



**Submission to  
House of Representatives Standing Committee  
on Employment, Workplace Relations and Workforce Participation  
Inquiry into Independent Contracting and Labour Hire Arrangements**

**Association of Professional Engineers, Scientists  
and Managers, Australia**

**March 2005**

## **Contents**

Executive Summary .....	3
Scope of report .....	5
Growth of non-standard work and professionals as a segment of the contingent workforce .....	6
Impact of rising incidence of professionals as part of contingent workforce on APESMA services .....	6
Status and range of independent contracting arrangements .....	7
Employment regulation and the diversification of forms of employment .....	8
Contractor experience .....	10
Reasons for opting to act as a contractor .....	10
Satisfaction levels .....	10
Drawbacks of working under contractor arrangements .....	10
Advantages of operating as a contractor .....	10
Work and family responsibilities .....	11
Downsizing in the 1990's and the decline in number of professionals operating as contractors .....	11
Skill shortages .....	11
Professional development .....	13
Nature of professional development activities undertaken .....	13
Comparison of professional development experience as a contractor compared with employee or labour hire worker .....	14
Underemployment .....	14
Professional liability .....	15
The issue of genuineness and legitimacy in relation to independent contractors .....	15
Alienation of Personal Services Income legislation .....	16
APESMA and labour hire arrangements .....	17
Monitoring and research .....	18
Conclusion .....	18
Submission preparation, acknowledgments and further comment .....	18
Endnotes .....	19

## **Appendices**

Appendix 1 – APESMA 2004 Independent Contractors and Consultants Survey	
Appendix 2 – Schedule of feedback on limit of 12 months for a commercial contract imposed by PSI legislation	

## **Tables**

Table 1 – Categories for understanding non-standard employment .....	6
Table 2 – Summary of ASCO minor group occupations as a percentage of the special interest	7
Table 3 – Dispersal of professionals operating as independent contractors across industries ...	8
Table 4 – Advantages of operating as a contractor .....	11
Table 5a – Percentage increase in major private industry awards for Professional Engineers and Professional Scientists – Metal Industry Award .....	12
Table 5b – Percentage increase in major private industry awards for Professional Engineers and Professional Scientists – General Industries Award .....	12
Table 6– Increases in Metal Industry Award C10 fitter classification over last decade .....	12

## ***Executive Summary***

A key aspect of change in the employment landscape over the last two decades has been the increasing proportion of those working in non-standard work arrangements.

This has implications for attracting people to the professions, for professional development, for the job and income security of non-standard workers as well as for society more broadly. This Submission seeks to identify some of the major and potential effects of the growth in non-standard work arrangements on professionals, and some of the obstacles or impediments to obtaining a better understanding of the impact of labour deregulation on the composition of this diverse group of individuals.

The Submission refers extensively to a survey of independent contractors undertaken by the Association of Professional Engineers, Scientists and Managers, Australia in 2004, and draws on information available through APESMA's special interest group for contractors called Connect. The Survey report is set out as Appendix 2 to this document. The Connect website is available at [www.apesma.asn.au/connect](http://www.apesma.asn.au/connect).

The key points of this Submission are as follows:

- The incidence of Professionals as a group within the independent contractor workforce is increasing.
- This group is diverse in terms of size, the type of business engaged in, the industry sector in which they operate, in the products and services produced, in the processes and level of technology used, in the specific community and business environment in which they are located, and whether they operate in the private or public sectors.
- APESMA is not opposed to the use of independent contractors to disperse specialist professional skills in short supply throughout industry, but is opposed to labour market deregulation which allows unscrupulous employers contriving to place segments of workers outside the framework of standard employment protections, rights and benefits.
- Further labour market deregulation may have the effect of worsening the current skills shortage in Australian industry.
- It is critical that institutional mechanisms for training and professional development are put in place to ensure the ongoing skills base of those moving into non-standard work arrangements.
- The issues around liability for independent contractors are complex. While professional standards caps and proportionate liability enshrined in the CLERP9 amendments are likely to result in better liability outcomes for contractors, the issue of future liability continues to be a major ongoing concern for our members. Some form of tax concession for those working in

non-standard work arrangements who must take out professional indemnity insurance and long term run off cover would mean that these individuals would not be placing their personal assets at risk.

