

**House of Representatives**

**Standing Committee on Employment,**

**Workplace Relations and Workforce**

**Participation**

**Inquiry into Independent Contractors**

**and**

**Labour Hire Arrangements**

**Submission**

**from**

**Group Training Australia Ltd**

**March 2005**

## **Terms of Reference**

- (a) the status and range of independent contracting and labour hire arrangements;
- (b) ways independent contracting can be pursued consistently across state and federal jurisdictions
- (c) the role of labour hire arrangements in the modern Australian economy;  
and
- (d) strategies to ensure independent contract arrangements are legitimate.

## **1. Executive Summary**

1.1. Group Training Australia Ltd (GTA) welcomes the opportunity to respond to the House of Representatives Inquiry into independent contractors and labour hire arrangements.

1.2. Group Training Australia is the national industry association for a network of group training organisations (GTOs) which collectively employ some 40,000 apprentices and trainees in most of the principal traditional trades, as well as in many of the traineeships that are now available. There are approximately 150 GTOs operating nationally, the overwhelming majority of which operate on a not-for-profit basis.

1.3. The terms of reference for the inquiry include a number of issues on which we are not well equipped to comment, in particular those relating to independent contractors. It is our intention in this submission to focus exclusively on questions raised in relation to labour hire which are essentially embedded in terms of reference (a) and (c) as follows:

- (a) the status and range of independent contracting and labour hire arrangements;
- (c) the role of labour hire arrangements in the modern Australian economy.

1.4. However, in doing so, it is also our intention to start by asserting that the organisations that we represent are not involved in the labour hire industry, although we appreciate that this view is not universally accepted. While group training organisations employ apprentices and trainees and on-hire them to host employers, in the manner of labour hire, we believe that the purpose of the placement is what distinguishes a group training organisation from a labour hire company.

1.5. We believe that the difference is one of training as opposed to employment. A labour hire company places a worker with a host employer exclusively for productive work and it may do so under a variety of contractual arrangements which themselves suggest different legal relationships and employment obligations between the parties. This ambiguity will no doubt be at issue during the course of the inquiry.

1.6. A group training organisation on the other hand makes a placement with a host employer principally for the purposes of training and continues to make such placements for as long as is necessary for the apprentice or trainee to complete his or her Training Contract. Employment, in this instance, is really only the vehicle for the delivery of the training with the apprentice or trainee, but particularly an apprentice undertaking a traditional four year trade, becoming more productive only as the relevant competencies are acquired.

1.7. The GTO is the employer, and as such is a party to the Training Contract, generally with responsibility for the payment of wages and other employment entitlements. In addition to brokering the placement, the GTO is then responsible for managing and co-ordinating the on and off-the-job training. It may even be the approved provider of the off-the-job training depending on a number of factors.

1.8. In managing the placement the GTO may also provide a level of care and support to its apprentices and trainees that often goes beyond its strict statutory obligations as an employer. We know that the pastoral care, and active intervention in personal lives, that a GTO might be required to provide to as many as 1,000 or more apprentices and trainees can at times be more akin to social work than routine human resource management.

1.9. We are not convinced that the level of government support is commensurate with the true cost of this undertaking and with the enormous contribution that GTOs are making to national skills formation, particularly in the traditional trades where skill shortages are now rife. In this submission we will demonstrate just how critical the group training network is to the national

training effort in the traditional trades and how government funding has been diminishing as the skills crisis has worsened.

1.10. We are also concerned in this submission to point to a range of factors, other than diminishing government financial support, which affect the ability of the group training network to fulfil its charter. These fall into the broad category of the legal relationship between the GTO and the host employer and concern questions such as:

- the respective responsibility for occupational health and safety;
- the increasing cost of workers compensation and how this is shared between the GTO and host employer; and
- the introduction of the crime of industrial manslaughter.

1.11. These are all impacting on the cost of doing business but also on the willingness of people to serve on the boards of group training organisations which rely on the goodwill of members of the community for their governance. The realisation that serving on the board of a community-based not-for-profit organisation affords no special protection is being cited as a cause of the difficulty of recruiting new directors.

1.12. We believe that the Queensland government has shown foresight on this matter by specifying in its workplace health and safety legislation that a GTO's host employer is the employer for the purposes of the legislation. While this has yet to be tested in the courts, it goes some way to recognising the need for protection if GTOs are to be able to carry out their functions. The same definition has yet to be introduced into the Queensland workcover legislation.

1.13. GTA would like to see this definition reflected in all State and Territory workplace health and safety legislation, as well as their workcover legislation.

