Owner Drivers Australia

If You're Talking to the Driver, You're Talking to the Owner

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Submission to the Senate Inquiry into the Independent Contractors Bill
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1. Overview

This submission looks at one issue only in the Independent Contractors Bill—that is, the removal of owner-drivers in New South Wales and Victoria from the protections afforded to all other independent contractors from State laws that treat independent contractors as employees for industrial relations purposes.

The removal of NSW and Victorian owner drivers is discriminatory and inconsistent with the rest of the Bill and with the Federal Government's 2004 election promise.

ODA recognizes the political and policy pressures that have led to the removal, but submits that the removal is, nevertheless, not appropriate.
ODA supports:

- a phased process of including NSW owner-drivers within the small business status protections of the Independent Contractors Bill.
- an immediate inclusion of Victorian owner-drivers within the small business status protections of the Independent Contractors Bill.
- the elimination of regulatory powers in the Bill [7(2)(c)] that enable additional State laws to be removed from the purview of the Bill.

This submission

- reviews the arguments used to justify the removals and demonstrates why the arguments are either not valid or have passed their use-by-date.
- proposes how NSW, in particular, can have a phased introduction into the Bill to ensure that existing commercial and other arrangements in NSW have time to adjust.

2. Summary

A summary of the arguments follows.

In relation to NSW:

- The NSW industrial relations, owner-driver arrangements may have been of value during the 1980s and up to the early 1990s to resolve some specific, isolated problems in the industry.

However,

- the provisions have grown beyond their original intent and now effectively deliver to the Transport Workers Union total control of the owner-driver, self-employed community, and

- the industry consensus that once existed around the NSW provisions has collapsed, leaving the TWU as the principal continuing proponent;

Further,

- commercial legislative developments during the late 1990s and beyond have extended protections to owner-drivers outside of industrial relations frameworks, effectively superseding the IR regimes.
- the Independent Contractors Bill offers substantial protections for all owner-drivers, particularly in relation to unfair contracts and sham contracts, that supersede the NSW IR laws and provide protections without the market distortions currently occurring under the NSW IR laws.

This submission draws heavily on the TWU NSW representations.

In relation to Victoria:

- The Victorian *Owner Drivers Act* is substantially a constructive piece of legislation that will improve the operation of the industry. The constructive parts are supported by ODA.

However,

- the Act includes provisions for the establishment of industrial relations 'award-like' price manipulation. This is *not* supported by ODA. The Victorian Act removes these price-fixing processes from the control of the *Trade Practices Act* but has not yet had time to be brought into operation. By excluding the Victorian *Owner Driver Act* from the reach of the Independent Contractors Bill, the Federal Government is effectively allowing the creation of a form of price-fixing in an industry sector where none yet exists.
- if the Victorian *Owner Driver Act* is made subject to the Independent Contractors Bill, the constructive aspects of the Victorian Act will NOT be overridden, but the price manipulation and control provisions will be overridden.
- if the Victorian Act is not overridden, the price-fixing provisions will, over time, deliver control of the owner-driver sector to the TWU and distort the operation of the market.

In relation to other States:

The Independent Contractors Bill allows regulations to remove other State laws from its jurisdictions. This power is unrestrained.

- The Queensland IR Act already has provisions to cover owner-drivers by decree. In 2005, the Western Australian government announced its intention to create NSW-type laws covering owner-drivers.

ODA firmly believes that these regulations will readily be used by future Federal Governments, in collusion with State governments, to remove all owner-drivers from the protections of the Independent Contractors Bill with respect to small business status. This regulatory power should be eliminated from the Bill. Such power should only be available through legislative amendment in the Federal Parliament.

3. Owner Drivers of Australia

All details about Owner Drivers Australia are located at http://www.ownerdrivers.com.au

New South Wales

4. What the Transport Workers Union NSW says

The TWU NSW is the main lobbyist for excluding owner drivers from the protections of the Independent Contractors Act. This is a summary of the TWU's views taken from (1) TWU submission to the Federal Parliamentary Inquiry Into Independent Contractors and Labour Hire Arrangements, March 2005 and (2) TWU submission to the Small Business, Tourism, Sport and the Arts Committee, May 2006

The Transport Workers Union of NSW has put a well-presented case to the Federal Government as to why they believe the Independent Contractors Act should not include owner-drivers in NSW. They have backed these arguments with:

- intense lobbying of the Coalition backbench.
- threats to conduct Federal Coalition marginal seat campaigns in NSW against the government.
- Actual and threatened truck blockades of the Sydney Harbour Bridge, Canberra, and the Hume Highway between Sydney and Canberra.

