine this important role of employment in society. Under such arrangements, Ross Human Directions provides the protection of Workcover as well as meeting taxation requirements. A flexible independent contracting system can co-exist with the labour hire employment model, as it

attracts a different type of person, namely a high skilled or mature person who is seeking “non-standard” work arrangements.

While the award safety net in place for employees must be respected and adhered to, there is a risk of over-regulation occurring in the labour hire industry, particularly where casual employees with longer service are concerned ie the Secure Employment Test Case.

There are many myths circulating about the job security and pay conditions of labour hire employees. The latest HILDA¹ survey shows that a large percentage of casual employees do not stay that way, with 42.2% moving on to non-casual employment within two years. It reports that casual's wages growth was worse than non-casuals, at 9%, compared with 11% for non-casuals between 2001-03. However, the main reason for the differential is the casual employee switching to non-casual and losing their casual loading.

It must be remembered that casual employees are free, at short notice to accept any suitable permanent position on the market if their labour hire arrangements do not suit. Many do not do so, because of the higher pay they receive as casuals, and the variety offered through different placements. We find that many companies utilising labour hire services acknowledge length of service issues, such as having time off and reasonable notice, when an assignment is to end.

It is also worth noting that a significant proportion of temporary labour hire employees are visitors to Australia under working and other types of Visa arrangements. Increased regulation, costs and other imposts in this area that make it difficult for such visitors to obtain work whilst in Australia, will further hamper our ability to attract skilled workers.

We believe that the actions of certain unions and state governments in the labour hire industry will only result in higher unemployment and a loss of competitiveness for Australian industry, as labour options become increasingly limited for companies, rather than an increase in permanent jobs being offered.

¹ HILDA Survey Annual Report, Melbourne Institute, March 2005

2. Ways independent contracting can be pursued consistently across state and federal jurisdictions

Consideration should be given to having only one definition of independent contractor for the purposes of common law contracts, Workcover, superannuation, taxation law and industrial relations. We believe this definition should be the current ATO definition (which has also been proposed by NSW Workcover), with the exception that the timeframe for the assessment of the 80/20 income rule should be increased to reflect the existence of long term projects.

The current requirement that the contractor cannot receive 80% or more of their income from any one client in a year is too restrictive and does not take into account the commercial reality that many projects involving specialist contractors would be longer than this. If the timeframe was for say 5 years, many contractors would be able to meet this rule easier, as they would be able to work exclusively for one client for at least a year and move on to another. The government should be adjusting tax laws to make it easier for people who want to be independent contractors to do so.

At present the industrial relations law is out of step with other laws regarding the status of contractor v employee. In industrial relations courts, the issue of contractor/employee status is dealt with on a case by case basis, using common law principles and multiple indices as indicators of the true employment relationship. This creates uncertainty and confusion among labour hire companies and their clients. The different outcomes in Industrial Relations Commission decisions such as *Accident Compensation Commission v Odco Pty Ltd* and *Josie Bianchi and Staff Aid Services* make it extremely difficult for labour hire companies and clients to know if they are unintentionally breaching industrial laws.

Despite its lack of clarity, the industrial legislation can be punitive to employers and at times one sided. Labour hire companies must pay employee related entitlements where ordered by the court, despite the "contractor" requesting and receiving all the benefits of higher daily rates and lower tax throughout the assignment. In these situations the contractor appears to be "having their cake and eating it too".

Where genuine independent contractor arrangements are agreed, the contractor should not be able to later claim to be an employee for the purposes of workers compensation, unfair dismissal, unfair contract and accrued employee entitlements such as annual leave. Taxation laws should be tightened to ensure that any successful claim for "employee" status by a contractor would automatically involve paying the difference in tax. This will ensure that independent contractors do not "double-dip" and that they genuinely believe their claim to be an employee is legitimate, thereby reducing ambit claims in the court system.

We recommend a system whereby independent contractors sign a declaration stating they meet the contractor definition "tests", similar to the form proposed in for the Workcover scheme in NSW. The labour hire company should then be exempted from any further action related to claims of employment.

