

Kristie Eggleston

From: NewsAlert@thomson.com.au
Sent: Thursday, 22 June 2006 10:17 AM
To: Kim Rickard
Subject: Workforce Daily: Andrews tables two independent contractors bills and here they are

THOMSON

WORKFORCE[Past Editions](#)[Search](#)[Links](#)[Diary](#)[Contact Us](#)

Thursday, June 22, 2006

Independent • News & Analysis • Since 1974

If you have trouble reading this email, click [here](#)[Andrews tables two independent contractors bills](#)

Copyright. Reproduction prohibited. Private and confidential information for subscribers only.

Andrews tables two independent contractors bills

WR Minister Kevin Andrews tabled two pieces of draft legislation relating to independent contractors in the House of Reps this morning, his last chance to do so until parliament sits again on August 8.

The first was the 43-page Independent Contractors [Bill](#) 2006 and its 65-page explanatory [memoranda](#). In his second reading speech for the principal bill, Andrews said "everyone's life opportunities are diminished by restrictions on freedom to work". Over the past 25 years has occurred the "most important but least remarked upon" changes in the history of working arrangements with the rise of independent contractors. Estimates on just how many there are range from 800,000 put forward by the Productivity Cmn to 1.9 million, Andrews said. "These Australians have already chosen to work for themselves ... Their choice must be respected," he said.

The principal bill

The principal bill reflects the gov't's commitment to encouraging independent contracting arrangements "without excessive regulation", Andrews said. "Genuine independent contracting relationships should be governed by commercial, not industrial law." For this reason the Fed Govt had chosen a "stand alone" bill rather than including the provisions in Work Choices legislation, he said.

The principal bill represents a further element in the gov't's workplace reform agenda, building on Work Choices legislation, which according to Andrews has facilitated greater choice and flexibility in workplaces by making it easier for employers and employees to make arrangements that best suit them. Today's legislation provides an "even wider range of choices about how they work, and ensures that their choice is respected", he said. It enshrines independent contracting status as a "wholly legitimate form of work".

The Bill:

- does not define the term "independent contractor" beyond its meaning under the common law. This is consistent with the approach of the WR Act, which imports common law definitions for 'independent contractor' and 'employee'.
- does not include in the definition components of the Personal Services Income test used by the Aust Tax Office to identify independent contractors, despite the committee's recommendations to do so.

- will use the Corporations Power to override state legislation that deems certain classes to be employees. "State deeming laws have become so absurd that they can result in completely arbitrary distinctions," Andrews said. "It is job destroying."
- will include a three-year transition period before state deeming provisions are overridden, giving employees and employers time to adjust their business affairs.
- will preserve textile and clothing outworker and transport owner-driver protections at a state level. The ability of transport owner-drivers to continue to bargain collectively with transport operators will remain unchanged by the principal bill, Andrews said. "These provisions in state legislation will remain, given the special circumstances of owner drivers," including having to operate under tight margins. "However, let me be clear, it is not the fed govt's intention to replicate these arrangements."
- will provide for a single unfair contracts jurisdiction. It will extend existing federal unfair contract provisions to all contract outworkers in Australia where an outworker is not already covered by state or territory legislation. It will override state unfair contracts jurisdictions, "primarily using the Corporations Power". The Fed Magistrate's Court will have jurisdiction, with the Fed Court continuing to have a role. To ensure the remedy does not become one for the "big end of town", the director or family member must directly perform the work under the contract, and a financial cap has been allowed for in regulations if it is needed in future.
- will empower the Office of Workplace Services with an additional \$6.2m in funding over the next two years to pursue enforcement of the legislation.
- will provide DEWR with a key role in developing a voluntary code of practice for independent contractors.

The amendment bill

The second bill presented at around 9.15 this morning was the 14-page Workplace Relations Legislation Amendment (Independent Contractors) [Bill](#) 2006 which, according to Andrews, "makes a number of necessary amendments to the WR Act". It provides for penalties to be imposed on employers who "disguise" their employees as independent contractors or "coerce" them to become independent contractors, Andrews said. In tabling this bill, Andrews said there would be civil penalties for sham arrangements – one where an employer seeks to avoid taking responsibility for legal entitlements due to employees by seeking to disguise "what is in reality an employment relationship". It also includes penalties for employers who knowingly make false statements to employees to persuade them to become independent contractors or who dismiss them or threaten to dismiss them for the "sole or dominant purpose" of re-engaging them as an independent contractor.

Debate has been adjourned on both bills until parliament sits again.

Another *Workforce Daily* later today will include key players' response to the bills.

[▲ Return to Top](#)

Subscription enquiries call Janelle Torr on (02) 8587 7686 or email janelle.torr@thomson.com.

Advertising enquiries call Jenny Osburn on (03) 9205 0606 or email jennifer.osburn@thomson.com.

Editorial Enquiries:
PO Box 3502, Rozelle NSW 2039
Phone: 02 8587 7684
Fax: 02 8587 7876

Subscription Enquiries: (e.g. change of subscriber names and new email addresses):
PO Box 6000, Kew Victoria 3101
Phone: 1300 304 197

Editor: Lisa Matthews
lisa.matthews@thomson.com
Chief Journalist: Mary McNamara
Journalist: Steve Andrew
Managing Editor: Peter Schwab
peter.schwab@thomson.com

Fax: 1300 304 198
Email: LRA.Support@thomson.com
Website: www.thomson.com.au
Non-subscribers can find out more about us
at: www.workforcenews.com.au.

Two of our other news services:



Workforce Daily is published Monday to Thursday to supplement Friday's weekly newsletter and is available by subscription only.

Published by Thomson Legal & Regulatory Limited: ABN 64 058 914 668

ISSN: 1446-5752

Copyright. Reproduction prohibited. Private and confidential information for subscribers only.
Copyright waiver applications should be made to the editor.