
The Parliament of the Commonwealth of Australia

Making it work:

Inquiry into independent contracting and labour hire arrangements

House of Representatives Standing Committee on Employment, Workplace
Relations and Workforce Participation

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Canberra

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DISSENTING REPORT

Mr Brendan O'Connor MP, Mr Tony Burke MP, Ms Annette Ellis MP, Ms Jill Hall MP

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Foreword

The growth of independent contracting and labour hire employment (in the last fifteen years) clearly indicates that it has become a preferred employment choice for many Australians. Currently over 10 per cent of the workforce identifies themselves as being independent contractors across a wide variety of industries.

The growth in these work arrangements has been attributed to employers' preferences for an agile workforce that can respond to changing work demands. Additionally, for some workers maximising their independence in determining work options is part of the attractiveness of independent contracting arrangements. For many they perceive that lifestyle and remuneration objectives are more readily achievable than through the rigidity of traditional employment options.

Identifying the future role of less common forms of work than direct employment, such as independent contracting and labour hire, is at the core of different political party perspectives.

It has been a challenging task for the Committee to examine current state and federal workplace relations systems to identify strategies to promote greater consistency across Australia.

This inquiry was conducted at a time of increasing debate on the conditions of Australian workers with possible changes to federal workplace relations legislation affecting the coverage of state legislation.

There has been concern that some employers may design contractual arrangements to craft workers as 'independent contractors' and thus avoid legal obligations that would be owed to employees.

The Committee investigated whether labour hire and contracting arrangements are, in some instances, being used to evade responsibilities – particularly in the areas of occupational health and safety and employee entitlements. The lack of comprehensive training and development strategies to meet current and future skills shortage was also examined.

Recommendations are included in the report to address the need for labour hire agencies and host businesses to fulfil their responsibilities for safe working conditions and to meet Australia’s skills requirements. A voluntary industry code of practice is proposed to improve the operation of the labour hire industry.

The need for greater clarity and consistency in distinguishing between an employee and an independent contractor was overwhelmingly presented to the Committee and subsequently considered. A pragmatic strategy using existing national approaches, including the common law and components of the personal services income taxation tests, is considered to provide the most achievable Australian-wide outcome.

It is important to ensure that the advantages of independent contracting and labour hire are not infringed upon while trying to curb the devising of artificial workplace arrangements that do not reflect the true nature of relationships.


Considering independent contractors within commercial relationships provides the framework for supporting and developing independent contractors’ business structures. Improved access to relevant information on rights and responsibilities is a key to ensuring there is informed choice in selecting working arrangements. Additionally, when a dispute arises regarding a contract for service, accessible, affordable resolution procedures are necessary.

It can be expected that there will be objections to some suggested reforms. A balanced approach has been sought to recognise the needs of labour hire agencies, workers, employers, and independent contractors. The Committee believes that what are essentially commercial business relationships should be preserved, while steps are taken to prevent artificial work relationships that seek to avoid important employer responsibilities.

Submissions and witnesses to the inquiry provided very valuable material and we are grateful for their involvement in the process with evidence being received from every state and territory. Once again the Members of this Committee demonstrated considerable commitment to working together to report in a reasonably short time-line. I thank the Members for their dedication to the inquiry. There has been dissent on party lines on some of the recommendations. However, there is unified support for the majority of the report. I also thank the dedicated professionalism of the Inquiry Secretariat for their counsel, assistance and patience throughout the process.

The strategies outlined here are designed to make labour hire and independent contracting arrangements work for Australians and for Australian businesses. They work to make a competitive Australia offering a range of working arrangements to suit industry, occupation, employer and worker requirements.

Mr Phillip Barresi MP
Chair



Membership of the Committee

Chair Mr Phillip Barresi MP

Deputy Chair Mr Brendan O'Connor MP

Members Mr Mark Baker MP
 Mr Tony Burke MP
 Ms Annette Ellis MP
 Ms Jill Hall MP
 Mr Stuart Henry MP
 Mrs Margaret May MP
 Mr Don Randall MP
 Mr Ross Vasta MP

Committee Secretariat

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Terms of reference

Inquiry into independent contracting and labour hire arrangements

The terms of reference for the inquiry were adopted on 9 December 2004 by the Committee. The Minister for Employment and Workplace Relations, the Hon Kevin Andrews MP, requested the House of Representatives Standing Committee on Employment, Workplace Relations and Workforce Participation Committee to inquire into and report on:

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



List of abbreviations

ABN	Australian Business Number
ABR	Australian Business Register
ABS	Australian Bureau of Statistics
ACCC	Australian Competition and Consumer Commission
ACCI	Australian Chamber of Commerce and Industry
ACTU	Australian Council of Trade Unions
Ai Group	Australian Industry Group
AiIT	Australian Institute of Interpreters and Translators Inc
AIRC	Australian Industrial Relations Commission
AMWU	Australian Manufacturing and Workers Union
ANTA	Australian National Training Authority
APESMA	Association of Professional Engineers, Scientists and Managers Australia
ASCC	Australian Safety and Compensation Council
ASU	Australian Services Union
ATO	Australian Tax Office
AWA	Australian Workplace Agreements
AWIRS	Australian Workplace Industrial Relations Survey

CCF	Civil Contractors Federation
CEITT	International Confederation of Temporary Work Businesses
CEPU	Communications, Electrical and Plumbing Union
CFMEU	Construction, Forestry, Mining and Energy Union
Cole Report	The Final Report of the Royal Commission into the Building and Construction Industry
Dawson Review	Review of the competition provisions of the <i>Trade Practices Act 1974</i>
DEST	Department of Education, Science and Training
DEWR	Department of Employment and Workplace Relations
DOCEP	Department of Consumer and Employment Protection
DSP	Disability Support Pension
EBA	Enterprise bargaining agreement
ESS	Australian Bureau of Statistics Employment Services Survey
FOES	Australian Bureau of Statistics Forms of Employment Survey
GTA	Group Training Australia
GTO	Group Training Organisation
HIA	Housing Industry Association
ICA	Independent Contractors of Australia
ILO	International Labour Organisation
IT	Information Technology
MBA	Master Builders Australia
NFF	National Farmers' Federation
NOHSC	National Occupational Health and Safety Commission
NRCOHSR	National Research Centre for OHS regulation

NSW IR Act	NSW <i>Industrial Relations Act 1996</i>
NSW RTA	NSW Road Transport Association
NUW	National Union of Workers
OEA	Office of the Employment Advocate
OHS	Occupational Health and Safety
Owner Drivers Bill	Owner Drivers and Forestry Contractors Bill 2005 (Vic)
OWS	Office of Workplace Services
PAYG	Pay As You Go
PSI	Alienation of Personal Services Income Act (2000)
QIRC	Queensland Industrial Relations Commission
Qld IR Act	Queensland <i>Industrial Relations Act 1999</i>
RCSA	Recruitment and Consulting Services Association
RTBU	Australian Rail, Tram and Bus Union
RTO	Registered Training Organisation
SBDC	Small Business Development Corporation (WA)
TP Bill 2005	The Trade Practices (Amendment) Bill 2005 (Cth)
TPA	<i>Trade Practices Act 1974</i> (Cth)
TWU	Transport Workers' Union
VACC	Victorian Automobile Chamber of Commerce
WR Act	<i>Workplace Relations Act 1996</i> (Cth)
WRMC	Workplace Relations Ministers' Council



List of recommendations

Inquiry into independent contracting and labour hire arrangements

Chapter 3 Labour hire

Recommendation 1 – Paragraph 3.57

The Committee recommends that the Australian Government Department of Employment and Workplace Relations:

- commission research into the prevalence of independent contracting and labour hire arrangements, ensuring comparability with earlier surveys and available data items; and
- work with the Australian Bureau of Statistics to expand existing survey categories in order to generate ongoing data on independent contracting and labour hire arrangements.

Chapter 4 Issues to address

Recommendation 2 - Paragraph 4.48

The Committee recommends that the Australian Government maintain the common law approach to determine employment status and distinguish between employees and legitimate independent contractors.

Recommendation 3 - Paragraph 4.48

The Committee recommends that the Australian Government, when drafting federal legislation, in addition to the common law position, adopt components of Australian income tax assessment alienation of personal services income legislation tests to identify independent contractors.

Recommendation 4 - Paragraph 4.48

The Committee recommends that the Australian Government, in conjunction with State and Territory governments, pursue through the Workplace Relations Ministers' Council national consistency in identifying independent contractors. The Committee recommends that this is achieved by, in addition to the common law position, adopting components of Australian income tax assessment alienation of personal services income legislation tests in the drafting of relevant state and territory legislation.

