



## **Australian Government**

Australian Government response to the  
House of Representatives  
Standing Committee on Education and Employment report:

Getting business booming  
Report on the inquiry into barriers for small business employment

June 2017

## **Recommendation 1**

The Committee recommends that the Australian Taxation Office and the Fair Work Ombudsman set up a working group to align the definitions of employee and contractor across government agencies and to develop a single decision tool to help small businesses correctly identify when a worker is an employee or a contractor. This working group should also identify legislative changes if needed.

## **Response to Recommendation 1**

The Government **notes** the recommendation to align the definitions of employee and contractor across government agencies. The Government acknowledges that although these definitions may cause confusion in some cases, the definitions are longstanding, and for the most part, well understood, and a single definition may not suit all circumstances.

The Productivity Commission Review into the Workplace Relations Framework that was undertaken in 2015 considered whether including a statutory test in the Fair Work Act 2009 would reduce the prevalence of sham contracting. The inquiry report found that ‘while a statutory definition is superficially attractive, there would be considerable difficulties and risks associated with a policy shift involving the rigid adherence to such a definition, and all to solve a problem of unknown dimensions’ (p 813).

While the Government has committed to undertaking further consultations on the recommendations of the Productivity Commission’s Inquiry report, a uniform statutory definition would be likely to include numerous factors for consideration (as is currently the case under the common law multi-factor test), such that it may not reduce the scope for ambiguity and litigation.

It is the Government’s view that if definitions were aligned, the Work Health and Safety Act 2011 (WHS Act) should be excluded from the process. This is because the WHS Act deliberately avoids the use of the terms ‘employee’ and ‘contractor’ in relation to the duties, instead including both categories under the definition of ‘worker’ (Section 7). The term ‘worker’ in this context is intended to capture a broad range of working relationships, recognising the changing nature of work and employment relationships to ensure health and safety protection is extended to all types of workers now and into the future.

The Government supports in principle the recommendation to develop a single decision tool to help small businesses correctly identify when a worker is an employee or a contractor as this will help to ensure that workers receive the wages and conditions they are entitled to. A working group has been formed to assess feasibility.

While there are tools and resources available from the Fair Work Ombudsman, including an Independent Contractors Decision Tool, in certain circumstances the information can be inconclusive.

## **Recommendation 2**

The Committee recommends that the Australian Taxation Office and the Fair Work Ombudsman working group set up to align the definitions of employee and contractor, and also to look into the Master Builders Australia proposals including for a register of building contractors.

### **Response to Recommendation 2**

The Government **notes** the recommendation for the reasons set out in Recommendation 1.

The Government will consider the Master Builders Australia's proposals.

## **Recommendation 3**

The Committee recommends that the Minister for Employment in conjunction with Safe Work Australia formulate proposals to take to COAG that eliminate the requirement for a small business operating in multiple jurisdictions to engage with multiple workers' compensation schemes.

### **Response to Recommendation 3**

The Government **notes** this recommendation.

The most recent data on multi-state employers with employee numbers is from the Australian Bureau of Statistics data from 2007. Only 0.42 percent of total businesses were small businesses operating across two or more states/territories.

The Government is discussing the following actions with stakeholders that will benefit small businesses operating in multiple jurisdictions.

Safety, Rehabilitation and Compensation Legislation (Comcare scheme)

The Commonwealth's workers' compensation arrangements (Comcare scheme) enacted by the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act) provide rehabilitation and workers' compensation arrangements for Commonwealth and Australian Capital Territory (ACT) Government employees as well as employees of a small number of private corporations (self-insurers).

On 19 March 2014, the Safety, Rehabilitation and Compensation Legislation Amendment Bill 2014 (Bill) was introduced into the Senate. The Bill sought to reduce regulatory burden for multi-state employers by introducing a simplified 'national employer' test to determine whether a corporation could join the Comcare scheme. This Bill lapsed with the proroguing of Parliament on 15 April 2016.

An 'opt-in' approach for multi-state employers

As part of the Industry Innovation and Competitiveness Agenda, the Government announced a project to research the feasibility of expanding access to the Comcare scheme and work health and safety laws to private corporations as premium payers on 14 October 2014. The Government is considering the recommendations from this research.

