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Submission of the

SMALL BUSINESS REFORM GROUP  
[www.sbrg.net](http://www.sbrg.net)

to the

STANDING COMMITTEE ON EMPLOYMENT, WORKPLACE RELATIONS and WORKFORCE  
PARTICIPATION

March 11<sup>th</sup> 2005

Dear Sirs and Madame's,

**Re: Submission for a discussion engineering of Federal "Independent Contractor Act"**

I applaud the objective manner in which the Federal Government has approached the "Working community" regarding issues for that are confronting Small Businesses and Contractors all over Australia.

For the record, I and the Small Business Reform Group(sbrg) have **no political alliance**. We are Australians who wish to see "Industrial Relations Reform" in place so we can raise productivity and prevent accidents in the workplace by giving employers and principal contractors incentives to work productivity and safely .

Major IR Reform is at hand . Australia must reform to keep pace with the global and domestic productivity Standards .

Reforms under a progressive government will promote ability to compete in business as well as peace, law & order, democracy, equality, liberty, social justice and promotes the general welfare and prosperity.

The "baby boomer" generation have grown up with change re: Italics, decimal currency, metric and GST. We now command that reform happens constantly in the administration of the workplace environment.

We all love to see Australians working, playing, competing and achieving, domestically and internationally

Preamble
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I have been guilty of "apathy" in the past, like millions of other Australians in voicing their opinions. However, after coming back into my family Roof Tiling & Construction business, I have confronted many Small Business issues.

A group of Central Coast small businesses have come together to form a Small Business Reform Group (sbrg) and help a support "Brickie" contractor who was fined \$50k over "vague regulations" in the deeming of Contractors as employees .

The contractor was going to lose their house because of NSW's Workcovers "cartel like" arrangement with Allianz Insurance and a rogue audit clerk, who was a common denominator when several businesses got together.

The sbrg group now has over 350 Small Business membership pledges since November 2004 and has linked with many other "like minded groups".

The Small Business Reform Group (sbrg) made a "stand" and got some reform happening from Workcover and the NSW Commerce Minister, Mr Della Bosca.

2GB Radio announcer , Ray Hadlee, was a great advocate for the issues sbrg and his audience presented to him. His "dogged" determination uncovered the communities discontent with current NSW Workers Compensation regulations.

Mr Hadlee got the Minister "on the spot" to make a "moratorium" regarding the inequitable NSW Workers Compensation Regulations "on air" , then go back and do the paperwork in NSW Parliament House.

The Small Business Reform Group (sbrg) issues are: -

# Prevention fair-trading by ineffective, unnecessary, vague, antiquated Government regulations and rate fixing situations to the point where the ACCC should be involved.

# Cartel like arrangement between the State Government and Insurance companies (that have the ethics of the Information Minister from Iraq, "Baghdad Bob").

# The proliferation of "mindless unionism" into the NSW Industrial Relations and the NSW State Government.

# The disregard of the "Rights of Australians" to have and run a small businesses as a consultant or contractor .

# The disregard of the changing "make up of the workforce". The Laws of the Land have to reflect that change. If you can say there should be a Law against that , then there usually should be a Law.

# Lack of clear objective , guidelines drawn up for the workforce to understand and follow legislation. Clear guidelines will allow market forces to increase our productivity , rewards for effort , standard of living and levels of employment.

# Legislation needs to be clear simple and concise without using an “academic High Court Judge style legislation” which is too vague and difficult to interpret. This also leads to the business community not being able to interpret the guidelines but it leads to lawyers to twist the spirit of the legislation eg OJ Simpson

# Workcover, insurance companies and the government need to reward efforts towards workplace safety by giving discounts for no claims, yearly audited safe work systems, etc that act as an **incentive** for human effort and funding to be allocated to REAL SITE PREVENTION of ACCIDENTS and WORKER INJURY. Not like NSW’s Mickey Mouse Premium Discount Scheme (PDS)

# The insurance market in Workers Compensation needs to be de regulated to give real competition to insurers and real options to insured .

# Prevention of Unions seeking orders from the Industrial Relations Commission to restrict ,constrain or cause a stoppage contractors working on a site with a Enterprise Bargaining Agreement (EBA)

# Have a “National Workcover Authority” with a ombudsman to monitor “Workcover” activities where unions are subjective acting against contractors to cause the site to close down.

# Consistent CRYSTAL Clear National guidelines for employers and contractors to follow all over Australia.

# Bring back “the more you work, the more you get” ethic into business , so Australians can fund their retirement and have a better standard of living in getting to retirement.

# Over governing, and over regulation by the local, State and Federal Public Service which creates too many “Hoops for Small businesses”,

# Encouraging employees initiate outsourcing themselves from a “employee wage slave situation” where they could be working as a contractor from home and spending more time with their families.

# Wasting Federal grants on local governments to train local small business, they need experienced “Small Business consultants to train and advise.

# Making it Crystal Clear that once contractors will complete the “offer , Acceptance, Intentions to enter a legal agreement & consideration, evidence in writing ” procedures they are bound by contract Law ONLY .