1.14. We hope that this submission will inform those members of the committee who are not familiar with the important work of the group training network. We feel that this good work is often caught in the cross-fire of debates about the impact of labour hire arrangements in the modern economy and we would not want to see the group training network's ability to achieve its objectives adversely affected by the outcomes of the committee's deliberations.

1.15. We make the following recommendations to the inquiry:

**Recommendation 1: That the Australian government take action to bring State and Territory workplace health and safety laws into line with the Queensland model outlined above.**

**Recommendation 2: That the Australian government take action to develop a national workers compensation scheme which would provide the same protection for group training organisations as that which is suggested for workplace health and safety legislation.**

## **2. Role of Group Training**

### ***A Uniquely Australian Employment and Training Solution***

2.1. GTA is the national industry association for a network of over 150 mostly not-for-profit group training organisations (GTOs) operating in over 200 locations across Australia.

2.2. GTOs employ apprentices and trainees (New Apprentices) and on-hire them to host employers for varying periods until the apprentice or trainee has completed his or her Training Contract. This network of companies collectively employs approximately 40,000 apprentices and trainees, some 12% of the national total, making it collectively the largest employer of apprentices and trainees in Australia.

2.3. Research conducted by Dench McClean Associates in 1996 Group Training Australia: Growth Strategy 1996-2000 indicated that, at that time, over 50% of group training's host employers were small and micro-businesses employing fewer than 5 employees while 70% employed fewer than 10. More recent research suggests that, while an increasing number of larger employers are now using the services of GTOs, small businesses are still the major user group. Many of these businesses would not be involved in contracted employment-based training if it were not for the services provided by group training organisations.

2.4. The concept of group training began in the late-1970s in response to the needs of small employers in the building and automotive industries who were increasingly unable to commit to four year indentures, which at that time was the standard duration of a Training Contract. GTOs subsequently proved themselves to be an important mechanism for providing employment for out-of-trade apprentices affected by the economic downturn in the early 80s.

2.5. From the early 1980s, the growth of group training was assisted by the support of the ACTU-Lend Lease Foundation, which promoted the concept and facilitated the establishment of new companies.

2.6. From about this time, group training also attracted the support of governments, which could see the benefit they provided to young people seeking employment in the trades and the important contribution they made to national skills formation. In recognition of their efforts, not-for-profit GTOs started to receive government grants to assist them with their operating costs.

2.7. A decision taken by government in the early 1990s to gradually withdraw operating support, subsequently rescinded as a counter-cyclical measure, impelled group training organisations to expand their operations beyond their core function in search of alternative sources of funding. Governments have, however, continued to promote the philosophy that GTOs should seek to be more self-sufficient and, as a consequence, have allowed the real value of their operating support to decline over the years.

2.8. The result of this is that today many Group Training Organisations are involved in a range of commercial functions including:

- the provision of training and assessment services as Registered Training Organisations (RTOs)
- the management of New Apprenticeship Centres (NACs) or the provision of other employment placement services under contract from the Commonwealth (Job Network)
- the provision of other employment and training services under contract from State and Territory governments; and
- labour hire for qualified tradespeople and other workers

2.9. These activities have contributed substantially to the commercial operations of GTOs and in many instances are the only reason they have been able to continue to operate the core business of employing and placing apprentices and trainees with host employers.



### ***School to Work Transition***

2.10. In addition to their many commercial functions, group training organisations also find themselves increasingly involved with schools, and the range of issues affecting school to work transition. This is not surprising of course, in view of their need to ensure that there is a steady stream of quality candidates willing and able to fill their apprenticeship and traineeship vacancies.

2.11. This involvement with schools takes a number of forms and includes:

- the provision of careers advice
- the management and coordination of structured workplace learning (SWL) programs, funded by the former Enterprise and Career Education Foundation (ECEP) and now the Department of Education, Science and Training (DEST)
- participating on VET in schools management committees
- providing training as an RTO to VET in school students; and
- employing school-based apprentices or trainees.

### ***Group Training Differs from Labour Hire***

2.12. As we stated earlier, while employing apprentices and trainees and on-hiring or leasing them to host employers is effectively a labour hire mechanism, Group Training Australia (GTA) and the group training network do not regard the business of group training as part of the labour hire industry. We appreciate however that this view is not universally shared.

2.13. We believe that the purpose of the placement is what distinguishes a group training organisation from a labour hire company, notwithstanding the vagaries of the contemporary labour market where placements can be of short duration in industries such as building and construction. A labour hire company places a worker with a host employer exclusively for productive work and it may do so under a variety of contractual arrangements which themselves suggest different legal relationships and employment obligations between the parties.