#### **Recommendation 4**

The Committee recommends that the Australian Government work with states and territories to boost employment and business productivity by reducing state and territory governments' reliance on payroll tax as a form of revenue.

#### **Response to Recommendation 4**

The Government **notes** this recommendation.

At the Council of Australian Governments meeting in April 2016, the Commonwealth and the States and Territories agreed to work together on opportunities for tax reform, including state tax reform. This work is being progressed.

#### **Recommendation 5**

The Committee recommends that the Productivity Commission investigate the impact on small business of lowering the GST threshold on the importation of physical goods and undertake regular cost effectiveness research of GST threshold reduction.

#### **Response to Recommendation 5**

The Government **notes** this recommendation.

In the 2016-17 Budget, the Government announced the GST will be extended to low value goods imported by Australian consumers from 1 July 2017, using a vendor registration model. As such, low value goods imported by consumers will face the same tax regime as goods that are sourced domestically. Further details on this measure can be found in the 2016-17 Budget papers.

#### **Recommendation 6**

The Committee recommends that Australian Small Business Ombudsman, Small Business Commissioners, Chambers of Commerce, Business Enterprise Centres and peak small business organisations develop strategies to promote to small business the benefits of workers from culturally and linguistically diverse (CALD) backgrounds. Where appropriate, the providers of small business advisory services should incorporate into the written and verbal material they present an explanation of how a small business can benefit from recruiting a person from a CALD background.

#### **Response to Recommendation 6**

The Government **notes** this recommendation, but acknowledges that it is directed towards small business representatives rather than the Government.

The Government agrees that workers from culturally and linguistically diverse (CALD) backgrounds can play a valuable role in the Australian economy.

As the report notes, the Government's business.gov.au site provides information on the hiring of CALD job seekers while the Australian Human Rights Commission provides a range of resources to assist businesses (of all sizes) understand the benefits of creating and maintaining

diverse and inclusive workplaces in relation to workforce productivity and customer engagement.

In addition, the Australian Small Business Advisory Services programme's Ministerial guidelines require that service providers adopt business models which, amongst other characteristics, are practical and delivered in a manner that suits the participants. This includes providing information on employing CALD job seekers, if relevant to the business.

The Government notes that the Australian Small Business and Family Enterprise Ombudsman has been established as an independent, statutory authority. A key role of the Ombudsman is to work consultatively with states and territories to develop national strategies in relation to legislation, policies and practices that affect, or may affect small businesses and family enterprises.

### **Recommendation 7**

- a) The Committee recommends that the Australian Government conduct a review of careers advice and support provided in schools [and online]. The purpose of the review must be to assess any gaps or areas of weakness in the current written and verbal advice that is provided [by schools and by Federal and state governments], and to improve the quality of the careers advice that young people receive.
- b) The Committee recommends that a Council of Australian Government (COAG) Working Group consider the merit of a national standard for careers advice for all secondary school students.

### **Response to Recommendation 7**

7a) The Government **supports** this recommendation.

Although not directly responsible for delivering vocational learning (which includes career advice) in schools, the Commonwealth plays an important role in providing national leadership and encouraging effective career education.

In May 2016, the Australian Government committed \$3 million to improving career advice by working with industry and schools to develop a new National Career Education Strategy.

The strategy aims to support young people to get the skills they need to successfully transition into further education or work. A plan for the development of the strategy is currently being established.

Through the Schools Vocational Learning and Training (SVLT) Working Group, established by the COAG Education Council, the Australian Government has led the development of:

- *Preparing Secondary Students for Work*, a new framework for vocational learning and vocational education and training (VET) delivered to secondary students. The framework was endorsed by the Education Council and released in December 2014.
- 'Key elements for enhancing career education for students', a resource which highlights the need for an effective career education plan. The plan should be developed and overseen by

school leadership and an appropriately qualified career development practitioner. Strategies and approaches outlined in the plan must be informed by the needs of students, teachers, industry and the broader community.

