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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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INTRODUCTION

1. The Australian Rail, Tram and Bus Industry Union (hereinafter referred to as the "RTBU") is a union of employees registered pursuant to the Workplace Relations Act 1996 (Cwth).

2. The RTBU has coverage of employees employed in or in connection with the railway industry, employees employed in the tramway industry, and employees employed by publicly owned bus operators in a number of capital cities and Newcastle. The range of work performed by RTBU members includes work involved in the operation of trains (passenger and freight), trams and buses; work involved it the maintenance and upkeep of railway and tramway infrastructure and railway, tramway and bus rolling stock; and the administration and other functions associated with the operation and maintenance of trains, trams and buses and accompanying infrastructure.

3. The RTBU currently has some 35,000 members employed in both the private and public sectors. Representing those members involves dealing with around 60 companies who are either operators or maintainers or providers of labour in the rail, tram and bus industry as described above.

4. The RTBU welcomes this opportunity to address the Senate Committee on the Independent Contractors Bill 2006 and the Workplace Relations Amendment (Independent Contractors) Bill 2006.

5. The objectives of the RTBU are set out in the registered rules.[1] Clause 5 of Part 1 lists 28 objectives. Of particular relevance in a consideration of the Bills before this Committee are the following:

    - To take all necessary steps and actions under any relevant legislation or otherwise, for the purpose of securing satisfactory industrial and working conditions without discrimination, in respect to the remuneration of labour, the hours of labour and other conditions in or in relation to employment in the rail, tram and bus industry.[2]

    - To resist the introduction or the continuation of bonus, butty gang, piece work and similar pernicious systems of employment[3].

6. The totality of the Union's objectives is the yardstick by which we measure the impact of proposed legislation on the membership.

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[1] RTBU, Rules of the Australian Rail, Tram and Bus Industry Union, Australian Rail, Tram and Bus Industry Union, Redfern, 2006. A copy is available on the on the website of the Australian Industrial Relations Commission – www. airc.gov.au

[2] Rule 5 (b)

[3] Rule 5 (v)

7. A perusal of the contents of both Bills leads the RTBU to the inevitable conclusion that their passage through Parliament and enactment as legislation would be contrary to the interests of RTBU members and the workforce in toto. It follows, in our submission, that neither Bill serves the public interest.

8. Considered together, the effect of both Bills is to permit what is essentially an employment relationship to be legally recognised as a commercial relationship through the mere stroke of a pen. It resembles a masquerade ball where the participants hide reality by wearing costumes and masks. These Bills represent the costumes and masks. But unlike most masquerade balls, these Bills are a very poor attempt at the art of disguise.

9. The existence of a genuine principal/contractor relationship has no need for the provisions of these Bills. It focuses on the outcome – the principal requires a good or a service, the contractor has the requisite know-how, a price, quality and timeframe are negotiated, an outcome ensues and the contract ends (or can be renewed). Inherent in such a relationship is the notion of equality of bargaining power and separation of control over the production of the outcome.

10. The outcome of the enactment of the Bills as legislation will be to further undermine the employer/employee relationship and in doing so undercut the wages, conditions and protection afforded to employees.

11. It is not in the interest of RTBU members and the workforce in general (including genuine independent contractors), already faced with the perils of "WorkChoices", to be confronted by persons masquerading as independent contractors and undermining their terms and conditions of employment and job security. It is not in the interests of persons to be pushed or cajoled or compelled to enter into a so-called contractor relationship on the grounds of no option and no comeback. Further, to the extent that the State/Territories have legislated to include notions of fairness and equity in a principal/contractor relationship, it is not in anyone's interest to have them removed.

12. To address these matters, this submission begins by outlining the terms of the Bills.

13. A section setting out in some detail the bases for the position the RTBU has reached in opposing the Bills will follow this.