- The issue of the Alienation of Personal Services Income legislation has not been satisfactorily resolved. While introduced as an anti-avoidance measure, APESMA is of the view that the PSI legislation has imposed both uncertainty and financial penalties on a significant number of genuine legitimate independent contractors.
- Effective policy support for small to medium enterprises including independent contractors requires effective and detailed identification of business failures and exits to allow for targeted support programs. The Australian Bureau of Statistics should be funded to provide for collection and publication of such data.

Re: House of Representatives Standing Committee on Employment, Workplace Relations and Workforce Participation Inquiry into Independent Contracting and Labour Hire Arrangements

1. I refer to your 21 January 2005 letter in which you invited APESMA to make a submission to the House of Representatives Standing Committee on Employment, Workplace Relations and Workforce Participation on matters relating to Independent Contracting and Labour Hire Arrangements.
2. The Association of Professional Engineers, Scientists and Managers, Australia (APESMA) is an organisation registered under the Workplace Relations Act representing over 25,000 professional engineers, scientists, veterinarians, surveyors, architects, pharmacists, information technology professionals, managers and transport professionals throughout Australia. We are the only industrial association representing exclusively the industrial and professional interests of these groups.

We thank you for the opportunity and outline our submission below.

3. **Scope of report**

This report chiefly refers to members who are currently operating as independent contractors but also refers in part to those employed under labour hire arrangements. These individuals are represented by the shaded areas in Table 1 below. Under a labour hire arrangement, a professional has a contract of employment with the labour hire firm or agency but actually performs work for another firm (the principal employer), usually on the principal employer's premises, using their equipment, and under the supervision of employees of the principal employer. The principal employer then has a separate contract with the agency or labour hire firm for the provision of "labour".

In other words, the employer in a labour hire arrangement is the labour hire firm or agency, although the professional appears otherwise to be employed by the principal firm. Most recruitment agencies offer this kind of service for their clients.

Working in a labour hire arrangement differs from independent contracting in that the labour hire firm or agency pays superannuation, a regular salary, covers insurances and deducts PAYG tax for the professional, whereas an independent contractor must organise these themselves. An independent contractor has liability for all the costs associated with undertaking a contract for service and bears the commercial risk attached to undertaking the commercial contract.

Table 1 – Categories for understanding non-standard employment<sup>1</sup>

Employment relationship					
Producing company is employing company		Producing company is not the employing company (contingent workers)			
Permanent	Casual	Labour hire/employment agencies		Independent contractors (“sole traders” or “own account workers”)	Outsourced suppliers
		Workers are employees	Workers are “dependent contractors”		

5. **Growth of non-standard workforce and Professionals as a segment of the contingent workforce**

A key aspect of change in the employment landscape over the last two decades has been the increasing proportion of those working in non-standard work arrangements. The 2001 Productivity Commission report “Self-employed Contractors in Australia”<sup>2</sup> documented the growth of the contingent workforce in Australia since the 1980’s. Unpublished data arising from the study and provided to APESMA confirmed the growing proportion of *Professionals* operating as part of the contingent workforce compared with other occupational groups:

*The share of self-employed contractors in the Professionals workforce, 10 per cent, was high relative to contractors’ share in most other occupational groups.*

6. **Impact of rising incidence of professionals as part of contingent workforce on APESMA services**

As the organisation representing the employment and professional interests of the various professions in our remit we rigorously monitor employment trends amongst our membership. An increasing proportion of the APESMA membership, currently around 10 per cent, are engaged as contractors and consultants. We expect this number to grow significantly over coming years, particularly in the IT, architecture and consulting engineering sectors of the economy.

7. The rising incidence of professionals operating as self-employed contractors was reflected in the growth in membership of a special interest group for independent contractors and consultants established within APESMA (Connect). The membership of Connect has increased between August 2001 and February 2005 by more than 120%. Representing and servicing this segment of the membership has become a strategic priority for the Association, which had until 2001 focused exclusively on representing employees in standard employment relationships.

8. A program of services for independent contractors to assist in the process of managing the transition from employee to contractor was launched at the end of 2001. The program included profession-specific contractor hourly rates information, referral to discounted professional indemnity insurance, information on business structures and how to set up a business or consultancy operation, taxation advice, guidance on writing contracts for service, regular targeted newsletters, networking opportunities via seminars, an online networking tool, and a dedicated online mentoring program.

9. **Status and range of independent contracting arrangements**

The following table sets out the breakdown of professions which comprise the membership of Connect. Whilst predominantly comprised of engineers, the membership also draws from a wide range of other profession groups.