For whatever reasons, the Federal Government has agreed to this TWU campaign and stopped owner-drivers in NSW from accessing the small business status protections under the Independent Contractors Bill.

4.1 The TWU's arguments

The coverage of self-employed owner drivers in NSW occurs under Chapter 2 and Chapter 6 of the NSW *Industrial Relations Act*.

The coverage applies to owner-drivers of single vehicle operations. The TWU says that these drivers are in special situations because of their dependency on one client.
There are three styles of NSW industrial relations regulations applied to owner-drivers.

1) Pay rate determinations.
2) Goodwill determinations.
3) Reinstatement of contracts.

At each step in the application of these processes, the TWU has exclusive rights under NSW industrial relations to represent owner-drivers. Owner-drivers cannot represent themselves.

The TWU says that these industrial relations arrangements have traditionally had the support of the industry, notably the Road Transport Association of NSW and the Liberal Party. These industrial relations laws came about following initial inquiries into the industry in the 1960s. The laws were originally designed to cover 'motor lorries' (that is, the long haul industry) but were extended in the 1990s to cover motor vehicles and bicycles.

The TWU calls for this NSW industrial relations regulation of owner-drivers to be applied in all States.

The TWU claims that it is legitimate to regulate small business owner-drivers as employees because:

- 'Owner drivers are a discrete category of small business, vulnerable to exploitation because of the dependent nature of the contractual relationship pursuant to which they perform work'.

The TWU says that owner-drivers have minimal practical independence because

- They are single operators.
- The client has specific priorities.
- They are usually required to be available to work for a single contractor.
- They are often required to paint their truck in the client's identifications.
- They have no power to set price. They are price takers rather than price givers.

The TWU claims that the NSW approach is 'minimalist', but this minimalism includes:

- over 170 contract determinations; and
- twenty-five contract agreements which it describes as 'collective arrangements'. These include agreements for:
  - long haul with Toll, TNT, Linfox, Startrack, Westgate. (three-year terms);
  - couriers with Toll, Allied Yellow Express;
  - readymix concrete with Boral, Metromix, Pioneer, CSR (eight to ten- year terms);
  - breweries with Linfox and Toll;
  - waste collection and quarries with Boral and CSR;
  - car carriers with TNT;
- Other arrangements which include the taxi industry.

4.2 Safety

The TWU says that these industrial relations arrangements to control commercial contracts are necessary to ensure road safety. It says that if rates are not set by industrial relations, drivers are prone to fatigue and to taking stimulant drugs.

It backs this assertion by claiming that 'coronial recognition that low rates of pay and poor conditions lead to speeding, and other unsafe practices and fatigue and thereby contribute to road fatalities'.

The TWU adds that 'What these (coronial) reports strongly suggest is that safety in the transport industry is inextricably linked with the financial and commercial arrangements pursuant to which work is performed. Accordingly, both reports support calls for more guidance and regulation'.

4.3 Disputes

The TWU cites a number of examples of contract disputes where the TWU has run dispute-settlement through the NSW IRC. It claims that the settlements have been to the benefit of owner-drivers and the industry. The union compares the outcomes it has achieved in NSW with disputes in the ACT, for example with Boral, which it alleges dragged on for years without effective resolution.

5. What the NSW Road Transport Association says

The Road Transport Association of NSW holds a very different view from that of the TWU. The following is a summary of the RTA's submission to the Minister of Employment and Workplace Relations, May 2006.

The RTA submission is based on a survey of the principal contractors in the NSW road transport industry and says:

5.1 Commercial relations: 'There is strong support amongst principal contractors for the relationship they have with sub-contractors to be based on commercial terms and not influenced by the determinations of industrial tribunals.'

5.2 Goodwill: 'Goodwill appears to exist in a very small minority of contracts because there has been a purchase of a business in the form of an exclusive delivery area…'

'Historically, goodwill was recognized in contracts executed by large transport operators when acting as principal contractor. However, goodwill provisions disappeared from most contracts during the 1970's 1980's and early 1990's. This means that there are rarely circumstances where goodwill can be said to exist in the business of a sub-contractor.' 'NSW RTA's advice is that (goodwill) remains in specific industry sectors, notably concrete agitating and in some contracts involving the cartage of beer.'