14. Finally the submission will set out a summary and conclusion.

AN OUTLINE OF THE BILLS

15. The Independent Contractors Bill 2006 ("IC Bill") comprises the following components:

- It sets out to override a number of State/Territory laws to the extent they impact on the creation/maintenance of a services contract.[4] In particular, it seeks to override any laws that would deem the parties to a services contract to be in an employer/employee relationship, to override any law establishing benefits, entitlements or obligations on a party/s to a services contract, and to override any law establishing a process for resolving disputes over alleged unfair contracts.[5]

- It establishes a role for the judicial system to deal with unfair contract allegations.[6]

- It has a separate part for contract outworkers in the textile, clothing and footwear industry.[7]

- A transitional arrangement is established.[8]

- The Bill specifically excludes owner-drivers in New South Wales and Victoria.[9]

16. The Workplace Relations Amendment (Independent Contractors) Bill 2006 ("WR Bill") comprises the following components.

- Makes unlawful the creation of sham arrangements and/or the misrepresentation of the nature of a contract.[10]

- Makes unlawful the dismissal of an individual for the purpose of establishing a services contract.[11]

- Makes unlawful the making of false statements to support the making of a services contract.[12]

- Provides a civil penalty where a person is found guilty of a breach of its provisions.[13]

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[4] Independent Contractors Bill 2006 Section 5
[5] Ibid, Section 7
[6] Ibid, Part 3
[7] Ibid, Part 4
[8] Ibid, Part 5
[9] Ibid, Section 7(2)
[10] Workplace Relations Amendment (Independent Contractors) Bill 2006, Sections 900 and 901
[11] Ibid, Section 902
[12] Ibid, Section 902
[13] Ibid, Section 904

17. The Bills allow for variation by regulation, broad defences against claims of sham arrangements, and, in parts, is complex and difficult to read.[14]

BASES FOR THE RTBU POSITION IN OPPOSITION TO THE BILLS

18. The Bills Undermine the Employment Relationship.

The Bills do nothing to resolve the conceptual and practical confusion between an independent contractor and an employee. By failing the address this confusion whilst removing a number of protective devices to counter manipulation of that confusion, the Bills provide an incentive for further incursion of the independent contractor into the rightful place of an employee. This incentive is the result of the potential to undermine the provisions inherent in an employee/employer relationship.

The IC Bill does not attempt to define an independent contractor – even though it is totally concerned with that entity. To the extent that it does it relies on the definition of a services contract with a person who enters into a services contract being an independent contractor. But this becomes a circular argument because the IC Bill describes a services contract as, amongst other things, one that "relates to the performance of work by an independent contractor."[15] This means that, based on the IC Bill, an independent contractor is a person who performs the work of an independent contractor.

Of course, the position of the Federal Government is that an independent contractor relationship "should be governed by commercial not industrial law and thus the IC Bill "does not define the term 'independent contractor ' beyond its meaning under common law"[16]

But this is hardly helpful. The distinction between a employee and an independent contractor at law has been the subject of controversy, debate and confusion for many years. This is so because of the lack of clarity in the common law. The explanatory memorandum notes that with respect to the application of the multi-factor test to determine the existence of an employee or independent contractor:

> "No single issue concerning control, economic independence or the description of the relationship in a contract will be determinative, however courts will place greater weight on some matters, in particular, on the right to control the manner in which the work is performed."[17]

This gives a clear indication that correctly characterising the relationship is hardly straightforward.

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[14] Even the Federal Government's ally in the area of contract labour, the Independent Contractors Association describes the Independent Contractors Bill 2006 as "complex to read". See. WORKFORCE, Issue 1547, 14 July 2006, p.8

[15] Section 5(1)(b)

[16] Kevin Andrews, Independent Contractors Bill 2006 and Workplace Relations Amendment (Independent Contractors) Bill 2006, SECOND READING SPEECH, House of Representatives, July 2006, pp. 2-3.