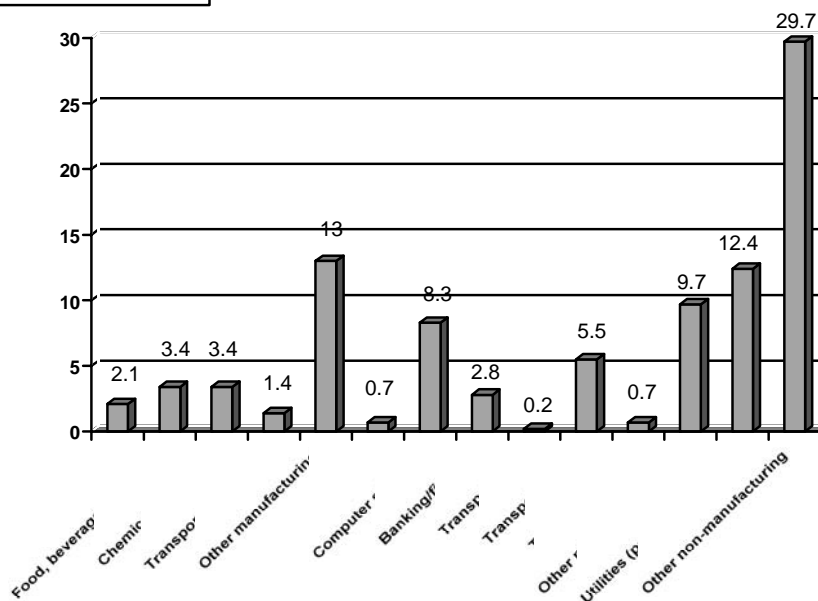
*Table 2 – Summary of ASCO minor group occupations as a percentage of the special interest contractor group*

<b>ASCO minor group classification</b>	<b>Profession</b>	<b>Percentage of Contractor group membership</b>
2124, 2125, 2126, 2127, 2129	Professional Engineers	78
2111, 2113, 2114 & 2119	Scientists inc. Chemists	10
2121	Architects	2
2231	Computing Professionals	2
2382	Pharmacists	2
2392	Veterinarians	1
Other	eg Managers	5

10. In 2004, APESMA conducted a survey of its contractor membership. The 2004 APESMA Independent Contractors and Consultants Survey (2004 APESMA ICC Survey) confirmed that its members are dispersed widely throughout industry and across the public and private sectors. The percentage of respondents in each industry is set out in the table below:

*Table 3 – Dispersal of Professionals operating as independent contractors across industry*

Percentage of professionals engaged in industry



11. **Employment regulation and the diversification of forms of employment**

APESMA's view is that the diversification of forms of employment is a complex issue which seriously impacts on workers, contractors, families, communities, businesses and society at large, and which requires careful analysis and policy development.

12. In considering the paper "The Scope of the Employment Relationship"<sup>3</sup> at its meeting in Geneva in June 2003, the International Labour Organisation resolved that while genuine commercial and independent contracting arrangements should not be interfered with, there is a need for mechanisms to ensure that persons within disguised employment relationships have access to the protection they are due at the national level.

13. APESMA shares this view.

14. APESMA is not opposed to the use of independent contractors to disperse specialist professional skills in short supply throughout industry, but is opposed to employers contriving to place segments of workers outside the framework of standard employment protections, rights and benefits. APESMA is committed to industrial regulation and maintenance of the powers of the AIRC and state based tribunals to make appropriate orders where employers are attempting to avoid their employment obligations by way of artificial or contrived arrangements which may be specifically designed to place workers outside the regulatory protective framework.

15. In the 2004 ICC Survey, APESMA found that roughly a third of respondents were operating as contractors because they couldn't find permanent work, and almost 65 per cent reported that they believed contractors were used in workplaces as a cost-cutting measure. 75 per cent indicated that they believed contractors were used by employers to avoid their employment obligations (copy of Survey attached as Appendix 1).
16. **APESMA proposes that the following principles be enshrined in the Workplace Relations Act:**

**The use of contractors by employers is necessary in some circumstances to cover workflow peaks, meet deadlines, undertake specific finite projects and overcome short term skill gaps where a permanent workforce is unavailable for this purpose.**