# Use two clear definitions to define Contractors and employees from one simple test, no outworkers, deemed workers .

# Discrimination against Australian workers that choose to be contractors and not to be an employee trapped in a “wage slave, non productive, take your brain out on entry” environment. Don’t take our rights away .

# Ensure that all legislation is clear and in plain English for the layman to understand. Not the academic ravings of a dissenting High Court judge, that leads to Lawyers “twisting the Law” to suit the largest wallet.

# Small Business and contractors do not want to be dragged into the current NSW Industrial Relations Regime,

From the field, I get continuous feedback from Contractors and consultants who “do not want to be part of the current Industrial Relations regime”, it is a “minefield of nightmares”. This regime is dragging down national productivity , self esteem , employment and standards of living of the community.

After reading the CEMFU submission , it is clear that they should be focused on creating a safe working environment with a safety net of minimum workplace conditions and remuneration for “wage slaves” .

Unions should stay out of “creating business opportunities and jobs” and engage in constructive productive safe work where there workers can earn more remuneration instead of “mindless Rock Throwing”.

## **The Status of Independent Contractors**

After conducting some discussions with Senior NSW Workcover officials , a series of “discussion papers” where proposed that came in line with similar systems of “Independent Contractor” interpretations ie ATO and Queensland Workcover.

The proposed interpretation was the simple Personal Services Income (PSI) which used the “results test” to self assess whether an entity was a “deemed employee” or a contractor.

Comments where made that the “definition of a Worker” should be modified and reference should be made to the contractor declaration and results tests stating the workers capacity (employee or contractor) before the worker starts work.

On declaration the contractor then is exposed to commercial risk when negotiating a deal through offer & acceptance , intention , consideration and evidence in writing ie market forces.

In addition, a declaration should signed and registered with the ATO as a matter of due course.

### **Comment : - Should the ATO results test be used without changing the world.**

Firstly, yes the 3 simple results tests seem to be fine.

However, the ATO’s PSI “results tests” flow chart looks fine, but the KEY words of the tests need to have clear examples in each category for industries to follow as a precedent .

Where there is no precedent , a new contractor/employee situation it should ruled on and made public on a Workcover Web Site .

Get rid of all the “Physco babble” about employees and deemed employees outworkers and other Deemed employees. Give us clear sidelines and goal lines for all to follow.

We need to get **lawyers, WC Commissions, High Court Judges out of the picture** and make some clear “Plain English” guidelines that workers employers, principals and Workcover officers can follow in the majority of situations.

This will enable the Industrial Relation shackles to be taken off contractors and small businesses nation wide.

### **Further Results Test Comment**

- 1) An example of achieving a “result” would mean a bricklayer contractor would build a wall, a fencer would erect a fence, a Roof tiler would install a roof ,
- 2) Supply Plant & Equipment and tools also should have examples for each industry situation . What if the principal supplies vehicles , machinery and the contractors supplies tools and equipment , does this satisfy the test.

If a precedent is not available then examples for each industry and a pre assessment of the intended contract should be assessed before the worker starts work ( it works in Queensland) .

### **Determining individual contractors as Deemed Workers**

1) The Results Test looks fine to determine whether a worker is a contractor or employee depending on the reservations mentioned above.

2) Please reference the Queensland legislation and make it more simplistic again with out all the additional conditions .  
Make it simple at the “Front End” of the legislation .

3) Modifications of the existing legislation would be to remove and make consistent wording definition of worker , employee, employer , principal, contractor , consultant and outworker , dependent contractor .

Also, all Ralph reports , leading High Court Cases , previous test should be noted as superseded by the new legislation , just to wipe the slate clean.

Simple and Crystal Clear so workers , employees , employers , contractors , consultants can get on with working and conducting business

To my way of thinking a “worker” can be a contractor OR a employee , TWO SEPARATE CATEGORIES. Both can be working in the same workplace of a principal and a employer , both have to focus on safety and the prevention of accidents .

4) The proposed declaration where the worker is an employee (ie covered under the WC policy of the principal ) or a contractor (through self assessment and separate insurances) before the worker starts work is **imperative** re: “up front” defining the workplace insurance category and method for controlling risks.

This also defines where everybody stands in a first day on the job accident.

Once a declaration is made that the worker is a “contractor”, it is the responsibility of the contractor to have adequate insurance to cover injuries from accidents and protect the others.

All contractors should have current ‘Sickness /Accident and Public Liability policies’(S/A & PL) to gain access onto a worksite .

However ,these S/A & PL insurance policies could be sourced from the open market(local & o/s) and based on real risk assessments and discounted for good safety records and NO Claim discounts.

The principal contractor would be advised that if he did not have a current S/A & PL policy insurance policy he should not have the worker on site. Because, he may be liable for injuries incurred for not preventing the contractors accident in his “Safety Plan”.

My suggestion is to include a Workers status box , as an employee or Contractor in the “**ATO’s tax declaration**” . This seems to work in New Zealand.

The ATO have every business on a string in Australia. Lets not duplicate government administration as it wastes \$31 billion every year.

