

**The Secretary
Standing Committee on Employment, Workplace Relations and Workforce
Participation
House of Representatives
Parliament House
Canberra ACT 2600**

Per Email: ewrwp.reps@aph.gov.au

Inquiry into Independent Contracting and Labour Hire arrangements

Submission date: 11 March 2005

Introduction

Labour Force Australia Pty Ltd (“Labour Force”) is the proprietor of Odco® Contracting and licenses that system of contract labour hire to licensed agencies all over Australia. Those agencies provide independent contractors to a wide range of industries Australia wide. Thousands of independent contractors operate through Odco® Contracting on any one day.

Labour Force has gained enormous experience in the range of issues facing independent contractors working through labour hire on a day-to-day basis around Australia. It has also had great exposure to the Courts and how they deal with independent contractors in the many legal cases in which Labour Force licensees have been involved. These cases have dealt particularly with the contractor/employee distinction, commencing with the original Odco case itself (*Odco v BWIU and ors 29 FCR 104*).

Labour Force welcomes the Government’s initiative to introduce legislation to enshrine and protect the status of independent contractors. To assist the Government in better understanding independent contractors and labour hire, Labour Force has prepared the following submission on behalf of itself and its licensees.

Status & Range

The recent Productivity Commission report “The Growth of Labour Hire Employment in Australia”, February 2005, examined the use and range of labour hire that parallels our own experience. Labour hire is used across all workplaces, from management roles through to manufacturing.

The success of Odco® Contracting is in its legal basis which allows individuals to contract their services outside of traditional common law employment. It allows them freedom and choice in their work arrangements.

The need for consistency across jurisdictions

Odco® licensed agencies are subject to a plethora of Federal and State laws that need to be understood and complied with. That is no different to any other business. The Odco® system seeks to understand its obligations.

- Federal: Independent contractors working through labour hire are subject to PAYG rules; in fact, labour hire has its own special section.
- State: The variations in the relevant pieces of state legislation, particularly Workers Compensation, cause unnecessary problems and additional administrative functions for Odco® agencies which operate in different states. The agencies need to be aware of and comply with different legislation for Workers Compensation, Payroll Tax, OH&S, and other regulations that may affect their businesses.

The only possibility for achieving national consistency must lie with the proposed Independent Contractor legislation.

Without a centrepiece, or baseline federally, the states will carry on in their apparently ad hoc fashion of continually changing legislation about contractors.

Primarily contractors should be regulated under a federal law system to create certainty and better outcomes. Having 7 laws to comply with is a nonsense.

Workcover: Nationally, workcover is a joke. Every state and territory has different legislation, different interpretations, and different industry rates. In fact they are all so different one wonders if we are doing the same business in the same country.

Payroll tax is in much the same boat as workcover and all of the above applies equally. In addition, since payroll tax is an employer/employee tax, as a matter of principle, Labour Force strenuously opposes payroll tax applying to contractors.

OH&S: Labour Force commends any law which promotes worker safety. We believe that the state OH&S Acts have been well interpreted to date. It is integral to any labour hire firm to ensure that personnel they are supplying are going to a safe workplace. Labour hire companies must embrace a positive culture of work safety.

Superannuation is grey. The current Rulings do not reflect the true common law position and in any event should not be applicable to contractors.

Summary: Labour Force submits:

1. The proposed Independent Contractor legislation should at least cut across the need to comply with different pieces of industrial relations legislation and their attendant industrial relations commissions.
2. It should attempt to provide clarity **and consistency** to workcover, payroll tax and OHS. That is, the states must have common (mutual) laws that work to the same effect. Workers Compensation is Workers Compensation. The Federal government should attempt to compel the states to at least use a common set of words in their legislation. For over 30 years there have been committees, meetings, submissions, the whole gamut of bureaucratic machinations into having consistent state laws. These have had no effect and have been spectacularly unsuccessful. The current systems are an impediment for both workers and business when they cross state borders. Australia should be one country when it comes to doing business.
3. Payroll tax should not apply to contractors.

Role of labour hire arrangements

Labour hire will continue to play a strong role in the Australian economy. It is a fact that the recruitment and engaging of labour, in any form, is a burdensome task. Business has realised that if they are good at producing widgets their expertise and time is better spent maximising that productivity than getting dragged totally into the quagmire of HR/IR.

Through outsourcing, companies can utilise labour hire companies' expertise to create the flexibility for greater productivity. Labour hire companies present a 'package' which must comply with their clients requirements if they are to be successful. The client must provide a safe workplace and after that they are freed from the plethora of reporting and red tape associated with the engagement of personnel.

Successful labour hire companies can value-add to the package in a variety of ways from assisting OHS management and compliance – up skilling and cross skilling through to a total re-engineering of the workplace.

Strategies to ensure legitimacy

The common law serves us well. The Independent Contractor Act should clarify many areas. It must not be used as a means merely to cheapen Australian labour. Sham arrangements must be set aside and we must look to embrace the concept of economic benefit.

Simply, a contractor should not be disadvantaged economically vis a vis an employee. The totality of remuneration to a contractor should equal the value of payment to an employee and include a component to cover superannuation, as it is an economic benefit to an employee.

There is already a plethora of laws as mentioned before to provide certain checks and balances and over these hover the Tax Act like a sword of Damocles. Labour Force suggests the Federal Magistrates Court would be a most suitable arena for resolving legal disagreements, particularly as to the status of a contractor, quantum and contractual performance.

It must be made abundantly clear that a person who ordinarily at common law is an employee cannot become a contractor simply by signing a contract. Equally where there is a high degree of ambivalence in the arrangements the courts must give a greater weight to the intentions of the parties.

Summary of submission

Extra bureaucracy cannot create legitimacy. It is the province of the courts to determine legitimacy. Educating contractors about their rights is the most positive way to ensure legitimate arrangements.

We welcome this inquiry and the proposed legislation and thank you for the opportunity to provide input. Should you require any further information we would be pleased to assist.

Yours faithfully

Peter Bosa
Chairman