**Contractors should be used by employers within the following guidelines:**

- **the security of employment of permanent employees is not to be prejudiced;**
- **contractors should not be used to meet developing work demands that are of a permanent and ongoing nature;**
- **contractors should not be used as a device to avoid provision of training to permanent employees and the development of an in-house capacity to undertake the work;**
- **existing employees and the relevant union/employee associations should be consulted before contractors are engaged;**
- **those engaging contractors should be required as a condition of engagement, to provide terms and conditions no less favourable than those prescribed in all relevant awards, enterprise agreements, legislation, codes of practice and quality standards;**
- **in the event that a dispute arises over the engagement of contractors or in relation to a particular contract or contractor, it will be resolved through an appropriate dispute settling procedure which includes provision for matters unresolved to be referred to the AIRC, a state based tribunal or other mutually agreed arbitrator for settlement;**
- **contractors themselves should be entitled to contract terms that are not harsh or unfair but which are based on the minimum entitlements under awards and enterprise agreements for full-time employees in the establishment doing the**

same or similar work.

17. **Contractor experience**

*Reasons for opting to act as a contractor*

The 2004 APESMA ICC Survey asked contractors about their reasons for choosing to operate as an independent contractor (respondents could choose up to three responses and as a consequence percentages do not add to 100 per cent). The main reason for choosing to operate as a contractor cited by respondents was better lifestyle (46 per cent). This was followed by better balance between work and family (35 per cent), better money (34 per cent), couldn't find permanent work (31 per cent), better balance between work and travel (15 per cent), previous position was outsourced (10 per cent) and as a "probationary" period prior to permanent work (3 per cent).

18. *Satisfaction levels*

73 per cent of ICC survey respondents indicated that they were satisfied or very satisfied with operating under contractor arrangements. 11 per cent were dissatisfied working under these arrangements. 31 per cent of respondents indicated that they would take up an option of working as a full-time permanent employee while 69 per cent said they would not take up this option. The fairly high proportion of those who would not be interested in taking up the option of acting as an employee is consistent with the significant proportion of those who cited lifestyle as one of the major advantages of operating as a contractor (62 per cent) (*N.B. The measure of better lifestyle referred to in Paragraph 17 above refers to the reasons for choosing to operate as a contractor, while the measure referred to here pertains to the respondent's experience of being a contractor, hence the different percentages of 46 and 62 per cent.*)

19. *Drawbacks of working under contractor arrangements*

Survey respondents not surprisingly cited lack of income security as the major disadvantage of operating as an independent contractor. This was followed by difficulty in locating clients, few holidays and long hours. A total of 35 per cent reported that working under contractor arrangements sometimes, often or always caused problems securing a mortgage or personal loan while 22 per cent indicated that working as a contractor sometimes or often caused problems paying bills.

20. *Advantages of operating as a contractor*

APESMA ICC respondents reported the major advantages of working under contractor arrangements as follows (in order):

*Table 4 – Advantages of operating as contractor*

<b>Advantage</b>	<b>Percentage</b>
Being own boss	68.7
Lifestyle	62.0
Able to operate from home	57.7
Sense of satisfaction from taking risk and being successful	54.0
Income	47.2
Balance between work and family	43.6
Access to business tax deductions	39.9
Better than being without work	31.1
A way of phasing out of full-time work and into semi-retirement	27.0
Balance between work and travel	19.0
Means of supplementing income	14.7
Source of income during years with young family	7.4

21. *Work and family responsibilities*

While 35 per cent of respondents indicated that they chose to operate through non-standard work arrangements for a better balance between work and family, a surprising 50 per cent reported that working under these arrangements had caused problems with family activities; non-standard work arrangements had not necessarily met contractors' expectations in this area. Whether or not operating under non-standard work arrangements does in fact facilitate a better balance between work and family responsibilities clearly is an area requiring further research. **APESMA proposes that Commonwealth funding for research to be conducted into whether or not operating under non-standard work arrangements brings about better work/family responsibilities balance outcomes.**

22. *Downsizing in the 1990's and the decline in number of professionals operating as contractors*

The profile of APESMA's contractor membership suggests that the number of professionals operating as contractors may decline over time. The APESMA 2004 ICC Survey indicated that the median age of a Connect member is 49. The majority of this group are likely to have received specialist training and gained experience either through a government department or large enterprise which downsized in the 1990's. These people would have received a redundancy package which may allow them to use contracting as a supplementary funding source. It is unlikely that such events will be repeated to the same extent in the near future. The possible consequence of this is that the existing pool of professionals offering their specialist skills across industry will shrink in time as people retire.

23. ***Skill shortages***

APESMA is concerned at the emerging shortage of professionals in a range of areas. The diminution in AIRC powers has led to an erosion of award relativities which, we would suggest, has in turn led to the professions becoming less attractive to students.