- a career education self-assessment tool, to be launched in the latter half of 2016. As part of the implementation of the *Preparing Secondary Students for Work* framework, the Department of Education and Training has engaged the Career Industry Council of Australia (CICA) to develop a career education online self-assessment tool for schools. Developed with support from the SVLT Working Group, the tool is designed to assist schools to assess and improve the quality of career education delivered to secondary students, with guidance for educators on good practice.

7b) The Government **considers there is merit** in reviewing the 2012 *Professional Standards for Australian Career Development Practitioners* (the Professional Standards), to ensure it meets the needs of students, schools and the future workforce. Consideration should also be given to whether these standards are made a mandatory part of a school's career education strategy. This issue could be explored as part of the development of the new National Career Education Strategy.

The Professional Standards represent a benchmark for career development practitioners by:

- defining the career industry, its membership and its services
- recognising the diverse skills and knowledge of career practitioners
- guiding practitioner entry into the industry
- providing a foundation for designing career practitioner training
- providing quality assurance to the public and other stakeholders
- establishing a benchmark against which career practitioners can be assessed, evaluated and judged by their peers and by others
- requiring career practitioners to undertake continuing professional development.

### **Recommendation 8**

The Committee recommends that Australian Government provide more funding and support for the provision of driver's licence programs to enable young and disadvantaged people to access employment opportunities.

### **Response to Recommendation 8**

The Government **notes** this recommendation.

While the Government notes that responsibility for driver licencing lies with state and territory governments, the Commonwealth has designed several initiatives to support young people from disadvantaged backgrounds to obtain a driver's licence.

The Government's Youth Employment Strategy is a key component of the Growing Jobs and Small Business package. The Strategy introduces new initiatives to assist young people at risk of

long-term welfare dependency to become job ready and find employment. Transition to Work and Empowering YOUth Initiatives are both measures under the package and may assist young people to obtain a driver's licence.

#### *Transition to Work*

The Government is investing \$322 million over the next four years for the Transition to Work service. Transition to Work will help young people aged 15 to 21 who have disengaged from work and study and are at risk of long-term welfare dependence. Young people accessing the service will benefit from intensive, pre-employment support to improve their work readiness and to help them into work (including Apprenticeships or Traineeships) or education. Services are expected to include an appropriate mix of individual, group and self-directed activities and can include assistance with practical skills development such as gaining a driver's licence. Services commenced on a rolling basis from 15 February 2016 and will support around 29,000 young people each year when fully operating.

#### *Empowering YOUth Initiatives*

Empowering YOUth Initiatives is funding innovative approaches to help vulnerable young people aged 15–24, and who are at risk of long term welfare dependency, onto the pathway to sustainable employment. One innovative approach is from the Fraser Coast Training, Employment and Support Services (TESS), which focuses on developing young people's employment skills through the conduct of a social enterprise driving school. In return for attendance and positive participation, a young person can earn 'TESS' dollars to go towards driving lessons and obtaining a driver's licence.

There are two other approaches funded through the Empowering YOUth Initiatives that support the provision of driver's licences for young people. The Brisbane Broncos career club is supporting young people in Ballina and Lismore New South Wales to secure sustainable employment, achieve a Year 12 or equivalent qualification and gain a driver's licence through a registered driving school. The approach offered by Eyre Futures provides young people in Ceduna, Port Lincoln and Whyalla Norrie in South Australia with access to local employers, helps them prepare to apply for work, and supports them to obtain their driver's licence.

#### *Employment Fund*

The Employment Fund is a flexible pool of funds that can be accessed by all jobactive providers to help job seekers build the experience and skills to get and keep a job. The Employment Fund funds driving lessons to a maximum of \$330 (GST inclusive) per job seeker per provider per period of unemployment (the cap on driving lessons will be increased to \$1,100 GST inclusive effective 5 December 2016). The Employment Fund also funds the cost of the driver's licence, associated test fees, car registration and insurance. In addition jobactive providers may use the Employment Fund to provide public and private transport assistance, so that job seekers can attend job search related activities, training or employment.

## **Recommendation 9**

The Committee recommends that the Federal Department of Employment look into the implementation of a ‘passport to competencies’ as envisaged by Master Builders Australia.

### **Response to Recommendation 9**

The Government **notes** this recommendation.