3. The role of labour hire arrangements in the modern Australian economy

In a highly competitive global market, flexibility and response times are crucial and as a result, demand from companies for labour hire services is increasing². Labour hire companies therefore perform an important role in the economy by assisting Australian organisations in remaining globally competitive and facilitating commerce and trade. This is a case of supply meeting demand – the question to ask is why are so many businesses requesting the services of labour hire companies and why do so many members of the workforce prefer to work in this manner?

Our experience with client organisations suggests that some of the answers to this question include:

- a. use of temporary labour hire workers provides the ability to adapt to changes in customer demand across the day or the week using sophisticated workforce planning practices
- b. the deployment of temporary labour hire workers in different locations during different time zones enhances service to consumers
- c. the ability to be flexible in the manner of workforce deployment provides consumer benefits in the form of lower prices
- d. the ability to use flexible workforce models supports the preference of many organisations to retain operations in Australia as opposed to going offshore.

Our experiences with many thousands of candidates over more than a decade suggests that a significant proportion of the members of our workforce prefer to work in a temporary labour hire capacity because:

- it permits them the flexibility to pursue family preferences
- it facilitates their earning important income while studying, whilst also providing flexibility of not working at times of high academic load
- as in the case of some student and working holiday visas, this is the only type of work they can undertake to support their ventures in Australia
- it provides the ability to “try before you buy” with corporations, role types and career changes
- it builds a cross-section of work experience that is increasingly valued by employers and therefore makes the individual more valuable in the marketplace

There needs to be a recognition by government that the business and work environment has changed significantly over the last decade and the provision of

² See findings in the “The Growth of Labour Hire Employment in Australia”, Productivity Commission Staff Working Paper, Feb 2005

services to businesses by labour hire companies and individuals must adapt accordingly. Their actions must be supported by the legislative framework only to the extent that abuse and extreme disadvantage are prohibited.

It must be recognised that the labour hire industry provides a valuable service in the economy by matching the labour requirements of companies with the work requirements of individuals. This function will be even more important in the future when the following trends have an increased impact;

- (i) Australia's shortage of skilled labour**
We need to attract skilled people into the workforce by widening the candidate base, and increasing the use of foreign, female and mature aged staff. This requires being able to offer flexible pay and working arrangements that meet individual needs when factors such as other income sources, visa requirements, childcare and taxation laws are taken into account.
- (ii) Encouraging mature age people back into the workforce or to stay in the workforce longer.**
Mature age professionals have valuable expertise to offer companies, but the current taxation and independent contract rules do not make it financially worthwhile for them to participate in the workforce. The independent contracting/labour hire system needs to offer such people the opportunity to work without penalising their superannuation and other income streams or locking them into long term arrangements. The impact of the reasonable benefits limit legislation on the mature age worker need to be addressed, for instance.
- (iii) The global competition for jobs and the need for Australia to compete against large scale outsourcing arrangements in developing countries.**
In order to compete with other economies with lower cost bases and IT advances that remove long distance issues, Australian companies need to be able to offer flexible work arrangements that can be readily adapted as operational requirements change. Labour hire companies and independent contractor arrangements are integral to this process, and are thus contributing in an important way to keeping work opportunities from going off-shore.

4. Strategies to ensure independent contract arrangements are legitimate.

Ross Human Directions recommends a system whereby independent contractors sign a declaration stating they meet the contractor definition “tests”, similar to the form proposed in for the Workcover scheme in NSW.

As discussed in 2. above, a modified version of the ATO definition of independent contractor should be considered for use for all employment related purposes, to simplify the current confusing array of rules.

Penalties should be applied to the contractor for any false statements and labour hire companies should be to recover any employment related costs incurred.

We support a legal avenue that allows a review of contractual arrangements where there is evidence of a lack of legitimacy, provided both parties have penalties applied to them if they are found to have made false statements or coerced the other party.

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