The following tables set out the percentage movement in Professional Engineers Awards rates compared to the movement in the benchmark C10 fitters classification in the Metal Industry Award over the last decade (1994-2004).

24. *Table 5a – Percentage increase in major private industry awards for Professional Engineers and Professional Scientists – Metal Industry Award*

Name of Award	Classification	Base salary 1994	Base salary 2004	Percentage increase since 1994
Metal, Engineering and Associated Industries (Professional Engineers and Scientists Award) 1998	Level 4	\$46,061	\$52,875	14.8
	Level 3	\$39,543	\$46,352	17.2
	Experienced Engineer	\$35,193	\$41,973	19.3
	New Graduate	\$28,675	\$35,685	24.5
			Average	18.6

*Table 5b – Percentage increase in major private industry awards for Professional Engineers and Professional Scientists – General Industries Award*

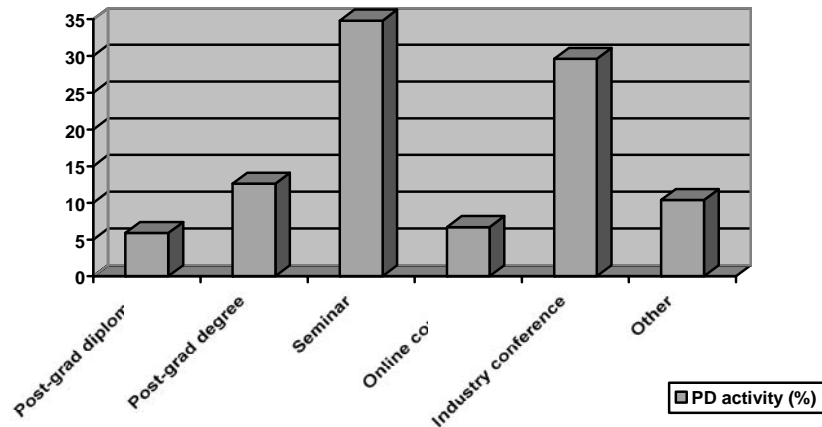
Name of Award	Classification	Base salary 1994	Base salary 2004	Percentage increase since 1994
Technical Services Professional Engineers (Consulting Engineers) Award 1998	Level 3	\$41,933	\$51,625	23.1
	Level 2	\$35,562	\$44,202	24.3
	Experienced Engineer	\$33,188	\$41,894	26.2
	New Graduate	\$26,668	\$35,573	33.4
			Average	26.8

*Table 6 – Increases in Metal Industry Award C10 fitter classification over last decade*

	Weekly Award rate for C10 (\$)	AIRC Print number
1994	425.20	L6242
1995	433.20	M1568
1996	441.20	N2097
1997	451.20	P1470
1998	465.20	Q1020
1999	477.20	R5307
2000	492.20	S8605
2001	507.20	PR904632
2002	525.20	PR918271
2003	542.20	PR932048
2004	561.20	PR947308

The percentage increase for the C10 fitters rate between 1994 and 2004 was 32 per cent.

25. This data demonstrates that the average percentage increase in the two major private industry awards for Professional Engineers and Scientists over the last decade were 18.6 and 26.8 (Tables 5a and 5b). For Professional Engineers, this compares with an increase in the award rate for a C10 fitter of 32% over the same period (Table 6). This data confirms the suggestion that Award salaries for Professionals have been eroded over time.
26. APESMA members and officers involved in the growth of non-standard employment arrangements report that it can also result in short term/non-strategic HR planning which can lead to:
- reduced cadetships/apprenticeships;
  - little succession planning; and
  - lack of career paths.
27. **APESMA recommends that Government support the establishment of a tripartite Inquiry into the likely impact of labour market deregulation and contracting on projected skill shortages.**
28. **Professional development**  
The 2000 ACIRRT Report "It's Not My Problem"<sup>4</sup> indicated that there was a nexus between non-standard work arrangements and lower levels of training. This was borne out by the 2004 APESMA ICC Survey however the respondents generally showed some awareness of the importance of professional development in keeping skills up-to-date and developing a broad portfolio of transferable skills. The cost of such training was of course borne by the independent contractors themselves.
29. *Nature of professional development activities*  
The nature of the professional development activities undertaken by respondents ranged from post-graduate work to seminars and industry conferences as set out below:  
*Table 5 – Nature of formal professional development activities in previous four years*



30. 84.2 per cent of respondents indicated that in the previous 12 months they had participated in informal professional development activities such as networking with peers, reading journals, etc.. Of these, 50 per cent had participated in more than 15 hours of professional development. This figure is well below the 50 hours of continuing professional development per year required by the Institution of Engineers, Australia so professional development is certainly a major issue.

