

New bill can reduce contract confusion



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While whole forests have been sacrificed in a torrent of newspaper comment on the federal government's *Workchoices* legislation, relatively little attention has been paid to its supporting act. This is the *Independent Contractors Bill* soon for debate in the Parliament. While perhaps less sweeping in its reach, the Bill nevertheless threatens to bring more change to workplace practices. Those many librarians now working under agency or labour hire arrangements should pay particular attention.

In its 2004 election policy the Coalition promised to protect and support independent contractors. After its re-election, for most of 2005 a Parliamentary Inquiry analysed the use of contractors and labour hire in Australia, making recommendations to Minister Kevin Andrews late in the year. Those proposals underpin the Bill shortly to be debated by Parliament. The Committee was asked to report on the status and range of labour hire and independent contractors in Australia; to suggest options for consistency across state and federal boundaries; to identify the proper role of labour hire in a modern economy and to develop strategies to ensure independent contracts are legitimate.

These are important matters in themselves but are rendered even more significant by the rapid growth of this type of work. A 2005 analysis by the Productivity Commission [*The Growth of Labour Hire Employment in Australia 2/2005*] confirmed that since 1990 the number of labour hire employees has grown by around 16 per cent a year. They now make up at least 4 per cent of the total workforce. Independent contractors – technically non-employees – now constitute at least 10 per cent of the workforce. Labour hire involves using workers from a labour hire company to work for a host business, often for short periods of time. It is essentially a triangular relationship between the agency, the worker and the host business. Independent contracting basically means self-employment, where services are contracted out to a number of clients under commercial, rather than employment, contracts.

The Inquiry found that this form of work is now very popular with many businesses wanting a flexible workforce that can respond to rapidly changing demands. It also appeals to high-skill individuals seeking to work at times and in ways that increase their lifestyle choices and independence. But the Committee also identified legitimate fears that too many employers may be designating employees as independent contractors purely to avoid legal obligations that should be owed to employees. This can include circumventing registered wage levels, avoiding superannuation contributions and workers compensation insurance and limiting or even denying health and safety liability. Some librarians report just such an experience.

The other disturbing aspect of labour hire is its effect on health and safety. The Inquiry expressed major concern about what it described as 'unclear responsibility for OHS matters' in labour hire arrangements. Evidence taken by the Committee indicates that the workplace health and safety of labour hire workers is not as good as that of direct employees. It referred to several recent reports to that effect, including the NSW Labour Hire Taskforce Report and Changing Work and OHS: The Challenge of Labour Hire Employment. Separate analysis of compensation claims in Victoria also found that labour hire workers are more likely to be injured than direct employees, and their injuries are often more severe. This conclusion is consistent with other Australian and international evidence.

When ALIA appeared before the New South Wales Labour Hire Inquiry more than five years ago, I emphasised our concerns with both these aspects of labour hire. [<http://alia.org.au/advocacy/submissions/nsw.inquiry.html>]. We proposed a formal code of conduct to regulate the labour hire industry. We said such a code should include firm provisions to prevent contracts designed to circumvent awards, agreements and obligations to employees. And we called for clarification of the occupational health and safety obligations of both labour hire companies and host organisations.

With that background, it is encouraging to note the recommendations of the recent federal Parliamentary Inquiry. Among other things, their recommendations call for: [i] a voluntary code of practice for the labour hire industry [Recommendation 11] to be finalised by 2007 and endorsed by the Australian Competition and Consumer and a program of skills development and best practice guide for the industry [Recommendation 5]; [ii] a range of initiatives to improve OHS practices for labour hire employees including more research, increased training, broader monitoring and enhanced enforcement [Recommendation 6], together with sharper delineation and clearer understanding of the responsibilities of both labour hire companies and host organizations [Recommendation 7]; and [iii] clearer separation of employee and independent contractor status [Recommendations 2,3,4 and 12].

Much understandable cynicism remains about manipulation of the use of 'contractors' in Australia. Realists will recognise, however, that this form of work is now well and truly established. It does have a valid role to play in the modern labour market, provided that proper controls and processes are put in place. The recommendations put to the federal government by the Committee of Inquiry provide the basis for a clearer picture in the future. Whether that is actually achieved will depend entirely on what form an Independent Contractors Act finally takes. ■

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