2004-2005-2006

The Parliament of the
Commonwealth of Australia

THE SENATE

Workplace Relations Legislation Amendment
(Independent Contractors) Bill 2006

(Amendments to be moved by Senator Murray on behalf of the Australian Democrats in committee of
the whole)

(1) Schedule 1, page 3 (after line 4), before item 1, insert:

1J After subsection 5(1)

Insert:

(1A) A person (the worker) who contracts to supply his or her labour to another party is to be presumed to do so as an employee, unless it can be shown that the other party is a client or customer of a business genuinely carried on by the worker.

(1B) A contract is not to be regarded as one other than for the supply of labour merely because:

(a) the contract permits the work in question to be delegated or subcontracted to others; or

(b) the contract is also for the supply of the use of an asset or for the production of goods for sale; or

(c) the labour is to be used to achieve a particular result.

(1C) In determining whether a worker is genuinely carrying on a business, a court must have regard to the following factors:

(a) the extent of the control exercised over the worker by the other party;

(b) the extent to which the worker is integrated into, or represented to the public as part of, the other party’s business or organisation;

(c) the degree to which the worker is or is not economically dependent on the other party;

(d) whether the worker actually engages others to assist in providing the relevant labour;

(e) whether the worker has business premises (in the sense used in the personal services income legislation); and
whether the worker has performed work for two or more unrelated clients in the past year, as a result of the worker advertising his or her services to the public.

(1D) A court is to have regard for this purpose to:
   (a) the practical reality of each relationship, and not merely the formally agreed terms; and
   (b) the objects of the statutory provisions in respect to which it is necessary to determine the issue of employment status.

(1E) An employment agency which contracts to supply the labour of a person (the worker) to another party (the client) is to be deemed to be that person’s employer, except where this results in a direct contract between the worker and the client.

(1F) If:
   (a) an arrangement is made to supply the labour of a person (the worker) to another party (the ultimate employer) through a contract or a chain of contracts involving another entity (the intermediary); and
   (b) it cannot be shown that the intermediary is genuinely carrying on a business in relation to that labour that is independent of the ultimate employer, on the basis of factors similar to those set out in subsection (1C);

the worker is to be deemed to be the employee of the ultimate employer.

[definition of employee]

(2) Schedule 1, page 3 (after line 4), before item 1, insert:

**1K Subsection 5(3)**

Repeal the subsection, substitute:

(3) In this Act, a reference to employee with its ordinary meaning is a reference to an individual who contracts, or usually contracts, to supply his or her labour as an employee (within the meaning of subsections (1A) to (1F)) to an employer within the ordinary meaning of that term as defined in section 6.

[definition of employee]

(3) Schedule 1, page 3 (after line 4), before item 1, insert:

**IL At the end of section 5**

Add:

(5) Subsections (1A) to (1F) do not apply in relation to:
   (a) a law of a State or Territory, to the extent that the law applies to a services contract to which an outworker is a party; or
   (b) a law of a State or Territory, to the extent that the law applies to a services contract that relates to the performance of road transport work by the independent contractor, other than a services contract to which an independent contractor that is a body corporate is a party, unless the road transport work to which the contract relates is wholly or mainly performed by a director of the body corporate or a member of the family of a director of the body corporate; or
   (c) without limiting paragraph (b), any of the following laws:
      (i) Chapter 6 of the Industrial Relations Act 1996 of New South Wales (and any other provision of that Act to the extent that it relates to, or has effect for the purposes of a provision of Chapter 6);
(ii) the Owner Drivers and Forestry Contractors Act 2005 of Victoria;
(iii) any instrument made under a provision of a law referred to in subparagraph (i) or (ii); or
(d) a law of a State or Territory that is specified in regulations made for the purposes of this paragraph, to the extent that the law is so specified.

(6) Notwithstanding anything else contained in this section, a reference in this Act to employee does not include, and is not to be taken as meaning, any of the following:
   (a) a person who is a party as a carrier to a contract of carriage as defined in section 309 of the Industrial Relations Act 1996 of New South Wales and to whom that State Act (apart from anything contained in this Act) is capable of having application;
   (b) a person who is an owner driver as defined in subsection 4(1) of the Owner Drivers and Forestry Contractors Act 2005 of Victoria and to whom that State Act (apart from anything contained in this Act) is capable of having application;
   (c) a person who is a haulage contractor as defined in subsection 5(1) of the Owner Drivers and Forestry Contractors Act 2005 of Victoria and to whom that State Act (apart from anything contained in this Act) is capable of having application.

[exclusion of certain state and territory laws]

(4) Schedule 1, page 3 (after line 4), before item 1, insert:

1M Subsection 6(3)
Repeal the subsection, substitute:

(3) In this Act, a reference to employer with its ordinary meaning is a reference to a person to whom another person contracts, or usually contracts, to supply his or her labour as an employee (within the meaning of subsections 5(1A) to (1F)).

[definition of employer]

(5) Schedule 1, page 3 (after line 4), before item 1, insert:

1N At the end of section 7
Add:

(3) In this Act, a reference to employment with its ordinary meaning is a reference to an arrangement whereby a person contracts, or usually contracts, to supply his or her labour as an employee (within the meaning of subsections 5(1A) to (1F)).

[definition of employment]