### **Outworker**

Out worker is just another name for a contractor that is dealt with in the results test, **just wipe this out section out.**

### **Labour Hire Workers**

Labour hire companies should have the same ATO like results tests as a contractors have to face regarding their status. Again, the rights of the Workers to be an employee or a contractor is his or her right.

### **Other Deemed Workers**

Other deemed workers is an unnecessary section and is just another name for a contractor that is dealt with in the proposed results test , **just wipe this out section out.**

Do not isolate the particular workplaces as “could be deemed worker”. We are trying to free up the workforce , make workers more flexible and encourage outsourcing .

Yes, shed the shackles of the current NSW “Archaic” Industrial Relations regulations and keep workers safe & productive.

Examples should be given on how employers can outsource employees and get them to start up consultants and contractors . Instead of categorising certain groups as unproductive “Wage Slaves” and contractors that succeed and prosper.

## Definitions

Current Definitions are cryptic and hard to understand . So much that even if you wanted to obey the Law you couldn't because it is unclear. It gives rise for the law not to be followed.

For example: NSW Legislation

Schedule 1 – Deemed employment of workers

Outworker and other contractor  
paragraph (2.1) p.22

- (a) “to perform any work exceeding \$10 in value(not being incidental to a trade or business carried on by the contractor in the contractors own name , or under a business or firm name”).  
(b) “to perform work as an outworker”

is made with the contractor, who neither sublets the contractor employs any workers is, for the purposes of this act , taken to be a worker employed by the person who made the contract with the contractor

paragraph (2.2) p.22

In this clause :

Outworker means a person to whom articles or material are given out to be made up, cleaned ,washed ,altered , ornamented , finished, or repaired, or adapted for sale:

- (a) in the person's own home, or  
(b) on other premises not under the control or management of the person of the person who gave out the articles or material

paragraph (2.3)\_

A person excluded from the definition of worker in section 4(1) because of paragraph (d) of that definition is not to be regarded as a worker under this clause.

**What sort of Drugs were these jokers on when they drew up this legislation or how much alcohol during the lunch break or did the judge go to sleep**

**How is a normal “JOE” suppose to be bound by this “garbage**

**FOOTNOTE TO LEGISLATORS**

**PLEASE GIVE CONTRACTORS THE ASSURANCE THAT WILL NOT BE AN DEEMED EMPLOYEE BY PASSING THE SIMPLE RESULTS TEST AND MAKING THE CONTRACTOR DECLARATION.**

**IT IS THEIR RIGHT TO CHOOSE TO BE CONTRACTOR.**

## Conclusion

Australia as a competitive nation, competes on the sporting fields of the world successfully when there are clear and set "plain English" guidelines, referees, measurement to see how we are going and training to improve our performance, hence staying ahead of the pack. Always evaluating, improving and never apathetically accepting "Status Quo".

Lets do the same in business!

Small businesses and contractor for too long have been "smashed by unions, Big Business and over regulation by local, state and federal governments.

Current NSW Workers Compensation Legislation is currently persecuting "contractors and small business" via a politically based attempt by left wing unionist to fuel their parties agenda's through Workcover, the Labour State & Federal Government.

Workcover, insurance companies and the government need to reward efforts towards workplace safety by giving discounts for no claims, yearly audited safe work systems, etc that act as an incentive for human effort and funding to be allocated to REAL SITE PREVENTION of ACCIDENTS and WORKER INJURY.

All the major political parties have dirt on their hands re: donations from developers and major builders. We can only assume that a \$100,000 donations must attract political favours, for both Liberal and Labour.

Taxpaying Australians are having their money mindlessly wasted by over regulation instigated by negotiations between big business and government.

Small Business is now picking up extra revenue (GST) for the three tiers of Government and getting a smacked on the hand when we don't do it quickly enough.

We want better service (public) than we are getting, otherwise we will have to get some contractors to run the place.

However, an initiative to reform Industrial Relations on a state and nationally basis, is happening.

I do congratulate NSW Workcover and the Federal Government on the objective nature of the "discussion paper" and their modern approach to Industrial Relations Reform.

Again, I am still appalled at some of the persecution horror stories that have surfaced from local Contractors and Small Businesses in NSW's (Sydney, Newcastle and the Central Coast) from INEQUITABLE prosecutions based on "Vague & Unclear" employment guidelines that are costing Australians their houses and destroying their lives.

Business and government reform in WC & OH&S must take place and all affected parties must be a part of engineering change for it is equitable and effective. New National Workers Compensation & Occupational Health & Safety regulations and guidelines can be applied objectively to the workplace with out fear or favour.

Involving in change is the key to success and **making it happen** in a way where all parties "can live with the changes" is a great outcome.

The Small Business Reform Group is preparing a further presentation to NSW Workcover regarding Setting of Premiums and **the method in which they are applied to the workplace**. Focusing on PREVENTION and REWARDING EFFORTS TOWARDS PREVENTION BASED ON REAL SITE RISK ASSESSMENT.

Lets do a "GST like" major reform in Industrial Relations.

As a nation, we only rise to greatness when we are confronted with major adversity and it is at our doorstep.

If you have any further questions, please contact me on 0243 58 1555 or 0418 438 511.

Regards,

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Small Business Reform Group