On 6 May 2016, the Australian Government launched the Apprenticeship Training – alternative delivery pilots, providing \$9.2 million to establish five industry-led pilots. Master Builders Australia (MBA) was selected by the Government to deliver one of three priority pilots (the remaining two pilots will be selected through an open grants process).

The ‘passport to competencies’ is one of the key activities MBA will deliver as part of this pilot, which will run until 30 June 2018.

All five pilots will be evaluated by the Government to assess increased industry validation and their potential to be adopted more broadly by industry.

## **Recommendation 10**

The Committee recommends that the Australian Government assess the impact of changes at the state and Federal level to apprenticeship programs including the Joint Group Training Program and the Australian Apprenticeships Access Program.

### **Response to Recommendation 10**

The Government **notes** this recommendation.

In July 2015, the Australian Government launched the Australian Apprenticeships Support Network, developed in response to industry feedback on Australian Apprenticeships support services. The Government is implementing some of the most significant reforms to apprenticeship support services in two decades – up to \$190 million each year is being provided to help employers, particularly small businesses, recruit, train and retain around 300,000 apprentices across Australia.

The Government monitors the impact of programs with recent assessments undertaken on both the Joint Group Training Program (JGTP) and the Australian Apprenticeships Access Program (Access):

- A July 2014 Ministerial review of JGTP by ACIL Allen Consulting noted funding did not markedly change behaviours or outcomes for group training participants and recommended JGTP in its established form be discontinued from 2015–16.
- In August 2014, based on these findings and recommendation, the Government decided to cease JGTP funding after 2014–15. On 1 July 2015, the Government ceased funding JGTP. A copy of the review is available at [www.acilallen.com.au/cms\\_files/ACILAllen\\_JointGroupTrainingProgram.pdf](http://www.acilallen.com.au/cms_files/ACILAllen_JointGroupTrainingProgram.pdf).
- In February 2013, Ernst and Young evaluated the Access Program. Ernst and Young found that since 2009, the Access Program had struggled to achieve its target of 40 per cent of

participants achieving employment or education outcomes. Outcome rates had dropped to 26 per cent for 2009–10 and 27 per cent in 2010–11.

Recommendations of the Productivity Commission inquiry into Australia's Workplace Relations Framework also call for further focus on factors influencing the supply of and demand for apprentices and trainees including the level of government support.

### **Recommendation 11**

The Committee recommends that the federal Department of Employment work with jobactive providers to ensure that ancillary service providers receive Australian Government funding for their assistance in placing jobactive clients into employment.

### **Response to Recommendation 11**

The Government **notes** this recommendation.

The jobactive Deed 2015-2020 requires jobactive providers to work cooperatively with private and community services and others. jobactive providers have a wide network of ancillary service providers and may seek assistance from these providers to deliver support and services to job seekers, including where required under the Employment Fund.

### **Recommendation 12**

The Committee recommends that the Australian Government review welfare eligibility rules for people with an episodic illness transitioning from a period out of the workforce into paid employment. The Committee encourages the Australian Government to ensure that people with an episodic illness are not discouraged from entering the workforce for fear of losing their disability or Centrelink pension when they work.

### **Response to Recommendation 12**

The Australian Government **notes** Recommendation 12 and that the Committee's focus relates to the Disability Support Pension (DSP).

Consistent with the evidence that people are better off working where they are able, rather than relying on income support, the Government has ensured arrangements are currently in place to support people with episodic illnesses in receipt of the DSP to participate in the workforce when they are able to do so.

The DSP provides people with an adequate means of support if they have a permanent physical, intellectual or psychiatric impairment which attracts at least 20 points under the Impairment Tables. The person must also be assessed as being unable to work for 15 or more hours per week, for at least the next two years, because of their impairment.

For DSP eligibility purposes a condition is considered permanent if it has been diagnosed, treated and stabilised, and in light of available evidence, it is unlikely that there will be any significant functional improvement within the next two years.

A fluctuating or episodic condition with episodes of intermittent impairment may still be considered fully stabilised for DSP purposes if it has been fully treated and the impact on ability to work is unlikely to improve significantly within the next two years.