'…while tied sub-contractors may sell their business, there is in normal circumstances no guarantee that the principal will give work to the purchaser. This means the sale of a 'truck with work' by a sub-contractor is rare…'

5.3 Hours: 'Claims that sub-contractors would have to work longer hours to remain viable if the (NSW) contract determination system ceased and was replaced by legislation that facilitated a more commercial relationship are unfounded…'

5.4 Contract Negotiations:
There is '…general agreement on eliminating the role of the TWU in these negotiations on the basis that

- Negotiations should take place within a commercial framework
- Such a framework will deliver win/win outcomes for both parties.
- The TWU would want to introduce provisions that distort the market, compromise the commercial nature of the relationship ….'

5.5 Phasing out of NSW IR:
'There was agreement a phasing in period was in most situations necessary…'

5.6 Summary:

- 'National reforms to ensure principal contractors can have commercial relationships with sub-contractors unencumbered by industrial relations considerations will benefit both parties.'
- 'Union concerns regarding goodwill are limited to a small minority of contract relationships.'
- 'Unions concerns regarding fatigue and road safety are unfounded.'

6. Owner Drivers Australia Submission

6.1 Observations and comments on NSW

ODA opposes owner-drivers being regulated as employees under industrial relations laws. This includes opposition to the NSW laws. ODA finds the arguments of the TWU to be wrong, inconsistent and outdated.

The TWU has claimed that there is a political and industry consensus regarding owner-drivers being within NSW industrial relations laws. On the evidence of the RTA NSW, this consensus has broken down. The industry clearly wants a return to commercial relationships.

The TWU justifies the NSW IR laws on the basis that the existence of one client creates 'dependency'. However, the laws only apply to owner-drivers who have one vehicle. The design of the NSW laws and the TWU's 'academic' justification for them are inconsistent. That is, the TWU says that the laws are necessary because of single-client status, but the laws apply to owner-drivers who have only one vehicle but more than one client. Owner-drivers who, under the TWU's own definition would not be 'dependent', are still subject to the IR laws.

The inclusion of owner-drivers into NSW industrial relations laws initially had a narrow focus, namely to cover problems in the long-haul, concrete and beer distribution sectors. All such problems related to circumstances where owner-drivers had to

- make large financial investments in trucks ($100,000 plus),
- often paid goodwill to secure the runs,
- were required to paint their vehicles in customer signage, thus restricting their capacity to offer their services more widely,

yet these drivers were denied security of contract to underpin their investments.

It would appear that these industrial relations laws initially had minimal and limited application and were designed to cover these specific circumstances.

However, the laws, the industry and legal circumstance have changed significantly since those earlier days.

These NSW laws have long ceased to be minimalist.

They now cover self-employed people:

- who drive private cars, motor bikes and bicycles where investments are comparatively modest.
- where no goodwill has been paid.
- where, if goodwill has been paid, the principal contractors may not even be aware of it.

The laws now cover almost every aspect of owner-driver activity in minute detail. One hundred and seventy contract determinations and 25 specific agreements is not minimalist.

Industry circumstances have changed.

- Goodwill, even in the long haul area, is rarely if every requested.
- The trend is for owner-driver vehicles not to have client company signage.

- NSW industrial relations price-setting for the owner-driver sector is distorting the market and minimizing the capacity for 'win-win' outcomes for both drivers and clients.

The legal environment has changed.

- The *Trade Practice Act* and its enforcement has developed significantly since the 1980s to afford extra protections against the destruction of contracts. The inclusion of NSW owner-drivers in the NSW *IR Act* prevents the *TPA* from having protective application to NSW owner-drivers.
- Fair Trading laws have developed significantly since the 1990s to enable trader-to-trader disputes to be handled in cheap and effective ways. The NSW IR laws prevent owner-drivers from accessing these laws—in particular, the small claims processes available to other self-employed persons.
- Federal and State franchising laws have been developed that apply rigorous contract principals to franchisors and franchisees. There are now heavy rules covering goodwill management for example, under franchising laws.
- Tax laws have changed (for example, Personal Services Income Act) such that incorporation is not necessary and may even be a disadvantage in accessing legitimate business tax-type status. The NSW IR laws create potential confusion for owner-drivers in accessing their best business tax status.

What has also changed more than anything is the level of power the TWU has over the owner-driver sector.

The NSW IR laws give the TWU the exclusive legal right before the NSW IRC to 'represent' owner-drivers. Individual owner-drivers are not given any choice. They cannot represent themselves. Their contracts are determined and controlled by the TWU by virtue of the TWU's exclusive access to the IRC. For owner-drivers it is a 'take it or leave it' situation.