Recommendation 5 - Paragraph 4.72

The Committee recommends that the Australian Government Departments of Employment and Workplace Relations, and Education Science and Training, through the National Skills Shortage Strategy, develop a program of skills development and a best practice guide targeted at the labour hire industry. The development of this program and guide should be in consultation with the Recruitment and Consulting Services Association as the peak industry body, labour hire agencies and relevant employee bodies.

Recommendation 6 - Paragraph 4.107

The Committee recommends that the Australian Government, through the Department of Employment and Workplace Relations, the Australian Safety and Compensation Commission and the Workplace Relations Ministers' Council, improve occupational health and safety in the labour hire industry through the following national initiatives:

- improving the collation of data on injury rates for labour hire workers compared to direct employees;
- requiring appropriate occupational health and safety training for workers by labour hire agencies and host businesses; and
- monitoring and enforcing compliance with occupational health and safety regulation.

Recommendation 7 - Paragraph 4.107

The Committee recommends that the Australian Government, through the Department of Employment and Workplace Relations, the Australian Safety and Compensation Commission and the Workplace Relations Ministers' Council, develop initiatives to achieve greater understanding and more clearly delineate responsibilities among labour hire agencies and host businesses in relation to occupational health and safety.

Recommendation 8 - Paragraph 4.109

The Committee recommends that the Australian Government, through the Department of Employment and Workplace Relations, the Australian Safety and Compensation Commission and the Workplace Relations Ministers' Council, improve occupational health and safety for independent contractors through the following national initiatives:

- improving the collation of data on injury rates for independent contractors compared to direct employees;
- requiring appropriate occupational health and safety training for independent contractors; and
- monitoring and enforcing compliance with occupational health and safety regulation.

Recommendation 9 - Paragraph 4.109

The Committee recommends that the Australian Government, through the Department of Employment and Workplace Relations, the Australian Safety and Compensation Commission and the Workplace Relations Ministers' Council:

- examine how incentives for independent contractors may discourage compliance with occupational health and safety requirements; and
- develop initiatives to ensure greater understanding among independent contractors and host businesses of respective responsibilities in relation to occupational health and safety.

Recommendation 10 - Paragraph 4.132

The Committee recommends that the Australian Government Department of Employment and Workplace Relations, through the Australian Safety and Compensation Council review workers' compensation schemes to assess and improve the consistency of employment services categories measuring the injury rates of labour hire workers and independent contractors compared to direct employees.

Recommendation 11- Paragraph 4.156

The Committee recommends that the Australian Government, through the relevant departments and peak industry bodies, establish a voluntary labour hire industry code of practice. The Committee recommends that the voluntary code is established by 2007, and endorsed by the Australian Competition and Consumer Commission.

Chapter 5 Commercial arrangements

Recommendation 12 - Paragraph 5.112

The Committee recommends that the Australian Government broaden the description used in the *Workplace Relations Act 1996* of an independent contractor and extend it beyond 'a natural person'.

Recommendation 13- Paragraph 5.114

The Committee recommends that the Australian Government Office of Small Business collate and further develop a series of resources for independent contractors. Collated resources should provide assistance on:

- setting up a small business;
- financial and reporting requirements;
- dispute resolution options; and
- business management practices.

Recommendation 14 - Paragraph 5.116

The Committee recommends that the Australian Government incorporate the following protections when drafting legislation for independent contractors:

- preserving the legal status of independent contractors as small businesses;
- providing a broad description of independent contractor to cover all forms of small business structures;
- regulating independent contractors as small businesses within a framework of commercial laws and institutions, rather than industrial laws and institutions; and
- providing alternative dispute resolution procedures.

Chapter 6 Future for working arrangements

Recommendation 15 - Paragraph 6.86

The Committee recommends that, if constitutional powers are used to implement a national industrial relations system, then the Australian Government ensure that legislation protects legitimate independent contractor arrangements by providing:

- national regulatory consistency;
- definitional clarity in relation to working arrangements and responsibilities; and
- accessible dispute resolution procedures.

Recommendation 16- Paragraph 6.95

The Committee recommends that the Australian Government extend jurisdiction of the Federal Magistrates Court to hear cases associated with dispute resolution of unfair contracts for service.