2.14. A group training organisation on the other hand makes a placement with a host employer principally for the purposes of training and continues to make such placements for as long as is necessary for the apprentice or trainee to complete his or her Training Contract. Employment, in this instance, is really only the vehicle for the delivery of the training with the emphasis on training rather than productive work.

2.15. The GTO is the employer, and as such is a party to the Training Contract, generally with responsibility for the payment of wages and other employment entitlements. In addition to brokering the placement, the GTO is then responsible for managing and co-ordinating the on and off-the-job training. It may even be in a position to deliver the off-the-job training if it is a Registered Training Organisation (RTO), is registered to deliver the competencies in question and is eligible for User Choice funding within the jurisdiction.

2.16. In managing the placement the GTO may also provide a level of care and support to its apprentices and trainees that often goes beyond its strict statutory obligations as an employer. We know that the pastoral care, and the active intervention in the lives of many young people, that a GTO may be called upon to provide to as many as 1,000 or more apprentices and trainees can at times be more akin to social work than routine human resource management.

2.17. We are not convinced that the level of government support is commensurate with the true cost of this undertaking nor with the enormous contribution that GTOs are making to national skills formation, particularly in the traditional trades where skill shortages are now rife.

2.18. The group training network is still comprised overwhelmingly of not-for-profit organisations whose charter broadly speaking is to:

- train and develop young people to become contributing citizens of the Australian community,

- maintain and enhance the stock of skilled personnel for Australian industry,
- support small business people (the major employer category in Australia) who wish to participate in training of the workforce but who lack the capacity to provide sustained employment and training opportunities; and
- assist communities through skills acquisition and enhancement as well as employment maintenance.

2.19. The directors of these organisations, generally incorporated associations or companies limited by guarantee, are drawn from a cross-section of the local community and give their time and expertise largely without recompense to ensure that the company is able to fulfil this charter while being run in accordance with the accepted standards of corporate governance.

2.20. As this organisation has claimed on many occasions, in submissions to government inquiries and in representations to external stakeholders, and as we will again demonstrate in this submission, the ability of group training organisations, their managers and directors, to play the part now expected of them is made that much more difficult and costly by the increasing complexity of their operating environment at a time when government support has been diminishing.

### ***Group Training Underpins Traditional Skills Base***

2.21. As indicated earlier, group training has its origins in the traditional trades when four-year indentures, or Training Contracts, as they are now known, were essentially the predominant form of contracted, employment-based training.

2.22. The introduction of traineeships in the mid-1980s saw a massive expansion in the range of contracted, employment-based training arrangements available to prospective job-seekers, initially at lower skill levels than traditional trade training, invariably of shorter duration (generally 12 months) and mostly in industries or occupations where such training arrangements had not previously existed.

2.23. Figures available from the National Centre for Vocational Education Research (NCVER), included in the following tables, demonstrate the extent to which the group training network underpins the national effort in traditional trade training.

Table 1

<b>Percentage of traditional apprentices in training by employer type by State/Territory</b>					
<b>September quarter 2004</b>					
<b>State/Territory</b>	<b>Government</b>	<b>Private Sector</b>	<b>Group Training</b>	<b>Unclassified</b>	<b>All Employers</b>
<b>NSW</b>	3.74	81.2	14.98	0.08	100
<b>VIC</b>	5.13	82.80	12.08	0.00	100
<b>QLD</b>	4.26	71.55	24.18	0.00	100
<b>SA</b>	1.49	71.03	27.33	0.14	100
<b>WA</b>	0.92	75.61	23.47	0.00	100
<b>TAS</b>	0.62	77.44	21.94	0.00	100
<b>NT</b>	4.23	80.71	15.05	0.00	100
<b>ACT</b>	1.69	80.47	16.74	1.09	100
<b>All States</b>	3.68	78.19	18.08	0.05	100

Source: NCVER Apprenticeship and traineeship data collection – September Quarter 2004

**Points of Interest:** The group training share of all traditional trades is 18% (23,869) nationally, rising to nearly 25% or more in QLD, SA and WA.

2.24. A closer look at the data is even more revealing. The following table highlights group training's national market share of all tradespersons, and selected trade categories, as well as its share in the same trade categories in those States and Territories where it exceeds its national share.

2.25. It is important to bear in mind that group training's national market share of all apprentices and trainees across all industry classifications is currently in the order of 12%, to appreciate the significance of the following figures.

