

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



Dear Sir

*Inquiry into the provisions of the Independent Contractors Bill 2006 and Workplace Relations Legislation Amendment (Independent Contractors) Bill 2006*

On behalf of the WA Trades and Labour Council (UnionsWA) I submit the following in relation to the above matter.

It has always been our understanding that the federal government would ensure that the proposed legislation would:

1. Fully maintain state laws which protect outworkers;
2. Exempt outworkers from the operation of the Bill; and
3. Provide for penalties where an employer tries to avoid outworker protections by calling outworkers independent contractors.

Unfortunately, our reading of the Bill is that it fails to deliver in any of these areas and

Indeed, even undermines or overrides the protections established by the *Workchoices* legislation a short time ago.

Whilst the Bills certainly purport to give the appearance of maintaining those state laws which protect outworkers it nevertheless fails in a number of areas:

- The provisions contained in the Bills do not maintain state laws which make a contract with an outworker void or unenforceable should a contract seeks to avoid industrial laws, awards or other instruments. This will allow rogue operators in the industry to regularly force outworkers into contracts which are designed to avoid industrial laws and awards and therefore we submit that State laws which prohibit this behaviour must be maintained.
- The Bills only protect state laws which regulate a contract to which an outworker *is a party*. It is well known that across the industry work performed by outworkers is initiated at the top of a chain of contracts to which there are many parties. To protect the outworker (who is at the end of that chain) state laws which regulate contracts between parties further up the contracting chain must be preserved. In their present form the Bills do not preserve these important state laws.
- Section 7 of the Independent Contractors Bill eliminates a very broad range of state laws affecting the "rights, entitlements, obligations and liabilities of a party" to a services contract with the only state laws saved in relation to a services contract with an outworker being those that "apply" to and "make provision"

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in relation to that contract. There are, of course, many important state laws which affect the rights, entitlements, obligations and liabilities of outworkers and those who give out work, but under these provisions many state laws protecting outworkers will be overridden because of this very narrow wording.

- It would also seem that the protections contained in the Bills can be overridden by the Minister through the issuing of regulations (which can override any state law protecting outworkers).

The inevitable conclusion of the above is that rather than exempting outworkers from its operation the Bills create a lawful category of "contract outworkers" who are only entitled to a minimum rate of pay and little if anything else. Protections for basic conditions and rights are excluded.

In states which do not have outworker laws, this will be the only protection for outworkers. An outworker in this position would not even be entitled to basic protections such as annual leave, protections for reasonable hours and overtime payments, shift allowances, redundancy, public holidays, superannuation or parental leave.

To reiterate, the currently drafted contract outworker provisions provide an easy mechanism for the many unscrupulous employers in the TCF industry to contract out of Federal protections for outworkers simply by arguing that outworkers are "contract outworkers". The onus would then fall on the outworker to prove they are an employee. This creates a ready made opportunity for the exploitation of outworkers.

Finally, there are no specific protections against sham contract arrangements for outworkers in the Bills.

Proposed amendments to the Workplace Relations Act contained in the *Workplace Relations Legislation Amendment (Independent Contractors) Bill 2006* give the appearance of protecting all workers against sham contracting arrangements. However, these protections will be hopelessly ineffective because the employer need only show that they reasonably believed the contract not to be a sham and they can then avoid any penalty.

I appreciate that this is a brief submission, however, I trust that the Committee will consider seriously the points raised, with a view to recommending that the Bills be amended to prevent the problems outline from occurring.

Yours Sincerely



D Robison  
Secretary  
UnionsWA

Friday 21 July, 2006