



## **INDEPENDENT CONTRACTORS BILL 2006**

### **Second Reading**

### **17 August & 11 September 2006**

[Ms GRIERSON](#) (Newcastle) (4.19 p.m.)—I rise today as the representative of the people of Newcastle, a proud daughter of the working class, a former school principal and board director, and certainly a person who has at no time used a quota system to be a representative. The member for Indi perhaps needs some education. I rise to speak on the [Independent Contractors Bill 2006](#) and the accompanying [Workplace Relations Legislation Amendment \(Independent Contractors\) Bill 2006](#). I oppose this legislation and I support the amendment moved by the member for Perth. The central philosophy behind this legislation is that the appropriate mechanism for regulating independent contractors is commercial law, rather than industrial law. This is consistent with the central philosophy behind the Howard government—that is, an individual worker has as much bargaining power as his or her employer. But that is just plain wrong and appallingly so.

This legislation is another attempt by the Howard government to remove another large group of Australian workers and put them outside the established industrial relations system which has served this nation well for 100 years. That is, of course, the system based on fairness and good faith in bargaining—a system in which everyone is seen as a stakeholder, and an important one, in work and productivity. Estimates do vary as to how many independent contractors we have in Australia, but it is seen to be anywhere between about 800,000 and two million people. So at least another 800,000 workers are being targeted for lower wages and fewer conditions by the Howard government.

For these workers, the Howard government's legislation is an absolute betrayal. These are workers who are going out on their own, who are enterprising and who are making their living based on their own skills and resources. These are the people who, as the research keeps telling us, have been shifting their votes to John Howard, as they have shifted away from old-style industrial enterprises and large-scale employers. These independent contractors are now finding themselves totally betrayed by the Howard government, just as all the other workers in Australia who have been caught up in its other set of extreme industrial relations laws—Work Choices—have also been betrayed. They are betrayed through the government's action to

override protections provided by the state industrial relations systems, which the government did not replace with any appropriate protections under this federal system.

Firstly, the bill overrides all existing deeming provisions in state industrial law. These deeming provisions in my state, New South Wales, declare that certain categories of workers are defined as employees even though they may be independent contractors at common law. These workers include carpenters, cleaners, painters, outworkers, drivers, plumbers and many others. In many cases, their working arrangements are little different from those of ordinary employees. The state deeming laws recognise this and offer some of the rights and protections enjoyed by all other employees. But the Howard government has decided, in its treachery, that these workers do not need these protections. It has deemed that these workers should be left vulnerable, in unfair bargaining positions, and at risk of having their pay and conditions further downgraded. How do we know this? We know it because the Howard government has exempted some workers from its new laws.

The government has exempted textiles, clothing and footwear—TCF—outworkers and transport owner-drivers in New South Wales and Victoria. For these two groups of workers it has preserved existing protections. While this is very good news for the TCF outworkers and transport owner-drivers in New South Wales and Victoria, you have to ask: what about everybody else? Because in exempting these two categories of workers the minister has admitted that this legislation is definitely going to reduce the pay and conditions of all other independent contractors. To quote from the minister's second reading speech:

*These provisions in state legislation will remain, given the special circumstances of owner-drivers in having to operate within very tight business margins because of the large loans they have to take out to pay for their vehicles.*

If this bill is not about reducing pay then why is the government and the minister worried about the tight margins of owner-drivers? If this bill is supposed to be doing something good for independent contractors, why, as the minister admits, will owner-drivers go broke if the bill is applied to them? This is not so much the exception proving the rule but the exemption absolutely proving the rule. It proves the rule that the Howard government is all about reducing the pay and conditions of hardworking Australians.

Do not get me wrong: I welcome this exemption for owner-drivers in my state, New South Wales. By them and for them it has been hard fought and well won. Their margins are tight. Petrol prices are at record highs. Interest rate rises add to their monthly loan repayments. Owner-drivers from my electorate have said that if they were exposed to the new laws they would simply be unable to provide for their families. They would have to spend

dangerous amounts of time on the road. In the words of one: 'We would get screwed.'

My electorate of Newcastle has some very distinct characteristics that make this bill very relevant to the people of Newcastle. Over the past decades Newcastle has faced major restructuring of industry as well as the closure of BHP. This has meant that with a tightening labour market, as we have seen, many Novocastrians have decided to create their own jobs and become independent contractors. Their sense of pride and self-worth is very important to them, and they have always resisted being a burden on government. Earlier this year I met with several—about 30, in fact—owner-drivers in my electorate before they commenced work. I thank them for being there at that time, because it was an absolute pleasure to be there and to speak with them. It is true that they purchase their vehicles at great cost. They pay all their insurance and all their costs. They cover their own sick leave. They cover their workers compensation, holidays and super. They drive five or six—some even seven—days a week. Their wife or another family member is often their reserve driver or the person who does the accounts. When I spoke with them and heard their stories, I did ask about holidays and, sadly, no-one had had four weeks annual leave—they just could not afford it. I also asked about their superannuation, and it disturbed me to know that, with the margins the way they are, they certainly were not putting away the correct amount for their future.