- The TWU reach initially covered only long-haul and large trucks.
- This has since been extended to cars, motor bikes and bicycles.
- This has further been extended to cover every aspect of commercial activity in the NSW owner-driver sector. (170-plus contract determinations.)
- This includes a legal power conferred on the TWU by the NSW IR laws to demand, remove and inspect all financial records of any transport operator in NSW, including all owner-drivers. The TWU frequently exercise this power, a power similar to that of the ATO, ASIC and ACCC.

6.2 Dispute resolution:

ODA strongly disagrees with the TWU's view that the dispute-resolution process in the NSW IRC is simple and effective. ODA submits that the opposite is the case. Dispute-resolution processes in the NSW IRC system are confrontationist, aggressive, full of acrimony and expensive. The primary focus of the dispute processes lies in ensuring security of the dominant controlling influence of the TWU over owner-drivers. Dispute resolution is made significantly more complex as a consequence.

6.3 Changed circumstances in relation to the Independent Contractors Bill

From a public policy perspective, preventing NSW owner-drivers from accessing the protections of the Independent Contractors Bill has significant disadvantages for them.

Unfair contracts regimes: The Independent Contractors Bill creates a high-quality unfair contracts regime which eliminates the business distortions operating under the NSW unfair contracts regime. Independent contractors in NSW will no longer face the problems created by NSW unfair contracts laws. But NSW owner-drivers are being denied this same right because of their removal from the Independent Contractors Bill. There is no justification for this.

Many of the contract disputes cited by the TWU would be readily handled and fall within the Federal unfair contracts laws.

Contract price setting = TWU power: The key to the power of the TWU NSW is its exclusive capacity to control the process of contract determinations under Chapters 6 and 2 of the NSW IR Act.

6.4 Recovery of goodwill: The recovery of goodwill provisions in the NSW IR Act have been shown by both the TWU and the RTA to have minor and limited application. Yet the goodwill issue has, to date, dominated the TWU's justification for preventing owner-drivers from accessing the protections of the Independent Contractors Act. The goodwill issue has almost acted as a diversion from other issues of more substance—namely, the contract determination provisions of the NSW IR Act.

6.5 Road Safety: It is accepted that commercial pressures can induce drivers to drive while fatigued and can lead to drug taking. However, in no other area of the law are commercial pressures used as an excuse to break the law. It would be considered scandalous if such an excuse was used under general OHS, directors' liabilities and other laws. Road safety for owner-drivers (and transport in general) are policy items to be addressed under road laws and OHS laws. Using road safety as a justification for maintaining price-setting arrangements under Chapters 6 and 2 of the NSW IR Act is in fact nothing more than a ploy by the TWU to justify existing laws that underpin their power in the industry.

6.6 Independent Contractors Bill. Changes: ODA recommendations.
ODA recognizes that the Federal Government is under political pressure to remove owner-drivers in NSW from the provisions of the Independent Contractors Bill. This is reflected in Clause 7(2)(b)(i) of the Bill. ODA maintains that this is bad for owner-drivers, the industry and the NSW economy.

ODA also accepts that immediate inclusion of NSW owner-drivers in the Independent Contractors Act would potentially cause disruption in the industry and could lead to financial losses for some owner-drivers. ODA therefore recommends that the Bill be amended to require a phased introduction of NSW owner-drivers into the Act as follows.

a) Unfair contracts: Owner-drivers in NSW should be given immediate access to the Federal unfair contracts provisions. The TWU has not raised one piece of evidence to indicate why owner-drivers should be forced to be included in the NSW IR unfair contract provisions when all other independent contractors in NSW will be given access to the Federal provisions.

b) Sham Contracts: It should be made clear that the sham contract provisions of the Independent Contractors Act should be immediately available to NSW owner-drivers.

c) Contract determinations: It is recognized that many commercial arrangements in the NSW transport sector are currently constructed around the NSW IR contract determinations. Overriding these determinations immediately could disrupt some commercial arrangements. Therefore, a phased application of the Independent Contractors Act should occur under one of several options.

a) Allow NSW owner-drivers to opt into the Independent Contractors Act as allowed generally under clause 35(4) of the Bill. This could be limited to owner-drivers with cars, motor bikes and bicycles.
b) Override the NSW IR contract determination provisions after two years. A two-year period of grace would allow most determinations to run for the balance of their existing lives.
c) Possibly allow special provisions for the long-haul and readymix concrete sectors to have a longer phase-in period of, say, three years.

