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Contractors get independence

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The federal government's world-first legislation to shield independent contractors from workplace laws has deepened the political divide over individual and collective approaches to Australian workplace law in the lead-up to the next federal election.

Workplace Relations Minister Kevin Andrews introduced the legislation into federal parliament yesterday, arguing it would "enshrine and protect the status of independent contractors" and encourage it as a "wholly legitimate form of work".

"This is about the right of all Australians to choose to work for themselves - the right to be their own boss," he said.

ACTU secretary **Greg Combet** said the legislation would encourage business to avoid responsibilities such as superannuation, workers' compensation premiums and leave entitlements; and that restrictions on the right of contractors to bargain collectively would push down rates.

"It doesn't help people who are independent contractors have a bit more muscle in their negotiations," he said. The legislation will mostly override state industrial laws which have allowed contractors to be "deemed" to be employees and which allowed state industrial tribunals to rule on whether their contracts were unfair.

It does not define the term "independent contractor" beyond that set through common law precedent, which looks at the overall relationship between the parties, including the right to control the manner in which work is done.

It does not include the definition of independent contractor used in the Australian Taxation Office's personal services income test, with Mr Andrews arguing the test was "easily manipulated to achieve the desired outcome".

The legislation includes protections against using "sham" contracting

arrangements to cover genuine employees, a three-year transition period for independent contractors who have previously been deemed to be employees, and regulation of unfair contracts through the Federal Magistrates Court. Employer groups hailed the legislation, although its main proponent, the Independent Contractors of Australia, claimed it would not bring a rapid increase in contractor numbers.

"This is a cultural shift," the ICA's Ken Phillips said. "This legislation is starkly reflecting the cultural differences that are now emerging in our workplace."

The Recruitment and Consulting Services Association's chief executive, Julie Mills, said the legislation would give greater clarity and national consistency on who was an independent contractor.

But law firm Minter Ellison said in a briefing note that the surprising thing about the legislation was "that, in some ways, they extend the rights of independent contractors - including by introducing a national unfair contracts regime, which applies (for the first time) to incorporated independent contractors.

"The uncertainties about whether an independent contractor may, in fact, be an employee (and therefore entitled to benefits as an employee such as awards, annual leave etc) will continue," the note said. "In fact, there are now a range of prohibitions on employers concerning 'sham arrangements', which may introduce further complications."

The Labor opposition made a muted response to the legislation, despite vowing to fight the next election under the banner of promoting collective bargaining over individual agreements.

Opposition industrial relations spokesman Stephen Smith said an initial analysis of the bill raised more questions than answers.

"The threats to owner-drivers are clearly not resolved by this bill," he said. "The provisions to prevent sham contract arrangements do not appear to effectively protect employees from unscrupulous employers."

KEY POINTS

- * The federal government says the change protects contractors.
- * The **ACTU** says the change lets companies off the hook.
- * It is claimed the legislation will not rapidly increase contractor numbers.
- * Estimates of Australia's independent contractors vary from 800,000 to 1.9m
- * Independent contracting relationships to be governed by commercial law, not industrial law
- * Individual contractor to be responsible for entitlements such as super, annual leave and tax rather than employer
- * Office of Workplace Services to investigate and prosecute sham

contracting arrangements

* Provisions on unfair contracts will override most state law, with federal Magistrates Court hearing claims

* Three-year transition for contractors who have previously been deemed to be employees under state laws

* Truck owner-drivers in NSW and Victoria will keep current status subject to review next year

* Clothing outworkers guaranteed minimum pay set as part of Australian fair pay and conditions standard

Table :

HIRED HANDS			
Breakdown of non-traditional work (%)			
	1998	1998	1998
Casuals	55.5	60.4	58.5
Fixed-term employees	9.9	9.6	8.6
Self-employed contractors	31.5	24.6	23.8
Labour-hire employees	3.1	5.4	9.1

Source: Productivity Commission and legislation

Caption :GRAPH: HIRED HANDS Prevalence of non-traditional workers % of workforce

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