

## **Report of the Whole Committee**

1.1 The Independent Contractors Bill 2006 (the principal bill) and the Workplace Relations Legislation Amendment (Independent Contractors) Bill 2006 (the amendment bill) were introduced into the House of Representatives on 22 June 2006 and referred to this committee by the Senate on the same day.

1.2 The committee's inquiry attracted a high degree of interest from affected parties. Some 55 submissions were received. Included among these were four from state governments, and a range of views were put by peak employer organisations, contractors associations, trade unions and individual contractors. Public hearings were held over two days in Parliament House, and the committee sought additional information about current negotiations between clothing industry workers and the government, a process which will be described later in this chapter. Lists of submissions, and witnesses appearing at the hearings, are to be found in the appendices to this report.

1.3 The committee has agreed to report on these bills in a way which is different from the usual run of EWRE Legislation Committee reports. This chapter reports the unanimous views of the committee as they relate to aspects of the bill dealing with the regulation of outworkers. This is a subject of long-standing interest to the committee, and this report describes the ultimately successful process of ensuring that the legislation effectively addressed some of the concerns of outworkers in the clothing industry, within the current workplace policy framework. Other reports which follow in this volume express the particular and opposing views of parties in relation to other aspects of the legislation.

### **What the bills do**

1.4 The principal bill, the Independent Contractors Bill 2006, seeks to exclude state and territory laws which deem as employees many independent contractors entering commercial agreements with employers. In the Government's view, these state laws interfere with rights, entitlements, obligations and liabilities of parties to genuine independent contracting arrangements. Most of the other measures contained in the principal bill are qualifications to the overriding provisions. These include the introduction of transition arrangements for those workers previously deemed by state and territory laws to be employees but who would now be independent contractors, and the retention of existing protections for outworkers and road transport owner-drivers. The principal bill also enables application to be made to a federal court for the review of services contracts on the grounds that they are harsh or unfair.

1.5 The amendment bill provides consequential amendments to the Workplace Relations Act (WRA), especially in relation to textile, clothing and footwear (TCF) outworkers, and to unfair contracts. The amendment bill also introduces a new provision relating to the prevention of deceptive misconduct by employers or contract

principals in relation to their employers or contractors. The provisions prohibit the misrepresentation of an employment relationship as one of independent contract, of knowingly making false statements to a worker with the intention of persuading or influencing the worker to become an independent contractor, or dismissing or threatening to dismiss an employee for the purposes of re-hiring that employee under an independent contract to engage in similar work. The amendment bill also contains provision for penalties where these provisions are breached.

### **Protection of the employment conditions of outworkers**

1.6 While members of the committee differ on the philosophy which underpins the Independent Contractors Bill, all agree that the increasing prevalence of independent contracting, which these bills seek to regulate, brings with it a possible danger for those workers most vulnerable to unscrupulous employers and to extreme forces in particular markets. The committee was reassured by the government's undertaking to protect outworkers and owner-drivers by maintaining existing state and territory regimes which set relevant awards as the minimum level at which pay and conditions for these workers may be awarded.

1.7 The issue of owner drivers is taken up in other chapters of this report. The committee considers outworkers to be more vulnerable to changes resulting from this legislation. At its hearings on 4 August, the committee heard from representatives of workers in the textile, clothing and footwear (TCF) industry, of which outworkers form a large part, that protections contained in the Independent Contractors Bill were inadequate. One concern in particular was taken up by the committee. That related to provisions which deprive state jurisdictions of the power to legislate to set aside unfair provisions in contracts, particularly necessary anti-avoidance laws, which currently exist in state legislation, and which are contained in clause 7(1)C of the bill. Other objections to the legislation were also outlined by FairWear in their submission, but the committee was particularly concerned with this matter.

1.8 At the hearings on 4 August, the committee agreed, after hearing from FairWear, to monitor negotiations, at that time were in their beginning stages, between FairWear, a combined union and community TCF interest group, and the Minister for Employment and Workplace Relations, the Hon Kevin Andrews MP. Should differences not be resolved within a week, the committee resolved to convene a private meeting at which representatives of the Department of Employment and Workplace Relations and the TCF industry could continue negotiations, with the committee acting as a facilitator.

### ***Contract outworker protection in Victoria***

1.9 That meeting was held on 17 August, at which parties reported to the committee that substantial progress had been made in relation to one area in dispute, resulting in an in-principle agreement by both parties to the removal of Part 4 of the primary bill, dealing with protection of outworkers in the TCF industry in Victoria. The committee notes the advice it received from the Minister for Industrial Relations

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in Victoria that Victorian legislation contained comprehensive and appropriate protection for outworkers. The Victorian Government would support the excision of the provisions in Part 4 of the bill, so as to avoid unnecessary and confusing duplication of laws. The committee is also reassured by strong indications from the Department that the removal of Part 4 is likely to be agreed to by the government. Finally, in view of assurances from FairWear of its firm support for the removal of Part 4, the committee recommends that this be done.

1.10 It was clear to the committee that disagreements over two other issues; the regulation making provision in the bill, and the provisions in relation to sham contracts and penalties for such offences, were too fundamental to the purposes on the bill to be subject to negotiation.

### *The contentious clause 7(1)C*

1.11 Most of the discussion conducted by the committee on 17 August with FairWear representatives and DEWR officials had to do with the contentious clause 7(1)C. The committee noted that the purpose of this clause was to give effect to the government's intention to create an exclusive unfair contracts regime in the Commonwealth jurisdiction. FairWear representatives argued that its inclusion in the bill was expressly contrary to the Minister's stated policy of preserving state powers to protect outworkers, because the clause had the effect of removing existing state anti-avoidance protections. The committee noted the Department's draft of an amendment to the bill to accommodate objections, and heard from FairWear representatives about their continued objection.

1.12 Departmental officials argued that exclusion of the provision would be inconsistent with Work Choices, and that the operation of state laws would be unaffected by its retention. The Department suggested that there were drafting possibilities which would serve to put the matter beyond doubt in regard to judicial interpretation. The committee understood that the Minister wanted agreement on this point, and that it was the Department's firm intention to find a drafting solution to the problem identified both by FairWear and expressed also by Senator Andrew Murray at a private meeting of the committee. It was believed that the inclusion of a clause directly excepting outworkers from the relevant provisions, or a legislative note or appropriate entry in the explanatory memorandum would be a way of making clear the government's intention to preserve anti avoidance provisions.

1.13 The committee's resolution to involve itself in processes of negotiation between interested parties to this legislation was highly unusual, and for this committee, probably without precedent. The value of this process will be seen in the amendments which the government is likely to make to the legislation.

## Recommendations

The committee believes that Part 4 of bill serves no useful purpose and **recommends** that it be omitted.

The committee remains firmly of the view that the issue of state powers in relation to anti-avoidance legislation for the protection of outworkers be put beyond doubt in the drafting of the bill. The committee **recommends** the bill be amended accordingly.



**Senator Judith Troeth**  
**Chair**



**Senator Gavin Marshall**  
**Deputy Chair**



**Senator Andrew Murray**