31. *Comparison of PD experience as a contractor compared with experience as an employee or labour hire worker*

49.1 per cent of survey respondents indicated that they had participated in lower levels of professional development activities as a contractor than as an employee. 20.5 per cent said they had undertaken more professional development as an independent contractor, and 30.4 per cent reported the same level of professional development. Of those who obtained work through a labour hire agency, a staggering 98.8 per cent indicated that the agency did not assist them in any way with professional development activities.

32. **APESMA recommends Commonwealth funding to a range of providers for putting in place institutional mechanisms, including scholarship programs and merit-based competitive funding schemes, to ensure that independent contractors and labour hire workers have access to professional development activities to maintain and upgrade their skills.**

33. *Underemployment*

The skills development issue sits alongside the equally important issue of the underemployment of contracting professionals. The 2004 APESMA ICC Survey found that 35 per cent of respondents felt that they were engaged on projects which sometimes, often or always underutilised their qualification/s, while 30 per cent reported that their

contract engagements sometimes, often or always underutilised their experience. These figures indicate that underemployment as well as skills development are significant issues for contracting professionals. **APESMA would support any initiatives which directly or indirectly address the underemployment of professionals in the workforce.**

34. **Professional liability**

The Association advises its contractor members to address professional liability as part of a responsible approach to business risk management. As part of its program of services to contractors, it provides access to competitive professional indemnity and public liability cover through APESMA Insurance Services.

35. Escalating insurance premiums and the availability of appropriate cover were both identified as major issues for members in the 2004 APESMA ICC Survey. Around 75 per cent reported that their professional indemnity and/or public liability premiums had increased in the previous twelve months by an average 44 per cent. Respondents recovered on average around 40 per cent of this cost from clients. These figures are in line with the Association of Consulting Engineers Association's professional indemnity insurance survey which found that around 20 per cent of consulting engineering firms are recovering only half their professional indemnity costs from clients.

36. Whilst the CLERP9 amendments (Corporate Law Economic Reform Program) which became effective 26 July 2004 provide for proportionate liability and professional standards caps which promise to assist with better regulating the liability environment for professional consultants, the Association has a further key concern in relation to this area. The issue is that of potential future liability – that is, the assets of professionals placed at risk through litigation over a project they had previously worked on. While APESMA will undertake a member education campaign in this area and encourage members to provide for this cover when arriving at appropriate hourly rates, **APESMA proposes that legislation be drafted which provides tax concessions for self-employed professionals to allow for future insurance liability.**

37. **The issue of genuineness and legitimacy in relation to independent contractors and consultants**

One of the major issues of concern to professionals operating as independent contractors identified by the 2004 APESMA ICC Survey was the operation of the Alienation of Personal Services Income (PSI) legislation. PSI was seen as a major or significant

problem by 30 per cent of respondents and as a potential problem by a further 31 per cent.

38. The PSI legislation was enacted on 1 July 2000 in response to recommendations set out in the Ralph Report. The legislation was intended to prevent individuals who generate income from their personal services from reducing their taxation liability by diverting income through a company, partnership or trust; and to limit and clarify the work-related deductions available to the individual and the interposed entity. The ATO put in place Taxation Rulings which detailed how a range of personal services business tests to determine contractor status would be applied. Those who did not satisfy these tests would not be regarded as businesses.
39. While introduced as an anti-avoidance measure, APESMA is of the view that the PSI legislation has imposed both uncertainty and financial penalties on a significant number of genuine and legitimate independent contractors. One of the major problems with the legislation for professional consultants continues to be the 80/20 Rule which effectively limits the type and duration of contracts which genuine independent contractors and consultants can take on. The legislation presupposes a “normal” contract length of less than 12 months. However in many cases, this simply does not reflect the reality of design and construction timeframes for many infrastructure projects meaning genuine contractors are contracted to one client for a continuous period of at times several years on a single large infrastructure project. The PSI legislation forces them to effectively reduce the number of hours provided to a client in order to diversify their client base and sources of income, or potentially lose the capacity to claim a range of legitimate deductions. A schedule of contractor feedback on this particular aspect of the PSI legislation is set out at Appendix 2 of this Submission.
40. In the revised ATO Rulings, the Results Test was elevated as the first criteria against which contractor status was determined. In considering whether or not a taxpayer will satisfy the Results Test, the ATO considers the substance of the arrangement between client and principal giving rise to the income. A problem with the PSI measure is in its application by the ATO – tax office officials have interpreted commercial terms of engagement – which set out arrangements between contractor and client - very narrowly when assessing contractor status for the purposes of a Personal Services Business Determination.
41. APESMA does not accept that it is acceptable in terms of policy or application to require independent contractors delivering business services to frame their contract

documentation in such a way and to effectively impose restrictions and penalties on legitimate independent contractors.