[17] House of Representatives, Independent Contractors Bill 2006 EXPLANATORY MEMORANDUM, House of Representatives, Parliament of Australia, Canberra, 2006, p.3

In a critique of the contract of employment, Professor Andrew Steward states:

> "…it is the definitional function of the contract that has attracted most ire from commentators."[18]

In addition to the absence of a single test to distinguish between employees and independent contractors, Stewart states that the ire:

> "…stems more particularly from a concern that reliance on the common law conception potentially excludes a wide range of workers from the benefit of protective regulation, when logic, fairness and indeed the purpose underlying the regulation in question might suggest they should have access to its benefits"[19]

Stewart goes on to say:

> "This concern has been exacerbated by the recent upsurge in arrangements which explicitly seek to confer on the worker the status of being 'self-employed' and thus in effect treat them as being in business on their own account." [20]

In addressing the growth of self-employed persons, Stewart states:

> "But what cannot be discounted as a explanation for the apparent growth in the ranks of the self-employed is the very fact that so much labour regulation hinges on the existence of an employment contract. The cost savings associated with avoiding that regulation - and those savings may be considerable, as will be explained – may provide an obvious economic incentive for a particular form of 'vertical disintegration' in which employees are replaced by contract labour"[21]

Whether a person is an employee or an independent contractor is very important for the determination of legal rights and obligation. As Layton states:

"The characterisation of being an employee has impact on the rights and benefits to the worker and the obligations owed by the alleged employer. It has a significant impact on:

- responsibilities for occupational health and safety
- taxation implications
- workers compensation rights and obligations
- common law damages implications including whether there are rights of insurance companies for subrogation and whether there is vicarious liability of the alleged employer for the actions of the worker.
- The application of unfair dismissal and redundancy legislation
- Whether award and enterprise bargaining rights are available
- Whether anti-discrimination legislation applies
- Superannuation obligations and rights"[22]

In that regard it can be seen that the consequences of whether a person is an independent contractor or employee with respect to workplace entitlements are

[18] Stewart A., "Redefining Employment? Meeting the Challenge of Contract and Agency Labour", AUSTRALIAN JOURNAL OF LABOUR LAW, Vol. 15, No. 3, December 2002, p.3

[19] loc.cit.

[20] loc. cit.

[21] Ibid. p. 4

[22] Layton R. QC, CREATIVE LABOUR CONTRACTING, Address to the Industrial Relations Society of South Australia, 2002, p.2. www.irssa.asn.au/Layton_R_presentation.doc

significant. Further, to the extent that an employer can avoid such responsibilities through the use of contractors, it has a serious detrimental impact on both independent contractors and employees. It transfers costs and obligations rightly incurred by an employer onto the contractor. Further, by making the use of contract labour cheaper, it provides an incentive to the employer to avoid the use of direct employment. Writing on what is described as the process of "conversion" i.e. converting employee positions to contractor positions, Bennett states:

" Conversion allows the allocative process to be again determined by economic power. Wages may be cut and on-costs such as paid sick leave, allowances, paid breaks and lunch periods, annual leave, superannuation and workers' compensation premiums can be eliminated. The burden of downtime can be shifted back to labour. Contractors can be paid for work actually completed and required to suffer the cost of delays or irregular work. This may be done even though such delays may be under the control of the principal, but not the contractor, and the contractor, unlike the principal lacks the resources necessary to cushion themselves. Conversion also allows some business costs to be externalised on to the contractor."[23]

Under the present legal regime it is not difficult to set up an ostensible independent contractor relationship. As Professor Stewart states:

> "Now any competent employment lawyer knows how to 'exploit' these indicia so as to arrive at the right result for their client. Typically, the lawyer is asked to draw up a contract for a hirer to obtain labour from a person who will be made to resemble an independent contractor, but over whom the hirer will retain maximum control. The trick is to ensure that as many of the indicia as possible point in the desired direction..."[24]

The Federal Government, through the two Bills before the Committee not only seeks to set this unfair and inequitable system in place through the retention of the common law approach to determining employment status, but indeed, to exacerbate the situation.

