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New Independent Contractors Bills Introduced into Parliament

The Federal Government has recently introduced 2 bills - the *Workplace Relations Legislation Amendment (Independent Contractors Bill) 2006* (WR Bill) and the *Independent Contractors Bill 2006* (IC Bill) that will alter the laws governing independent contractors for those businesses governed by the WorkChoices regime (ie constitutional corporations). Summarised below are the key features of the Bills that will be debated when Parliament resumes sitting on 8 August 2006.

DEFINITION

The IC Bill does not define independent contractors, instead it relies on the common law test to distinguish between independent contractors and employees. This test takes into account a number of factors such as control, method of payment, provision/maintenance of equipment, work hours, power to delegate, income tax and obligation to work. This distinction is significant as independent contractors are not entitled to the traditional benefits of employees such as superannuation, occupational health and safety, leave entitlements and award protections.

The IC Bill does not adopt the ATO personal services income test (the 80/20 rule) to identify independent contractors. This means that while a worker may be an 'employee' for the purposes of taxation, this is not conclusive and they may still be classed an independent contractor.

REMOVAL OF STATE DEEMING PROVISIONS

The main feature of the IC Bill is that it removes State laws that deem certain workers to be employees for certain purposes, in an attempt to confer employee-like rights on independent contractors. The effect is that the broader definition of employee in the *Industrial Relations Act 1996* (NSW) and s246 *Industrial Relations Act 1999* (Qld) is overridden, as well as similar provisions in South Australian and Tasmanian legislation.

UNFAIR CONTRACTS JURISDICTION

Similarly, the IC Bill overrides New South Wales and Queensland's unfair contracts jurisdictions, the explanatory memorandum arguing that it will reduce duplication by creating a new federal unfair contracts jurisdiction, repealing the current provisions contained in the *Workplace Relations Act 1996* (WR Act). This regime, contained in the IC Bill, allows the Federal Magistrates Court and the Federal Court to vary or set aside services contracts that are harsh or unfair. The Court can take into account relative bargaining power, undue influence, whether the contract provides total remuneration that is less than that of an employee performing similar work and any other relevant matter.

PENALTIES FOR SHAM ARRANGEMENTS

The WR Bill inserts new provisions into the WR Act to deal with “sham arrangements”. Offences include:

- misrepresenting an employment relationship (or proposed relationship) as an independent contracting arrangement.
- dismissal for the purpose of engaging certain persons as independent contractors.
- prohibited conduct for the purposes of engaging persons as independent contractors such as making false statements or intention to influence.

The maximum civil penalty for individuals is \$6,600 and for corporations is \$33,000.

SPECIFIC ARRANGEMENTS FOR TRANSPORT DRIVERS

The IC Bill makes special provisions preserving state laws that apply to transport owner-drivers, namely certain provisions of the *Industrial Relations Act 1996* (NSW) and the *Owner Drivers and Forestry Contractors Act 2005* (Vic). However, regulations may specify further exemptions.

More substantive provisions apply to textile workers including establishing a default minimum rate of pay for contract outworkers in the clothing and footwear industry.

HOW DOES THIS AFFECT YOU?

- If you currently engage independent contractors who have been deemed employees under State laws there is a 3 year transition period before the IC Bill will affect your relationship. However, parties can choose to adopt the IC Bill provisions at an earlier date.
- The test for independent contractors remains the same, however, they will no longer be deemed eligible for certain ‘employee’ benefits under State laws, unless they are preserved e.g. transport drivers.
- A new unfair contracts jurisdiction and penalties will apply for sham arrangements.



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