DSP recipients have access to services such as Disability Employment Services (DES) providers who play a specialist role in helping people with a disability get ready to look for, find and keep a job. DSP recipients who have periods of ability to work are supported to try working and building their hours, while retaining their DSP as a safety net, including:

- DSP recipients are able to work up to 30 hours a week without their payment being suspended or cancelled, and receive a part pension subject to the usual means testing arrangements.
- If a DSP recipient starts work of 30 hours a week or more, they can have their DSP suspended for up to two years rather than cancelled, which means they are able to resume DSP without having to claim again. For the first of these two years, people can continue to have access to the Pensioner Concession Card.

Depending on the nature and severity of the condition, DSP is not always the most appropriate payment for people with episodic conditions. If a person has an episodic condition that is not considered permanent for DSP purposes, then their claim for DSP will be rejected and they may be eligible for another payment such as Newstart Allowance.

Newstart Allowance provides income support for unemployed people while they look for work or undertake other activities to improve their employment prospects. Recipients can have modified mutual obligation requirements, taking into account the impact of their condition. They must meet their mutual obligation requirements to receive payment, unless they have been granted an exemption, for example, an exemption from mutual obligation requirements may be granted for recipients who have a temporary incapacity to work (as evidenced by a doctor's medical certificate).

Recipients of Newstart Allowance who have a partial capacity to work because of a physical, intellectual or psychiatric impairment have mutual obligation requirements which match their assessed capacity to work. Job seekers who are ill, injured or have temporary medical conditions (such as injuries resulting from accidents, or episodic periods of depression) may be required to look for work or take part in activities to their availability and capacity to help them prepare for a job or build their work capacity, even if they are temporarily unable to work.

Other provisions in the welfare system also support people to undertake work, rather than relying solely on income support. The effects of the income test free area and taper rates mean that recipients are better off receiving additional income. There are also measures available to recipients to ease the transition from income support into work. Working Credit allows recipients to build up credits while they are not working which can later offset the amount of income assessed when they start working. In addition, recipients who commence work and whose income reduces their payment to nil can access the 'employment income nil-rate period'. This period allows recipients to remain connected to the income support system for up to six fortnights when they start work and return to income support without having to reclaim if their work ceases within the period.

### **Recommendation 13**

The Committee recommends that the Australia Government reassess the policy case for the redundancy payouts of persons over 65 years of age to encourage people to stay in the workforce.

### **Response to Recommendation 13**

The Government **notes** this recommendation. The taxation treatment of redundancy payments has been reviewed by the Government as part of its considered and thorough process about how Australia's tax system can be made better.

Payments made by employers to individuals aged 65 or more do not qualify as genuine (bona fide) redundancy payments. This treatment has applied since 1992. A key policy rationale has been that individuals aged 65 and over generally have access to other forms of income, such as the Age Pension and concessional tax superannuation.

The main tax concession available for recipients of genuine redundancy payments is allowing the payments to be tax free up to a threshold, based on the recipient's length of service with the employer.

While this tax-free component is not available to people receiving redundancy payments who are aged 65 years or over, people age 65 and over benefit from other employment termination-related tax concessions. In particular, employment termination payments made to people over preservation age are taxed at a maximum of 15 per cent (excluding Medicare levy) up to the cap. This maximum tax rate is lower than for people who are below preservation age, who are taxed at a maximum of 30 per cent (excluding Medicare levy) up to the cap.

### **Recommendation 14**

The Committee recommends that, in light of the importance of digital infrastructure for the viability of small business, special focus be given by NBN Co on ensuring their timely access to high speed broadband.

### **Response to Recommendation 14**

The Government **notes** this recommendation.

The National Broadband Network aims to foster productivity and provide a platform for innovation in order to deliver economic and social benefits for all Australians. The Australian Government is committed to completing the National Broadband Network and ensuring all homes and businesses have access to affordable high speed broadband services by 2020.

The Government is conscious of the particular importance of high speed broadband to small businesses and has emphasised the need for the National Broadband Network to prioritise areas that are currently poorly served by broadband, to the extent commercially and operationally feasible, through the Statement of Expectations.

Additionally, the Government is currently developing legislation to place infrastructure provider of last resort obligations on the National Broadband Network, and other carriers where

appropriate, to ensure that all Australian homes and businesses have access to high speed broadband.