Over the years, various state/territory governments have taken steps to alleviate some of the unfairness and inequity that can exist in an independent contractor/principal relationship. This has occurred in various ways – the use of "deeming" provisions, the application of certain legal entitlement of employees to independent contractors and the use of unfair contract provisions. In that respect, a judgement has been made that many independent contractor positions are tantamount to employer/employee relationships, therefore they may as well be provided with at least some of the protections of an employer/employee relationship. The Bills before this Committee remove such protections thereby leaving persons who may be compelled into an independent contractor relationship completely vulnerable to exploitation.

It's not as if the Federal Government is unaware of these issues. In August 2005, the House of Representatives Standing Committee on Employment, Workplace Relations and Workforce Participation produced a report that, amongst other things, considered

[23] Bennett L., MAKING LABOUR LAW IN AUSTRALIA: Industrial Relations, Politics and Law. Law Book Company, Sydney, 1994, p.172

[24] Stewart A., op. cit. p.10. The "indicia" referred to are the factors taken into account in the multi-factor approach by the courts to the determination of a contract of service or a contract for service.

the position of independent contractors.[25] The authors of the report split along party lines on the issue of a definition of an independent contractor.

Nevertheless the Liberal Party members on the committee regarded the common law definition as a necessary but insufficient part of a contemporary definition. They recommended that in addition to the common law components, the Federal Government "adopt components of Australian income tax assessment alienation of personal services legislation tests to identify independent contractors."[26] Their colleagues, being the decision-makers in the government, clearly rejected their position.

The Labor Party members, on the other hand, and rightfully in our view, resolved to adopt another approach. Their approach entailed the drafting of a comprehensive definition of an employee.[27] In doing so they picked up on an important message from Professor Stewart when he said:

> "The [common law] approach is necessarily impressionistic, since there is no universally accepted understanding on how many indicia, or what combination of indicia, must point towards a contract of service before the worker can be characterised as an employee. In effect, this 'multi-factor' test proceeds on an assertion that the courts will know an employment contract when they see it."[28]

Having proposed a clear definition of an employee that would properly and unambiguously cover the true employer/employee relationship, it would become a relatively easy exercise to distinguish between an employee and an independent contractor. It is axiomatic that the federal government rejected this approach.

In summary, rather than clarify the relationship between an employee and an independent contractor, these Bills not only retain the confusion but also permit the expansion of the definition of an independent contractor way beyond its natural limit by removing the current state/territory based protections. By providing an incentive for employers to "convert" employee positions to contract positions and providing no protection for employees, these Bill undermine the employee/employee relationship.

19. The Bills Promote "Sham" Arrangements

One of the ironies of the Bills is that whilst one of them builds an environment for the application of sham arrangements the other purports to make them unlawful.

As Professor Stewart points out, it is not very difficult to have a lawyer prepare the appropriate documentation to meet the relevant indicia to conform to an independent contractor relationship. Whilst his statement was made prior to the drafting of these Bills, there is nothing in these Bills that alter the force of that statement.

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[25] House of Representatives Standing Committee on Employment, Workplace Relations and Workforce Participation, MAKING IT WORK: An Inquiry into Independent Contracting and Labour Hire Arrangements. Commonwealth of Australia, August 2005.
[26] Ibid. pp.65-66
[27] Ibid. p.160-163
[28] Ibid. p. 160

As the Bills remove a number of protections that currently exist in legislation of the states/territories, the incentives to create independent contractor relationships rather than employment relationships increases. This is so because it permits the principal to transfer a greater range of costs onto the ostensible independent contractor. The range and nature of those costs are set out in point 18 above.

In this case, what can a person who believes they have been "sold a pup" do?