d) Goodwill: There appears to be a comparatively small number of persons affected by the NSW goodwill provisions. Persons who have purchased contracts with goodwill on the belief that the goodwill prices are secured by NSW IR laws should not have that situation changed immediately. Persons so affected should continue to have existing NSW goodwill guarantees made available to them. They should be required to register their intent to avail themselves of the guarantees and stipulate the amount of goodwill at stake. Goodwill guarantees for new contracts should be phased out over two years. Any person who believes that they would suffer financial loss as a result of the phasing-out should be eligible for a compensation 'adjustment' package from the Federal Government. The likely extent of the claims would be known as a result of the registration requirement. Any principal contractor who seeks to sell a delivery/transport run should be subject to Federal and State franchise laws covering fair franchise contracts, as well as being subject to the Federal unfair contract provisions.

Victorian Owner Drivers

7. Overview

The issues facing Victorian owner-drivers are totally different from those in NSW.

Victoria did not have specific owner-driver laws until mid-2005. Until then, owner-drivers were regulated under normal commercial law. Consequently, the TWU has not had a privileged legal position to control owner-drivers' contracts. There is no evidence of any differences between Victoria and NSW in terms of OHS or road safety issues. The only major difference between the two has been the absence of industrial relations-type price-fixing in Victoria and the presence of it in NSW.

In 2004, the Victorian Government conducted an inquiry into the sector. Owner-driver laws were introduced in 2005 and came into effect in early 2006. Full implementation of the laws, however, is yet to occur. There are positive and negative aspects to the Act.

8. The positives

ODA supports the positives aspects, which include, for example:

- The requirement for an information booklet to be developed for owner-drivers which details what they should expect when running their own business. This includes looking at costs and charge rates. It will draw comparisons to 'like' employee income.

The booklet must be given to owner-drivers by principal contractors at the point of engagement. (ODA supports this initiative because it will arm owner-drivers with information that will assist their business operations.)

- A requirement that where an amount is deducted from an owner-driver by a principal for personal injury insurance, for example, evidence of the purchase of that insurance must be provided by the principal. Further, the owner-driver must have the option to seek alternative insurance. (ODA sees this is a sensible measure that protects owner-drivers from what could otherwise amount to fraud if a principal contractor were to make insurance premium deductions but not provide insurance cover.)

There are several other practical steps taken under the Victorian Act that will enhance business transactions in the owner-driver sector and provide important commercial protections to owner-drivers.

In relation to the Independent Contractors Bill, it is important to note that if Victorian owner-drivers are given full access to the Bill, these practical and positive Victorian initiatives would not be overridden. Why? Because the Bill is primarily focused on preventing interference with the terms of commercial contracts, including interference with price. Specifically, clause 8(1)(e) of the Independent Contractors Bill overrides and voids State laws that are directed to 'making, enforcing or terminating agreements (not being contracts of employment) [or] determining terms and conditions of employment'.

The Independent Contractors Bill is designed to stop unconscionable, unfair and related State laws being able to set prices under commercial contracts.

9. The Negatives

However, there are negative aspects of the Victorian Act, which ODA opposes. These negative aspects arise from a process whereby a State tribunal can use provisions dealing with unconscionable contracts to create and impose on the entire owner-driver sector pricing orders which are binding. That is, these price-fixing aspects of the Victorian Act seek to achieve precisely what the Independent Contractors Bill is intended to stop.

The Victorian Act achieves this by:

a) Enabling an unconscionable contract decision to impose a price on to a commercial contract as if it were an employment contract.
   The Victorian *Owner Drivers and Forestry Contractors Act* 2005) states:
   - Clause 31: When considering unconscionable conduct by hirers the Tribunal must have regard to (e) 'the amount for which … the contractor could have supplied services…. including as an employee.'
   - Clause 45 (2) '…the Tribunal may make an order that the contractor is to be paid an amount…' (3) '…the Tribunal must have regard to ….(b) the amount to which the contractors would have been entitled if the contractor had provided the services as an employee.'

b) Enabling the Tribunal to apply a decision made upon one contract to an entire class of contracts. The Victorian Act states:
   - Clause 48. 'The Tribunal may make an order applying to a decision on rates for one contract and ensure that decision is (1) …extended generally to regulated contracts of a specified class.'

c) Further, an application to create a pricing order over owner-drivers can be made by a union.