42. **APESMA proposes a review of the unusual circumstances provisions of ATO Rulings 2001/7 and 2001/8 to provide for an assessment of the diversity of a contractor's client base over a period of five years on a rolling basis.** This will assist with discriminating appropriately between genuine contractors and those attempting to avoid tax by creating an interposed entity.
43. **APESMA and labour hire arrangements**

The employment of professionals by labour hire firms has consistently increased over the past decade. The labour hire employment relationship is very different to the standard direct employment relationship and more traditional independent contracting arrangements.
44. APESMA takes the view there are both advantages and disadvantages of working in a labour hire arrangement. Particularly for short-term contracts, the labour hire firm takes responsibility for many of the more expensive and inconvenient aspects of contractor-style engagement, such as recovering unpaid debts from principal employers. Additionally, it can be a good way to get a "foot in the door" with the principal employer for future direct, permanent employment, or to add to a professional's experience.
45. On the negative side, it is often quite easy for the principal employer to "dismiss" labour hire employees with or without a good reason and/or without regard to natural justice or due process. As there is no direct employment relationship with the principal employer, the relevant legislation and employment protections often do not apply.
46. APESMA's position in relation to labour hire is that it is appropriate to consider the labour hire option where there are genuine choices in the type of employment relationship available. However APESMA objects to the labour hire arrangement being used as a contrived means of principal employers avoiding their employment obligations particularly in relation to mandated unfair dismissal provisions and/or professional development. Arrangements which provide for such avoidance should be seen as the regressive loophole in labour regulation that they are rather than part of a "modern" Australian economy.

47. As a point of interest, APESMA's recruitment arm, ETM Placements, offers its labour hire staff skills-based training, access to a mentoring program and extensive assistance with career development.

48. **Monitoring and research**

At present detailed ABS figures on the characteristics of business exits/failures are not available. Additional funding would allow the ABS to more accurately monitor business failures/exits/bankruptcies/closures to ensure that information was available on whether or not particular groups such as independent contractors are disproportionately represented in business failures. Effective policy support for small to medium enterprises is dependent upon being able to identify business failures, the reasons for these failures and then pinpointing and funding initiatives which provide targeted and appropriate support in these areas **APESMA proposes that adequate Commonwealth funding be provided to the ABS to allow collection and preparation of information with sufficient level of detail to allow for trend monitoring of business failures.**

49. **Conclusion**

While it is acknowledged that flexibility in working arrangements is sought by employers and employees to both meet the demands of economic growth, and to strike a better balance between work and family responsibilities, the unfettered growth of non-standard work has the potential to threaten employment stability and the availability of quality secure employment and give rise to longer term skill shortages.

50. In conclusion, the Association reiterates its commitment to supporting the growing number of independent contractors and labour hire workers who form part of our membership, but also restates its opposition to legislation which would enable unscrupulous employers to contrive to place segments of workers outside the framework of standard employment protections and regulation.

51. **Submission preparation, acknowledgments and further comment**

This submission was prepared by National Information Officer, Kim Rickard. APESMA would like to acknowledge the contribution of Alison Bathe and other industrial officers in the preparation of the submission. For further comment, please contact John Vines, Chief Executive, APESMA, GPO Box 1272L, Melbourne, Vic. 3001. Telephone: 03 9695 8800. Facsimile: 03 9696 9320. Email: [info@apesma.asn.au](mailto:info@apesma.asn.au).

