

**SENATE EMPLOYMENT, WORKPLACE RELATIONS AND EDUCATION  
LEGISLATION COMMITTEE**

**2006-2007 BUDGET SENATE ESTIMATES HEARING  
29TH-30TH MAY 2006**

**EMPLOYMENT AND WORKPLACE RELATIONS PORTFOLIO**

**QUESTIONS ON NOTICE**

**Outcome 2: Higher productivity, higher pay workplace**

**Output Group 2.2: Workplace Relations Implementation**

**Output 2.2.1: Industry and Australian Government Employment Advice**

**Question Number: W226-07**

**Question:**

Senator Siewert asked in writing:

**Guest workers** If a labour-hire agency recruits self-employed ABN workers, pays their professional liability insurance, places them on construction sites, administers their pay and charges them an administration fee for those services, is that labour hire agency subject to the provisions on the BCII Act, and, if so, in what way?

**Answer:**

I am advised that the current Migration Regulations and procedures require an eligible Australian employer (which may include a labour hire agency) to demonstrate an employer-employee relationship with all overseas workers recruited under the temporary business long stay migration arrangements. As such, overseas workers recruited under these migration arrangements cannot operate as self-employed independent contractors.

In addition, building and construction industry employers operating in the federal jurisdiction are covered by the BCII Act. The definition of building contractor in the BCII Act is:

*“a person who has entered into, a contract for services under which the person:*

*(a) carries out building work; or*

*(b) arranges for building work to be carried out.”*

A labour hire agency would fall within the definition of building contractor under the BCII Act if it has entered into a contract for services to arrange for building work to be carried out. If the labour hire agency is a building contractor, it would be subject to those provisions of the BCII Act that apply to building contractors.