- Clause 49. 'An application for an order extending a contract variation order may be made by an association, including a trade union…'

ODA predicts that the process will work like this:

1. The government will produce its information 'booklet' which will set, recommend and indicate rates for owner-drivers based on, or similar to, employee rates. ODA believes that these rates, predictably, will reflect and look very much like employee award rates.
2. The TWU will make unconscionable contract applications using the information booklet as the basis of its claims.
3. The Tribunal will look to the 'booklet' for guidance on what remuneration and prices should apply under the commercial contract/s and make an order accordingly.
4. The TWU will make application to have the order extended to a 'class' of contracts.
5. Through repetition of the process by the TWU, owner-drivers will, over time, find that they have industry price-setting orders imposed on vehicles of certain tonnage, carrying capacity and so on.

The process will take a few years to unfold and will occur by stealth, but it will result in price-fixing of commercial contracts in the owner-driver sector. The outcome will be price fixing under commercial contracts that look like and have the same effect as industrial relations awards.

Evidence that this is the intent of the Victorian Act is clear from the provision in the Act that removes itself from the reach of the *Trade Practices Act*.

- Clause 64 (1) 'For the purposes of the Trade Practices Act ….the following things are authorized...' (c) 'anything done by a person in order to comply with this Act…'

If the Victorian Act did not remove itself from the reach of the *TPA*, the price-fixing and the mechanism that created employee-type awards would breach the anti-price fixing provisions of the *TPA*. Clearly the Victorian Act contemplates commercial price-fixing of a nature that would breach the *TPA*.

The result is a series of legislative triggers which, in effect, create a backdoor method to impose employee and industrial relations-type contract control over owner-drivers. This is despite the Victorian Government's declaring that it has no intention of re-creating industrial relations laws in the State. The fact remains that it has created the loophole.

This Victorian provision is precisely the type of State law that is designed to have the effect of stripping self-employed people of their self-employed, business status. It may not declare self-employed people to be employees, but it has the same outcome. It will make owner-drivers legislatively dependent on the TWU by creating legal privilege for the TWU.

This is the type of law which, according to the Federal Government's 2004 election undertaking, the Independent Contractors Act is intended to block. The Independent Contractors Act is intended to protect all independent contractors from State laws that declare them to be employees or treat them as employees. The Independent Contractors Bill achieves this, but then excludes owner-drivers in Victoria from the protections. No detailed explanation has been given for this.

The removal of Victorian owner-drivers from the Independent Contractors Bill is mystifying and inconsistent with government policy for the following reasons:

- Inclusion of owner-drivers would not override the positive aspects of the Victorian Act.
- The price-fixing aspects of the Victorian Act are not yet in force and it will probably take another 12 months before the processes involved would result in substantial price-fixing. The industry is currently structured without price-fixing. If owner-drivers are included in the Independent Contractors Bill, price-fixing will be stopped. If not included, price-fixing will occur.
- The TWU's legal powers in Victoria do not currently extend to owner-drivers. The TWU's power will be substantially enhanced in Victoria if owner-drivers are refused the protections of the Independent Contractors Act.
- Victoria does not face the transitional issues that loom in NSW, where owner-drivers have been treated as employees for a substantial period of time.

In many respects, the treatment of Victorian owner-drivers is the first real test of the Federal Government's commitment to protect independent contractors from being regulated as if they are employees. It is a threshold test. If Victorian owner-drivers are excluded from the Independent Contractors Act, then this would send a clear signal that other owner-drivers and other independent contractors could likewise be excluded.

ODA recommends that Clause 7(2)(b)(ii) be deleted from the Independent Contractors Bill—in other words, that the clause stopping the Independent Contractors Act applying to the Victorian *Owner Drivers and Forestry Contractors Act* 2005 be deleted.

10. Removal of other State laws by regulation

The Independent Contractors Bill enables other State laws to be removed from the reach of the Bill by regulation. ODA opposes this.

The relevant clause is

Clause 7(2)(c) 'a State or Territory law that is specified in regulations, made for the purposes of this paragraph, to the extent that the law is so specified.'

This clause would enable any Federal Government, in particular any future ALP Federal Government, to collude with State Governments to remove all and any independent contractor laws from the protections of the Independent Contractors Act. It would effectively enable a gutting of the Act without reference to due Federal parliamentary process. Changes of this nature to the Independent Contractors Act should only be made by way of legislative amendment.

ODA recommends deletion of Clause 7(2)(c) from the Bill.