Table 2

<b>Group Training Percentage Market Share by Trade and by Key States September Quarter 2004</b>			
Trade	GT Market Share All States/Territories %	GT Market Share Selected States/Territories %	
• Tradespersons and Related Workers (all trades)	18.1	QLD	24.2
		WA	23.5
		SA	27.3
		TAS	22.0
• Construction tradespersons	24.2	WA	42.7
		ACT	41.6
		SA	48.6
		QLD	34.3
• Automotive tradespersons	19.9	TAS	29.1
		SA	31.4
		WA	23.7
• Mechanical and fabrication engineering tradespersons	17.3	NT	19.4
		TAS	21.3
		SA	26.7
• Electrical and electronics tradespersons	22.0	SA	37.3
		TAS	46.3
		WA	32.1
		QLD	25.3
• Food tradespersons	15.3	QLD	26.4
		SA	23.2

Source: NCVET Apprenticeship and traineeship data collection – September Quarter 2004

2.26. There could be no clearer evidence of the significant contribution that this uniquely Australian labour market intermediary is making to the maintenance of the national training effort in the traditional trades. This effort has been made despite a steady increase in the operating costs of GTOs at the same time as the level of government financial support has been reduced.

2.27. The increasing costs can be attributed to factors such as:

- the burgeoning costs of insurances, in particular workers compensation and public liability
- the loss of benefits derived from sales tax exemption with the introduction of the GST;
- compliance costs associated with a range of government policies including GST, OH&S, affirmative action, protection of minors; and, a point that is often lost,

- the increased complexity of managing apprentices and trainees in a competency-based training system.

### ***How Policy Affects Group Training***

2.28. A 2002 review of group training, chaired by the Australian National Training Authority (ANTA), considered its role in the labour market and its contribution to employment and skilling in Australia. The review affirmed the important role of group training in the Australian VET system; in underpinning traditional trade training; working with local communities; as school to work transition brokers; and in assisting small business to understand the national training system and other aspects of government policy.

2.29. As a result of its findings, the review recommended the introduction of nationally consistent registration standards, which we fully support and which are soon to be reviewed, and more critically, proposed a new set of funding arrangements which have now been implemented.

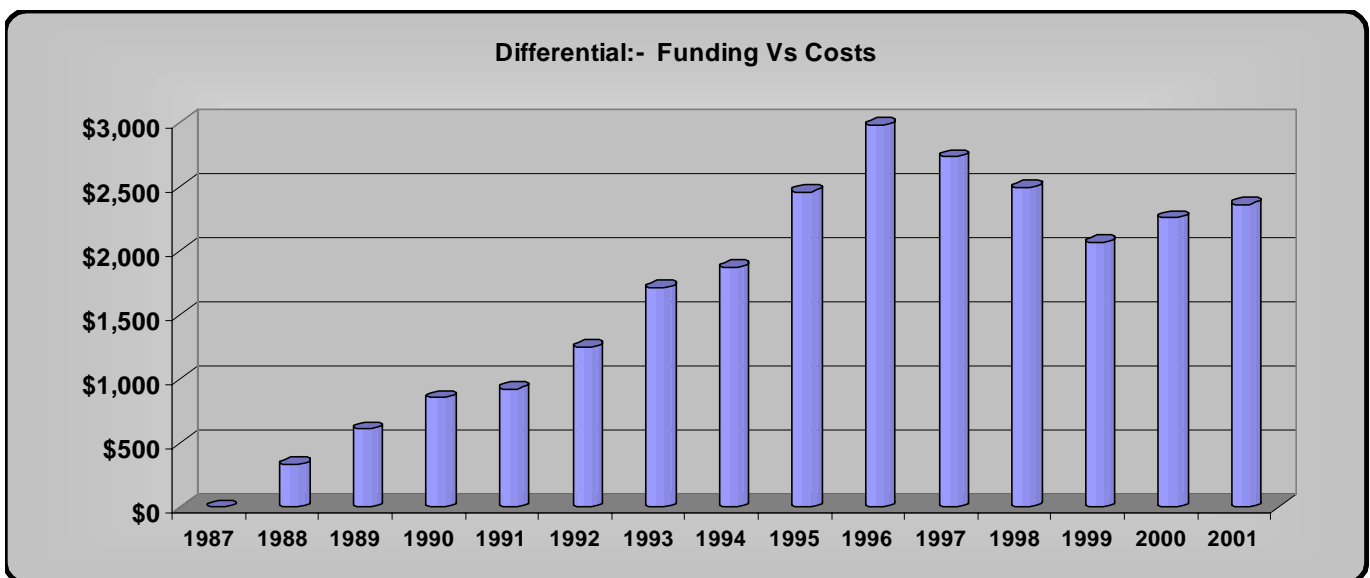
2.30. This association has always been concerned about the proposed new funding arrangements and the impact they might have on group training organisations, given that these funds are critical to the financial viability of many GTOs. Administered on a matching basis between the Commonwealth and the States under what is known as the Joint Group Training Program, this funding has been a cause of concern to our network for some time.