The Workplace Relations Amendment (Independent Contractors) Bill 2006 purports to outlaw "sham" arrangements. But, that is easier said than done.

Assume for a minute that the person concerned had the capacity to analyse their situation (after commencing the contract) against the "indicia" and had some financial backing – a very unusual situation.

Having assumed these practical problems away for the sake of argument, the next problem is that the IC Bill has an inbuilt defence mechanism for the principal. It provides that a person does not contravene the provisions of the Bill if at the time they made the representation they:
" (a) believed that the contract was a contract for services rather than a contract of employment; and (b) could not reasonably have been expected to know that the contract was a contract of employment rather than a contract for services"[29]
For a principal searching for a defence, this is a powerful weapon. It is a defence that should not be too difficult to meet. In our submission this type of defence acts to rule the provisions of the clause nugatory.

Even if the provisions were to have some practical effect and say a principal was found guilty of an offence what is the remedy? For the ostensible independent contractor the outcome may be a sense of satisfaction or the knowledge that he/she was right but that is about as far as it goes. For the penalty at law is a fine. It is problematic that any person would or could go to the time and expense of taking such a matter to a court when the outcome in practical terms for that person is simply not worth the trouble – regardless of how right the person may be.

A similar conclusion can be reached with respect to the unfair contract provisions. The right to pursue a class action is denied.[30] The Government retains the power by regulation to restrict the operation of the unfair contracts provisions.[31] Unlike the unfair contract provisions in New South Wales, costs can only be awarded in the event of proceedings being instituted vexatiously.[32] Finally, when it comes to claiming unfair remuneration it requires the contractor to have access to other relevant services contracts for comparative purposes.[33] This becomes even more pertinent in light of the decision of the Employment Advocate not to publish certified agreements

[29] Section 900(2)(a) &(b) and 901(2)(a) & (b)
[30] Independent Contractors Bill 2006, Section 12(2)
[31] Ibid, Section 13
[32] Ibid, Section 17
[33] Ibid, Section 15(2)

on the Internet without the approval of the employer.[34] Further, just because the remuneration in other contracts is similar, doesn't mean that the remuneration is fair.

20. The Cost of Pursuing These Newfound "Rights" is Prohibitive

One of the (many) differences between an employee and an independent contractor is the cost of enforcing rights and entitlements.

This is manifestly a consequence of the capacity and willingness of employees to organise collectively as unions and the use of collective bargaining, awards and collective agreements. Further the States/Territories have, over the years, and in response to union and public agitation enacted legislation designed to create various employee entitlements eg annual leave, long service leave etc. In places some of the legislation has been extended to ostensible independent contractors either through the deeming process or by specific reference. The Bills before the Committee, of course, remove such entitlements for independent contractors.

Through the activities of unions, employees can effectively and efficiently pursue and defend their interests. It is the collective – the union - looking after one another, providing support, advice, assurance and bargaining power and avoiding the danger of divide and rule. It is only through these means that employees can hope to challenge the imbalance of power in the workplace.

Independent contractors, on the other hand, unless they possess some unique skill are in a vulnerable position. Subject to the provisions of the common law and with little legislative support, they can only endeavour to enforce their entitlements through the courts. It is their alleged desire for "independence" that prevents them from availing themselves of the advantages of acting collectively.[35] On the other hand, the principal has no qualms about organising collectively in the form of a corporation.

In any dispute between a principal and an independent contractor, the end of the line is a courtroom. It is a fact of life that the court process – particularly where fine points of law may be involved - can be both long and expensive.

The unfair contracts provisions provide a no cost jurisdiction, except in the case of a vexatious litigant. Further this submission has already noted that the Bills don't leave much room for an independent contractor to pursue "fairness" in the courts.

An independent contractor desirous of pursuing a matter through the court system will need the patience of Job and deep pockets. If the independent contractor is a tradesperson or a cleaner or security guard or some such similar occupation, then the latter is a rarity. To the extent that the cost of pursuing a matter through the courts is prohibitive, the independent contractor has nowhere to go.

