



**Australian
National
Couriers**



21st July 2006

The Secretary
Senate Employment, Workplace Relations and Education Committee
Department of the Senate
PO Box 6100
Parliament House
CANBERRA ACT 2600

Per email: eet.sen@aph.gov.au

Dear Sirs,

INDEPENDENT CONTRACTORS BILL 2006 (IC BILL)
WORKPLACE RELATIONS AMENDMENT (INDEPENDENT
CONTRACTORS) BILL 2006

Australian National Couriers (ANC) has operations in Sydney, Melbourne, Brisbane, Adelaide and Perth with agents operating in Canberra, Hobart and Darwin.

ANC engages some 650 owner drivers and has some 150 staff and we perform on demand transport and distribution services for over 5000 companies across Australia.

The coalition's election promise in 2004 of world first legislation that protected independent contractors from third party interference was well received by ANC and our industry and we support the IC Bill in general. We make this submission on the particular exclusion of NSW and VIC owner drivers from the IC Bill and strongly support the inclusion of all owner drivers in the IC Bill.

The 2004 election promise did not explain, mention or in any way articulate that owner drivers in NSW and VIC would be excluded or that the IC Bill would in any way be selective and exclude independent contractors from some industries.

In the House of Representatives Standing Committee on Employment, Workplace Relations and Workforce Participation inquiry into independent contracting and labour hire arrangements "Making it Work" of August 2005 – there is no mention or indication/recommendation that an exclusion for any kind for any independent contractor should be considered. In addition in points 6.100 and 6.101 recommends national consistency in regulation, the IC Bill is in direct contradiction to the recommendation of a national approach.

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The exclusion of owner drivers has been made on the following basis: (Media release KA0105/06 3rd May 2006)

- NSW and VIC owner drivers require special protections
- NSW and VIC are the only states that have IR laws in relation to owner drivers


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Independent contractors choose to be that – they choose to be independent and operate their own businesses and accept the risks associated with the operation of these businesses. It provides them flexibility and choice on who to work with, how often to work and also negotiate the reward, they also have to rectify in the event that they get things wrong.

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The IC Bill has also given strong protection from sham contracting and this is something that the transport industry fully supports. (Friday employee – Monday contractor).

By the exclusion of owner drivers from the IC Bill the government has created a dangerous and commercially insensate arrangement – IC Bill recognises that independent contractors have a legitimate and important role to play in the economy and its growth. Yet with the introduction of Workchoices and the IC Bill with the exclusion of owner drivers in NSW and VIC, there has now been created a 3rd type of “worker” that is not an employee and yet is not a contractor.

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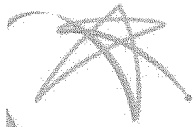
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If owner drivers are not independent contractors they will fail the common law tests and provisions of the IC Bill and fall under Workchoices. However with the current exclusion this cannot occur in NSW and VIC – the result is that we will have an industry paralysed by confusion and the absurd paradox that if you are an owner driver in NSW you have your own business but are subject to more industrial relations regulation than that of an employee.

The arguments that owner drivers have protections are NSW is spurious at best. Yes there is NSW Chapter 6 of the NSW IR Act that deems contract carriers to be employees and principal contractors as employers and there is the Courier and Taxi Truck Contract Determination – yet to exclude owner drivers from the IC Bill assumes that these protections work and are commercial sensible/viable and provide what they propose to do and that is protection of owner drivers.

The TWU claim that without these “protections” there would be a race to the bottom for rates – we would argue that the rates are already at the bottom and the so called protections



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continue to suppress the true market rates that an owner driver could attain by direct negotiation.

The TWU claim that safety is a problem as you have principal contractors pressuring owner drivers to perform and placing unrealistic expectations on their ability – this compromises the safety of the owner drivers and the public. In reality the converse is true – the minimum rates as scheduled cause principal contractors to load up the under minimum owner drivers to try and get them over the minimum rate – the result is the NSW IR regime causes a compromise of safety.

Victoria introduced the *Owner Drivers and Forestry Contractors Act 2005* and it has yet to function or operate so there are no so called operating protections in VIC.

Looking at QLD, VIC, SA, ACT, WA, TAS and the NT that do not have the NSW “protections” – ANC does not experience any of the disastrous situations that the TWU report and we have not seen these problems in the courier and taxi truck sector. If this were the case, why have not the other states all introduced similar legislation to NSW – the fact is that it has never been necessary.

ANC experience in QLD, VIC, SA, and WA is that to attract good quality owner drivers you have be willing to negotiate and offer not only attractive and quality work but also offer fair and equitable rates based on ability and experience. This negotiation ability has been removed by the NSW IR laws and the monopoly that the TWU has to represent all owner drivers regardless of them being TWU members is astonishing and in the past 15 years has been destructive for the NSW industry. The NSW IR regime does not consider ability or experience and reward skill – it attempts to colour all owner drivers with the same brush.

The TWU purports that it represents the courier and taxi truck industry with its small membership and yet when we talk to the owner drivers we engage not only do that want nothing to do with any union they cannot see any benefit in the TWU representing them. Overwhelmingly they want to be able to appoint there own representatives rather than have the NSW IR laws choose for them.

The TWU also has right of entry into NSW principal contractors and these powers have been used from time to time for the purpose of compliance. The sole negotiator is the TWU and the sole representative is the TWU and as a result NSW owner drivers have had basic freedoms of association, negotiation and choice removed from them. Compliance has been patchy at best

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because the industry from principal contractors to owner drivers does not understand their position – you would be confused as well if you operated your own business and had all of these responsibilities yet were also advised that you were deemed an employee for NSW IR purposes. The coalition government promised to rectify this situation in the election promise of 2004 and the resulting IC Bill with the exclusion if owner drivers will exaggerate the current confusion and be damaging to all in the industry.

Proposal

1. Remove owner driver exclusions from the IC Bill and allow the IC Bill and Workchoices to operate as a national approach providing consistency, clarity, flexibility and choice.
2. If the coalition is so concerned about the so called need for protections for owner drivers in NSW and VIC – allow owner drivers the choice to continue under the jurisdiction of the NSW Chapter 6 IR or the VIC provisions or opt into the IC Bill. (This is on the preface that the exclusion of owner drivers in the IC Bill is removed).

Conclusion - Owner driver exclusion from the IC Bill:-

- Strongly objected by ANC – all owner drivers and all independent contractors should be included
- Creates further confusion regarding status and is damaging to the courier and taxi truck industry
- Continues the monopolistic representation of the TWU and limits choice and negotiation by independent contractors
- Creates a situation that owner drivers have more IR coverage than that of employees
- Is not in keeping with the 2004 election promise of the coalition.
- Causes a precedent that could see independent contractors in other industries also excluded by the regulation of the Minister.

I would be happy to give evidence if the committee requires.

Yours sincerely,

James Taylor.
Director

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