

Hon Michael Wright MP  
Member for Lee



Government  
of South Australia

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Mr John Carter  
Senate Employment, Workplace Relations and Education Committee  
Department of the Senate  
PO Box 6100  
Parliament House  
Canberra ACT 2600

Dear Mr Carter

This submission is made on behalf of the South Australian Government in response to the Inquiry into the provisions of the *Independent Contractors Bill 2006* (the Bill) and the *Workplace Relations Legislation Amendment (Independent Contractors) Bill 2006* (the Amendment Bill).

Many important points have been raised in the submissions of the other State Governments. The following is a summary of the South Australian Government's main concerns regarding the two Bills.

While the Bill purports to maintain state laws to protect outworkers, it potentially undermines the protections of the *Workplace Relations Act 1996* (as amended by the *Workplace Relations Amendment (Work Choices) Act 2005*).

The Bill only protects state laws which regulate a contract to which an outworker is a party. It fails to preserve state laws, namely the *Fair Work Act 1994* and the *Clothing Trades Award SA*, which regulate contracts between parties further up the contracting chain. In the case of clothing outworkers, this includes fashion houses and principal contractors. In South Australia, this may exclude the operation of any code that regulates arrangements that exist outside of the immediate contract to which the outworker is a party.

In any event, the limited outworker protections preserved in state laws by the Bill can be excluded in future through regulation.

This outcome is contrary to the Federal Government's stated position in the Explanatory Memorandum, which admitted that textile, clothing and footwear outworkers are particularly vulnerable due to their lack of bargaining power and that overriding State deeming laws regarding contract outworkers would disadvantage those who are entitled to State industrial relations laws and would be inconsistent with the special arrangements of the Work Choices legislation.

The Amendment Bill prohibits sham sub-contracting arrangements, many of which exist in industries such as cleaning, construction and security. However, it is a defence for the employer if they acted in good faith and could not have been reasonably expected to know that the contract in question was a contract of employment. This significantly weakens the protection.

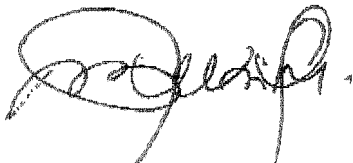
The Bill is aimed at stripping state industrial relations legislation of the deeming powers, which allow some independent contractors to be treated as employees. This will result in many workers being denied access to minimum protections such as rates of pay, leave entitlements, superannuation, workers compensation, sick leave and public holidays. What protection is currently afforded to independent contractors will be swept away.

Further, the Bill creates the potential for more workers to be defined by the Federal Government as independent contractors and will shift the duty for workplace safety on to the individual. This is a major concern to the South Australian Government with wide ranging implications for employees, contractors and the wider community.

The South Australian Government recognises that contracting is a legitimate way to do business. However, contractors should not be used by employers to avoid their employment obligations by way of artificial or contrived arrangements.

The South Australian Government's view is that the Bills are unnecessary and, when combined with Work Choices, will result in negative outcomes for Australian workers. The South Australian Government submits that both Bills should be rejected in whole and commend to you the submissions made by the other State Governments.

Yours sincerely



Michael Wright MP  
**MINISTER FOR INDUSTRIAL RELATIONS**

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