Margins are indeed very tight and, yes, owner-drivers are already doing it tough. I am glad that they are exempt from this bill. I am also glad TCF outworkers, often some of the most disadvantaged and lowest paid people in our community, and many of whom are women, are exempted. However, the owner-driver provisions are set to be reviewed in 2007. That strikes terror into our hearts. It is fairly clear from the minister's statement that he wants to see the drivers' exemption cut. I fear there is little chance of the exemption for owner-drivers surviving beyond next year, with the minister already announcing what this review would be about:

*... rationalising these laws and achieving national consistency if possible ...*

And let us not forget: if, as the minister admits, this bill is bad news for these two groups of independent contractors, it is surely bad news for all independent contractors. It does not matter if you are a driver, a seamstress, an IT technician, a plasterer or a milkman—you have still got a mortgage, you have still got to fill up the car with fuel, you have still got to pay the interest on your loan and you have still got to feed and clothe the kids and pay for health care and education. You have also got to keep yourself fit for the job. You have got to cover sickness and time out if something goes wrong with your health or if something goes wrong with the tools and equipment you need to do your job.

Families are doing it tough, and the Howard government knows it. This legislation will make it tougher for the families of all independent contractors. Indeed, the other so-called protections offered to TCF outworkers will do little for them. The bill provides for a default minimum rate of pay to operate where an outworker is not guaranteed a minimum rate under state or territory law. This wage will be based on the minimum rate application under the minimum wages guarantee in that wonderful Australian Fair Pay and Conditions Standard. Remember, that is the minimum wage that has not risen in 18 months and which the government thinks is already too high. So that is not much of a guarantee for those people, is it?

The bill also ensures that independent contractors can no longer access state unfair contracts laws. It creates a new national unfair contracts regime. Matters will be heard in the Magistrates Court. That is very interesting, isn't it? We read recently of a member of the minister's staff being appointed to the Magistrates Court—just in time, apparently, but certainly an appointment that is being questioned by the profession. Moving to this new regime will create greater expense and lengthier and more complex arguments, and will expose independent contractors to costs orders. In addition, under the federal system there is no ability for employer organisations or unions to apply for unfair contract review on behalf of a party. This is a further step along the path of deregulating contract arrangements, and a further whittling away of the rights, protections and representations available to independent contractors. It also adds to the layers and layers of complexity the Howard government has built up in the industrial laws of this nation. It makes a mockery of one of the Howard government's Work Choices slogans:

*A simpler, fairer, national workplace relations system for Australia.*

Remember that one? You would hope you would remember it, because I think the Howard government spent \$1½ million of taxpayers' money on market testing that slogan so that you might believe it.

Debate interrupted.

**Ms GRIERSON** (Newcastle) (5.42 p.m.)—I rise today in continuation on the [Independent Contractors Bill 2006](#). Prior to the interruption of debate, I was discussing how much money the government had been wasting on advertising its industrial relations changes, and I will come back to that. Since the debate was interrupted, the Senate committee looking at the Independent Contractors Bill has tabled its report. It does not make comfortable reading for government MPs, I would imagine.

The committee unanimously recommended that the whole of part 4 of the bill be removed. This is the part which you will recall sought to remove protections such as annual leave, public holidays, overtime, superannuation, workers compensation and redundancy pay from outworkers in the clothing industry. The government's own senators have rejected these unfair

provisions, which the committee found 'serve no useful purpose'. I think they could have gone further and rejected the bill in its entirety, because the rest of the bill also serves no useful purpose. This bill, just like Work Choices, is about as far as you could get from the fairer, simpler, national system that the government spent over 50 million taxpayer dollars advertising.

The Australian people know that the Howard government's extreme industrial relations laws are not fairer. I have had massive amounts of feedback into my office from people who are concerned for themselves, their children and their grandchildren. The changes are certainly not national. Work Choices gutted the state systems but still left them with some jurisdiction. This bill overrides some state laws for some independent contractors and leaves others alone. And the laws are not simple. The common-law criteria that will be used by courts to decide who is and who is not an independent contractor under this bill are more difficult and complex than the state deeming rules. This bill overrides the deeming provisions of state industrial laws but leaves other state legislation—such as occupational health and safety and workers compensation—alone.

So it is not a simpler system. The only simplistic thing about it is the Howard government's simplistic argument that individuals are in a better position when they are stripped of their rights and they are negotiating on their own against their employer. This is more of the same 'every man for himself' stuff that we are now used to from this government. It is estimated that around 40 per cent of independent contractors only deal with one employer. In effect, they are wholly and solely 'dependent contractors'. These people are employees in all but name, yet this bill is going to let their employer avoid their obligations to their workers.

