



**NEW SOUTH WALES
TEACHERS FEDERATION**

**Submission to
Senate Employment, Workplace Relations and Education
Legislation Committee**

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

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1. Introduction

The NSWTF represents over 60,000 teachers and related staff in public schools, TAFE institutes, educational staff in corrective services locations and other educational institutions in NSW. Federation is opposed to the proposed Independent Contractors Bill 2006 as it is not in the best interests of a just and equitable society and particularly not in the best interests of Australian working people.

This legislation if enacted will impose a new regulatory framework designed to exploit the job security, living standards, health and welfare of millions of Australian families and particularly those employees who lack bargaining capacity when negotiating working arrangements.

Federation also submits that this legislation could override current protections in state legislation and thus undermine protection for millions of workers including some teachers and education staff.

The Independent Contractors Bill 2006 (the Bill) will make it easier for employers to use contract arrangements to avoid employment obligations and limit opportunities for employees who have been treated unfairly to seek remedies through the legal system.

Federation strongly opposes all laws that encourage the growth of independent contracting as an alternative form of work to the traditional employer/employee relationship, particularly in the industry of education and related occupations and professions.

2. Employee Rights

Federation strongly supports an industrial relations system that encourages cooperative work arrangement rather than one where individuals are pitted one against another. The introduction of teachers as independent contractors would militate against a universal education system and undermine fundamental working condition rights for many employees.

Furthermore many school and tertiary students engaged as independent contractors because of lack of knowledge of their rights or lack of employment choice could be open to exploitation by unscrupulous employers.

The proposed Bill also fails to recognize that much of existing independent contracting work is in fact not significantly different to traditional employment and that legislation to minimize rather than legitimate independent contracting is required.

3. Exclusion of State and Territory Laws

Federation submits that the provisions in Part 2 of the Bill that seek to exclude the operation of the New South Wales Industrial Relations Act (NSW IR Act) are unfair and extreme.

Section 106 of the NSW IR Act permits the Industrial Relations Commission to consider whether a contract is unfair, harsh or unconscionable; or is against the public interest; or provides remuneration less than the person performing the work would have received as an employee; or is designed or does avoid the provisions of an industrial instrument. If such characteristics are present then the Commission is empowered to vary the contract or declare all or part of it to be void.

Such provisions ensure that persons who lack bargaining capacity in negotiation of income and conditions associated with their employment are not unfairly exploited by employers in the engagement of these types of employees.

Schedule 1 of the NSW IR Act also contains provisions that deem certain workers to be employees in any determination of their legal status. The overriding of such provisions by the Bill may render such employees subject to onerous employment conditions.

4. Minimum Employment Rights

In cases where independent contracting does legitimately exist there are few minimum rights. In these cases Government should legislate to ensure minimum entitlements are developed to protect economic, social, occupational health, welfare and work and family balance as well as rights to other industrial standards.

5. Conclusion

Federation supports the submissions of the Australian Council of Trade Unions, Australian Education Union and Unions NSW and submits that the Bill will result in a reduction in living standards for many employees/workers in Australia, especially the most vulnerable and particularly young first time workers who are mainly school or tertiary students.

We urge the Committee to recommend amendments to the Bill that provide comprehensive protection of the rights of workers who may be declared independent contractors and are vulnerable at work. Such amendments should provide minimum employment rights such as pay and leave entitlements, the right to collective bargaining for conditions, industry employment standards and legal right to claim unfairness in relation to a contract with appropriate remedies.

Federation reiterates its opposition to this Bill and urges the Committee to amend it to provide fundamental employment rights rather than widen the capacity of employers to exploit vulnerable workers.