



A proposed redefinition of employment

Professor A. Stewart, Submission No. 69, p. 10-11.

Referred to in paragraph 4.19

The following standard definition of employment is proposed:

- (1) A person (the worker) who contracts to supply their labour to another is to be presumed to do so as an employee, unless it can be shown that the other party is a client or customer of a business genuinely carried on by the worker.

- (2) A contract is not to be regarded as one other than for the supply of labour merely because:
 - (a) the contract permits the work in question to be delegated or sub-contracted to others; or
 - (b) the contract is also for the supply of the use of an asset or for the production of goods for sale; or
 - (c) the labour is to be used to achieve a particular result .

- (3) In determining whether a worker is genuinely carrying on a business, regard should be had to the following factors:
 - (a) the extent of the control exercised over the worker by the other party;
 - (b) the extent to which the worker is integrated into, or represented to the public as part of, the other party's business or organisation;
 - (c) the degree to which the worker is or is not economically dependent on the other party;
 - (d) whether the worker actually engages others to assist in providing the relevant labour;
 - (e) whether the worker has business premises (in the sense used in the personal services income legislation); and

- (f) whether the worker has performed work for two or more unrelated clients in the past year, as a result of the worker advertising their services to the public.
- (4) Courts are to have regard for this purpose to:
- (a) the practical reality of each relationship, and not merely the formally agreed terms; and
 - (b) the objects of the statutory provisions in respect to which it is necessary to determine the issue of employment status.
- (5) An employment agency¹ which contracts to supply the labour of a person (the worker) to another party (the client) is to be deemed to be that person's employer, except where this results in a direct contract between the worker and the client.
- (6) Where:
- (a) an arrangement is made to supply the labour of a person (the worker) to another party (the ultimate employer) through a contract or chain of contracts involving another entity (the intermediary); and
 - (b) it cannot be shown that the intermediary is genuinely carrying on a business in relation to that labour that is independent of the ultimate employer, on the basis of factors similar to those set out in (3) above, the worker is to be deemed to be the employee of the ultimate employer.

¹ That is, an entity whose business involves or includes the supply of workers to other unrelated businesses or organisations, whether through a contract or a chain of contracts.