### ***Joint Group Training Program***

2.31. The question of the depreciating value of the Joint Group Training Program funds was the subject of vigorous debate during the 2002 national review of group training. The debate included submissions from interested parties following the release of a consultation paper by the review steering committee.

2.32. One such submission from a GTA member company included a table that graphically demonstrated the growing gap over the period 1987-2001 between the level of government support for an apprentice or trainee and the cost of supporting that person through their Training Contract. This graph is reproduced below by permission of Capricornia Training Company (CTC), Rockhampton, Queensland.

2.33. While the graph is based on the income and expenditure profile of CTC's apprentices and trainees, GTA believes it would be indicative of trends for the entire network. Indeed, this contention was essentially confirmed by William Buck Business Consultants who were commissioned to undertake an analysis of the financial viability of GTOs as part of the national review.



2.34. It is clear from this graph that this growing gap has had to be met by either cross-subsidising from other sources or from increased charge-out fees to host employers. While charge-out rates have had to be increased to compensate for the reduction in government support, small business has a limited capacity to absorb the increase. The risk to GTOs, and hence to the national training effort, is that host employers will opt out of contracted, employment-based training altogether if it proves too costly.

2.35. The new funding principles are controversial because they overturn the long established principle of funding for all apprenticeships and traineeships and replace it with the proposition that the funds only be used by State/Territory Training Authorities to purchase outcomes drawn from four agreed priority categories. This would further reduce operational support for many GTOs and adversely impact on their ability to maintain effort in the recruitment, placement and support of a traditional apprentice throughout a four-year Training Contract.

2.36. We understand that the Australian National Training Authority will soon conduct a review of the impact of the new funding arrangements.

### ***Legal Issues***

2.37. There are factors, other than diminishing government operating support, that are impinging on the ability of GTOs to fulfil their charter as providers of career opportunities to young people, which might not otherwise be available, and as critical contributors to national skills formation. These factors include the usual imposts and compliance costs of doing business in the modern economy but there are now also increasing problems of a legal kind associated with the nature of their business.

2.38. These factors go to the relationship between the GTO and host employer, their respective responsibilities for the apprentice or trainee in the workplace and the different State occupational health and safety regimes that apply. These in turn can affect the cost of workers compensation insurance, which for many GTOs is still based on a labour hire rating at the upper end of



the scale, and which is becoming an insupportable impost that has to be passed on to host employers who, not surprisingly, balk at these additional costs.

2.39. More recently, we have seen one jurisdiction introduce legislation that enables its Workcover authority to recoup workers compensation payments from what is termed a third party wrongdoer, in this case a GTO's host employer, if the host can be proved liable for, or to have contributed towards, a workplace accident. The legislation has caused a number of GTO host employers to return their apprentices and trainees or face steep increases in their public liability premiums to cover the cost of possible recovery action.

2.40. Finally, the introduction or proposed introduction of the crime of industrial manslaughter in various jurisdictions has given rise to considerable apprehension within the management and boards of many GTOs. Every effort is taken by a GTO to induct an apprentice or trainee in occupational health and safety, as well as to assure the safety standards of every host employer's workplace before assigning an apprentice or trainee to it. The reality however is that some workplaces are dynamic and changing daily, such as in the construction industry, and with the host employer responsible for the day to day supervision and direction of an apprentice or trainee, it is unreasonable to expect a GTO to be able to assure the safety of the workplace on a daily basis.

2.41. While it has always been argued that such legislation is only targeted at so-called rogue employers, we are concerned that if tested in a court of law by a skilled advocate, the outcome could one day prove quite remote from the original intention.

2.42. Not-for-profit GTOs across the country rely on the goodwill of largely unpaid directors drawn from local communities who give their time and expertise to assist their company to provide career opportunities for the young people in their community. The likelihood of their being liable in the event of a tragedy over which they genuinely feel they have had no control is an

alarming prospect and is already leading to signs of an unwillingness to serve GTOs in this capacity.

2.43. We believe that the Queensland government has shown foresight on this matter by specifying in its workplace health and safety legislation that a GTO's host employer is the employer for the purposes of the legislation. While this has yet to be tested in the courts, it goes some way to recognising the need for protection if GTOs are to be able to carry out their functions. The same definition has yet to be introduced into the Queensland workcover legislation.

2.44. GTA would like to see this definition reflected in all State and Territory workplace health and safety legislation, as well as their workcover legislation.

**END**