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[34] This is so even though prior to the WorkChoices legislation, all certified agreements were published on the Internet. See www. wagenet.gov.au

[35] It is noted that the Federal Government has determined to exclude owner-drivers in NSW and Victoria from the provisions of the Independent Contractors Bill 2006. These drivers do resort to the Transport Workers Union to undertake the contract negotiations with employers.

21. Who Pays? Certainly not the Principal

The RTBU sees the growth of independent contractors over the last 15 years or so as one part of a strategy by employers to reduce the cost of production/services, thereby increasing profits. This strategy involves such things as contracting out, labour hire, casual employment, outworkers, relocation etc.

The nature of the relationship will impact on the distribution of the costs associated with maintaining that relationship. The use of independent contractors allows a company/principal to avoid a number of costs it would otherwise incur if it employed employees. It's not that the costs disappear – they are simply transferred to someone or something else. In point 18, a number of examples of how costs are transferred are given.

To the extent there are tax advantages to the principal eg payroll tax, the cost is borne by the community through tax foregone.

To the extent the principal avoids the provision of tools and equipment that it would be obliged to provide to employees, the cost is borne by the independent contractor who will have to provide his/her own tools and equipment.

To the extent that benefits enjoyed by employees do not pass onto the independent contractor, the cost is borne by the independent contractor.

To the extent that the contract undermines and undercuts the wages and conditions of employees performing the same work, the cost is borne by both the independent contractor and the employees (through a reduction in job security).

In the event the independent contractor has his/her contract terminated early and no provision is made for a redundancy payment, the cost is borne by the community through social security benefits. Another example in this area is where an independent contractor is ill for a period of time and is compelled to apply for sickness benefits because, unlike an employee, he/she does not have and sick leave.

It may be argued that many of the entitlements of employees are compensated for in an independent contract as part of the contract price. This of course is a matter of conjecture and very much depends on the relative bargaining power. But it raises the question about why an employer would prefer independent contractors to employees if it is not going to cost less. After all, by definition, the employer has more control over employees than it does over independent contractors. If it doesn't it will raise the question about whether the relationship is one of a genuine independent contractor.

22. Occupational Health and Safety

Occupational health and safety in the workplace can be a problem where independent contractors operate. As Mayhew, Quinlan and Bennett state:
"The management of risks for subcontractors is more difficult than it is for employee workers."[36]
They set out 4 grounds in support of this position.

"(a) The economic/reward structure encourages enhanced competition for contracts between different subcontracting groups, the paring of profit margins, and work intensification – all of which have been known to increase injury ratios."[37]

"(b) The inherent disorganisation associated with the outsourcing of labour increases as the numbers of subcontractors on a site multiply, and hence, the overall standard of communication and co-ordination normally diminishes. Thus responsibility for OHS becomes fragmented and attenuated."[38]

"(c) Because the OHS regulatory controls have been established primarily with traditional employer/employee relationships in mind, they may be singularly inappropriate on sites where, in particular, multiple subcontractors are present."[39]

"(d) Finally, where outsourced labour is fragmented, both the self-employed and employee workers have difficulty with uniting themselves to force comprehensive management of the OHS risks they face."[40]

Employers have an obligation under the various Occupational Health and Safety statutes to ensure the safety of persons in the workplace. As Mayhew et al identify, the greater the diversity of persons in the workplace the greater the potential occupational health and safety risk. In a workplace with a combination of employees, independent contractors and labour hire employees, the job of co-ordinating the demands of a safe work place where the relationship between persons in the workplace can differ is fraught with problems. For example, who has responsibility for safety, who has the obligation for training and who is liable in the case of a workplace accident can be contentious issues. It is hardly in the interests of anyone that safety be ignored because nobody believed it was their responsibility or that workers injured in workplace accidents are forced to initiate legal proceedings because nobody will accept liability.

