

Contracts, Fairness & Shams: Independent Contractor Laws

By

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Independent Contractor Laws

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**Former Minister Andrews in the second reading of the
INDEPENDENT CONTRACTORS BILL 2006 and
WORKPLACE RELATIONS AMENDMENT (INDEPENDENT
CONTRACTORS) BILL 2006:**

Australia's continued prosperity in the twenty first century requires systems of regulation that encourage rather than restrict creativity, that reward rather than confine initiative. Australia deserves a system that responds to the needs of individuals including those who have made the deliberate choice to become an independent contractor and their families. Independent contractors are entrepreneurs and, of course, the one-person micro-businesses of today are often the employing small businesses of tomorrow. For many, the attraction of independent contracting is to operate independently, not to work as an employee. The flexibility that independent contractors provide the workplace is an important component of a modern and dynamic economy.

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The Independent Contractors Bill (the Principal Bill) reflects the Government's commitment to ensuring that independent contracting is encouraged without excessive regulation. The Principal Bill is built on the principle - a principle this Government believes in - that genuine independent contracting relationships should be governed by commercial not industrial law. This is reflected in our approach of having a stand-alone Independent Contractors Bill, rather than including the reforms in workplace relations legislation.

Second reading of INDEPENDENT CONTRACTORS BILL 2006
and WORKPLACE RELATIONS AMENDMENT
(INDEPENDENT CONTRACTORS) BILL 2006 at
<http://www.workplace.gov.au/NR/rdonlyres/7FA9483E-F8B0-41C8-93DF-0C71C3D88DBD/0/icbills20062rs.pdf>

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The new legislation is based on the old common law test. Applying the test can be difficult but the test remains control:

- *Hollis v Vabu* (2001) 207 CLR 21
- *Hollis v Federal Commissioner of Taxation* (1996) 81 IR 150.

Cyclists vs Drivers! Same Company!

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Some of the main protections afforded as regards independent contracting are found in the provisions of the *Workplace Relations Act* from 900 to 903. These section basically contain prohibitions on:

- misrepresenting the employment contract relationship (900-901); or
- otherwise “leading” a worker into signing a document that makes them look as though they are independent contractors (903); or
- threatening to dismiss a worker unless they sign an agreement that makes them look like an independent contractor (902).

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Overviews and in some cases full discussions of all of these provisions are found in: Riley Joellen Riley *Independent Work Contracts* (Thomson Publishing Sydney 2007); Forsyth Anthony 'The 2006 Independent Contractors Legislation: An Opportunity Missed' (2007) 35 *Federal Law Review* 329-348; and Marilyn Pittard and Hedy Meggiorin "New National System of reviewing unfair Contracts and ban on shams" Issue 5, 28 May 2007 *Australian Industrial Law News*

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