***Appendix 1 – 2004 APESMA Survey of Independent Contractors and Consultants***

## Appendix 2 - APESMA feedback on PSI legislation

Comments on the 80/20 Rule
I feel that I'm being penalised only because my work takes about two and a half years to complete, whereas if I was doing nine month projects, I'd be fine. Seems a bit arbitrary to me.
The legislation may adversely affect those legitimately working for themselves who have many tens of thousands of dollars tied up in hardware and software. These individuals may well have only one client, however they are not employees by any stretch of the imagination. They do work using their own equipment, are under no direct supervision, have to provide their own working environment (most work from home), have to provide all consumables, have separate phone/fax/email facilities, all at their own expense. Essentially they are given a task and it is up to them how they do it, when they do it and who they use to get the job done. It is these individuals I feel for as they are running businesses, but because they get more than 80% of their income from a single source, they get caught in the net.
I am a contract engineer (manufacturing) and I move around every year or so. My contract generally runs for more than 1 year as my clients frequently continue to offer jobs when one project finishes because they like my performance. The tax rule will force me to reject new contracts from my existing client if I have been with them for more than say 10 months, and forces me to look for another job elsewhere. Recently, I got a job with (name of organisation withheld) to help with their \$500 million project, which may run for 3 years. The tax regulation will consider me as an (withheld) employee but I am a true contract engineer.
The Rulings do not take into account annual and seasonal variations in demand.
Allowance should be made for projects in excess of one year. A Professional Engineer may take a project through from planning to the completion of construction as a Project Manager or Project Engineer.
To look at these sorts of issues in one year time frames is absolutely absurd.
The 12 months rule seems to be too arbitrary. The solution is some sort of averaging.
I have had to reduce the number of hours that I provided service to the client in order to attempt to diversify my client base and source of company income. (Company name withheld) would gladly utilise every hour that I have available and continues to request further services.
Much of the work we do is less defined than engineering tasks (such as designing a bridge). It is more in the nature of providing expert business/commercial advice, e.g. advice re intellectual property, electricity market advice, etc., which is not rectifiable (very hard to provide if the advice is right or wrong). (IT contractor)
We enter into contracts for payment for our services on a daily rate basis rather than for a tendered amount to complete a defined task. (IT contractor)
Whether the contract defines a specific tasks depends on what sort of contractor you are e.g. a software writer may provide a program but what result can a system administrator point to satisfy the test?
I could not meet the Results test as I get paid for hours performed not results. I am usually required to use the client's premises and hardware and software, and I have to attend during normal business hours as that is when the rest of the team that I work with is in attendance. I cannot delegate since I have been contracted based on my own experience and qualifications, and I am not liable to correct mistakes.
When I read about introduction of the Results Test would solve the problem, but when I read further it seems the ATO/Gov wants to differentiate between supplying 'plant and equipment' and intellectual knowledge? If this is so, how absurd! Maybe it's no so absurd because the ATO and the Gov probably think engineers only build things.
Producing a result could be a problem depending on definition. Through my company I am running a

program for a government department. The result will be satisfactorily completing the program which will probably occur on award of the last contract, although there will probably be some ongoing involvement through construction and commissioning.

The criterion of deriving an income from producing a result should not preclude provision of Professional Services (including advice).

The APSI arrangements are unfair. The reason that I have been caught up in this situation is that I have provided a service to my client that was well received, effective, reasonably priced and timely. Consequently the client 'demanded' more and more of my services to the point where almost 100 per cent of my company income was derived from this single client.

These new Rulings fail to deal with the reality of the contract market, particularly in the IT area.

It is a VERY simple view of what the contract industry is about, and it will have a harmful effect on the Australian economy.

I think the whole outlook from the ATO/Gov is very narrow and simplified. In the real world life just isn't that simple.

## Endnotes

- 
- <sup>1</sup> Extract from Briggs, C. and Buchanan, J., (2002), ACIRRT study, *Costs and liabilities associated with non-standard work: key issues for accountants*. University of Sydney. p9.
  - <sup>2</sup> Waite, L. and Will, L. (2001). Self-employed contractors in Australia: incidence and characteristics, Productivity Commission Staff Research Paper.
  - <sup>3</sup> International Labour Organisation (2003), The scope of the employment relationship, Report V.
  - <sup>4</sup> Hall, R., Bretherton, T. and Buchanan, J. (2000). It's Not my Problem: the growth of non-standard work and its impact on vocational education and training in Australia., National Centre for Vocational Education Research and Australian National Training Authority.

## References

Pocock, B., Buchanan, J. and Campbell, I (2004), Meeting the Challenge of Casual Work in Australia: Evidence, Past Treatment and Future Policy, in Australian Bulletin of Labour, National Institute of Labour Studies, Flinders University, Adelaide, Vol. 30, No. 1, March 2004, pp. 16-30.