This bill is going to encourage sham arrangements, where genuine employees are shifted into contracting arrangements so that employers can avoid paying workers' entitlements. The protections for workers against such actions are simply not strong enough, and the encouragement to employers to engage in sham arrangements are simply too great. It is always worth reminding people that many employers will do those sorts of things just because they can. Just as Work Choices encourages the spread of AWAs to undercut wages and conditions, starting a race to the bottom, this legislation encourages the shifting of workers into contracting arrangements with lower wages and fewer conditions.

So the incentives for bad employers are strong, just as the protections for workers are weak. Under this bill, the onus of proof is reversed so that the worker has to convince the Magistrates Court that the contracting arrangement was or would be an employment arrangement. After that, the worker would have to rebut any claims by the boss that they acted in good faith, genuinely believing that contract was for services, and could not have been expected to know that it was a contract of employment. These claims of good faith will in all probability be very difficult to refute.

So, once again, the Howard government is stacking the odds against the ordinary worker. It is a move to further centralise power in the hands of the government and its Minister for Employment and Workplace Relations, who, by the way, has his own 'independent contractor' now—his new assistant, Mr Hockey, the Minister Assisting the Minister for Workplace Relations. On the surface, it looks like this appointment is a bit of a 'good cop, bad cop' routine—Minister Andrews, the hard, cold, uncaring face of Work Choices, is now joined by the jovial Mr Hockey, the Minister for Human Services, who presides over a supposedly kinder, gentler Centrelink, which he said last year would 'put the "service" back in service delivery'. It looks like a good match, but I am not sure. Let us not forget that Minister Hockey retains the responsibility, through Centrelink, of implementing Welfare to Work—not so jolly and jovial there—the policy that sees 16-year-old kids with leukaemia forced to get a job. And now he is the assistant for Work Choices, the policy that forces down wages and conditions so that people are forced to accept anything they are offered, otherwise they will have their benefits cut.

I have always said that these two policies—Work Choices and Welfare to Work—when taken together would wreak havoc on young people, the unskilled and people with sickness and disabilities. And now, by giving Minister Hockey responsibility in both, the Howard government has confirmed just how closely these two policies are linked. Under the new welfare system, a person on Newstart must accept an offer of a job or run the risk of being breached and losing their benefit. Under the new industrial relations system, that person can be made a 'take it or leave it' offer of an individual contract containing the minimum wage and four other minimum basic conditions. Remember that under the new Fair Pay Commission—another great product of the Howard government spin factory—there is every chance that the real value of the minimum wage will be eroded over time.

So let us look at the choice this person faces: take the job on the boss's terms or risk not only not having a job but also losing the Newstart allowance. It is not much of a choice. But these two pieces of legislation—Work Choices and Welfare to Work—were always intended to go hand in hand to slash wages. Now we have the ministerial crossover—the two ministers going hand in hand to enforce this crackdown on the low paid and the disadvantaged. At the same time, the government has also launched a backbench industrial relations task force which is designed to, and I quote the Prime Minister's announcement:

*... better inform the Australian public how these changes—*

Work Choices—

*will strengthen the Australian economy.*

As far as we can tell from the Prime Minister's announcement, that is the task force's only role—just more spin.

Families all around Australia are feeling the pinch as these extreme industrial relations laws hit home, and all this out-of-touch government can do is keep trying to convince them they are actually better off as their incomes and their conditions slide ever lower. The government will not actually listen to the Australian people about how these laws are affecting them. This task force will not be out there listening. It will not actually try to quantify the impact of these laws on our economy or the wages and conditions of Australian workers. By contrast, the Australian Labor Party has been listening to the Australian people. The Labor Party established its own industrial relations task force in December last year. Since then we have been listening to communities all around this nation. We have been out there hearing what is actually happening in places like Launceston, Townsville, Blacktown, Tumbi Umbi, Darwin and Lismore.

The Labor Party has an acute understanding of the impact of Work Choices, and that is why it is opposing the further extreme changes contained in this Independent Contractors Bill. I must say that recent attacks by the minister in the House on people who presented to Labor's IR task force are just so typical of the bullying attempts to muzzle people in our communities. Apparently, according to the minister's comments, if you are a member of a union you do not count as a real Australian. What rubbish! Like Work Choices, this bill removes rights, entitlements, conditions and protections that should be afforded to all Australians in the workplace, whether they be employees or independent contractors.

I noted an earlier government member speaking of 'setting the workers free'. Well, the only things this legislation is setting the workers free from are their protections, their rights, their conditions and their dignity. The government is not setting the workers free; it is actually cutting them loose. This is another bill that is all about the Howard government's utter contempt for the working people of this nation. It is the government saying to independent contractors, as it is saying to all Australian workers: 'You're on your own. Look after yourself.' It is survival of the fittest, but those who are less fit and less powerful in the workplace will certainly miss out. We are sick of the government saying 'Good luck' and leaving these people desperately hanging out. They do need support, as everyone does. This country is strengthened by a strong labour movement based on equity and fairness. The Independent Contractors Bill 2006 is not about a labour movement that is committed to delivering economic prosperity to this nation. In fact, it undermines its citizens' commitment and willingness to do so.