[36] Mayhew, C., Quinlan, M., Bennett, L.,THE EFFECTS OF SUBCONTRACTING/OUTSOURCING ON OCCUPATIONAL HEALTH AND SAFETY, Industrial Relations Research Centre, University of New South Wales, Sydney, 1996, p. 137
[37] loc.cit.
[38] loc.cit.
[39] loc.cit.
[40] Ibid. p.138

23. The Myth of "Choice"

In the second reading speech, the Minister for Employment and Workplace Relations, Mr. Andrews, after commenting in the various estimates of the number of independent contractors in Australia, claims:
"These Australians have already chosen to work for themselves to gain the benefits of the choice and flexibility that self-employment provides"[41]
There are two key points that can be made in response to this claim.

Firstly, there is no evidence to support the claim that all independent contractors have "chosen" to work in that capacity. Certainly no such evidence is provided in the second reading speech or, indeed, anywhere else by the government The Minister simply makes a sweeping claim and then moves on. About the only fact in this quote is its consistency with the ideological position of the Minister and the federal Government.

Secondly, these Bills – like the Workplace Relations Amendment (WorkChoices) Act 2005 - have nothing to do with choice. Search as one may, there is nothing in the Bills that provide that a person may "choose" the type of employment he/she so desires. And no employer/principal may compel on the basis of "my way or the highway" a person to enter into a type of employment he/she would not otherwise choose. Indeed, the RTBU submits that the opposite is the reality. When combined with the "WorkChoices" legislation, these Bills not only encourage employers to utilise independent contractors at the expense of employees, they provide the ammunition for an employer to ensure such an outcome. And this is to be the case regardless of the view or will or "choice" of the person concerned. In the scenario where an employer proposes to convert its employees employed as cleaners to so-called "independent contractors" with less remuneration and increased work, what real "choice" do the relevant employees have. In the real world, other than in very limited circumstances, the answer is none!

The only choice in this exercise was one for the federal government, It had a choice of compulsion or co-operation. And it chose compulsion.

[41] Andrews K. op.cit. p.1

SUMMARY AND CONCLUSION

24. Whether a person is an employee or an independent contractor is critical to determining the legal rights of the respective parties in the workplace.

25. For many years the application of the common law to the distinction between an employee and an independent contractor has been one of confusion. At the least it leaves room for debate and the potential for complicated and expensive legal proceedings – something most individuals cannot afford.

26. Circumstances may exist where this confusion can be used by an employer to establish a principal/contractor relationship or convert an existing employer/employee relationship to a principal/contractor relationship. In doing so the employer can transfer a number of costs to the new "contractor". At the same time, the employer need cede little control over the job. When the economic power is in the hands of the employer, this becomes an attractive proposition.

27. In some cases, various state/territory governments have enacted legislation to, at least partially, rectify the inherent unfairness of such a relationship.

28. The Bills before the Committee seek to remove or diminish (with limited exceptions) what limited legislative protection exists for persons in a principal/contractor relationship.

29. The Bills also make it more difficult for independent contractors to enforce what limited rights they have.

30. The Bills, by promoting the use of independent contractors directly seek to undermine the employee/employer relationship. This they do by providing additional mechanisms to avoid well-established wages and conditions in the workplace.

31. As such the Bills, if enacted, may be used as vehicles to attack the wages and conditions and job security of RTBU members and other workers. Simultaneously, the Bills are designed to provide further ammunition to employers to undermine the collective capacity of employees and accordingly their bargaining power in the workplace.

32. The Bills, if enacted, may also be used as a vehicle to transfer costs that right belong with the employer, to other persons.

33. The only winner in the enactment of these Bills is the corporations and employers who take on the mantle of a principal.

34. For these reasons the RTBU opposes the Bills before the Committee and calls upon the Committee to recommend that the Senate reject them.

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