

INDEPENDANT CONTRACTORS

In this special IPA feature, we look at the long and evolving emergence, but seemingly sudden recognition, of the entrepreneurial class in Australia. They seem not to have, nor want, any organized political voice, but appear to have been a key factor in the last Federal elec-

tion. They make up 28 per cent of the private-sector workforce and are most easily identified as independent contractors.

Who they are, where they are, what they want and how they are regulated, are the issues looked at in this feature.

The Workforce of the Future

Bob Day

This is an edited version of the opening address given to the first Independent Contractors Of Australia National Summit in Canberra on 24th August, 2004.

It was said during the 1920s that Prohibition was terrible - but it was better than no alcohol at all.

There is much we can learn from that observation. I was once asked by a trade union official, 'Do you want a no-strike clause, or do you want no strikes?' Again, reality trumps perception. The perception in Australia is that we are free. The reality, as we all know, is rather different.

In the two words independent contractor, independent is synonymous with freedom, with the capacity to choose, whether right or wrong, and is indicative of the very high place the individual has in the culture we have inherited.

A contractor is someone who contracts. The sanctity of contract is one of the three pillars of our common-law system. The principle that people who sign contracts are then expected to keep

their word and honour their undertakings, is one of the foundations of our civilisation.

In the context of a complex legal, economic and regulatory framework surrounding independent contracting, I wish to argue that workers shouldn't have to jump through a myriad of hoops just because they choose to work differently from others, and that in fact we would all be a whole lot better off if we removed the regulatory framework altogether.

An individual who is able freely to enter into a relationship with another person in order to achieve an ambition which neither party could achieve acting alone is a situation which we accept as an everyday occurrence. It is an event, nonetheless, of profound moral significance in addition to its having highly beneficial economic consequences.

Where individual freedom is re-

stricted, where private property is insecure, and where economic life is centrally controlled, we find that the gap between rich and poor is wider than in societies that have independent rule of law, security of property and the sanctity of contract.

Every major thinker who has written about the foundations of a free society—amongst them, David Hume, Adam Smith and Edmund Burke—understood the fundamental nexus between the freedom of the individual, freedom of contract, and the type of society which supports those freedoms.

So the words 'independent contractor' are truly inspirational. When it is finally accepted that the individual is capable of making a conscientious judgement as to his or her best interests and is capable of entering into an exchange of promises with another, not only are the parties to the

contract both better off, but society as a whole is enhanced.

What I wish to emphasize is more than just efficiency, though its contribution to efficiency and productivity is beyond dispute. My concern is about the very nature of our society.

In my view, independent contractors—and I am one myself—represent the very best traditions and aspirations of our society. We are proud of who we are and what we do. But centuries of experience show that we must be vigilant in protecting those traditions.

Although there has been a reasonable degree of bipartisan support for most of the great changes that have done much to free up the Australian economy over the past two decades, our labour market remains highly regulated and is a serious burden on our economic life. In phasing out protectionism, and abandoning the White Australia Policy, we have interred the ghost of Alfred Deakin. But we have not yet interred the ghost of Henry Bourne Higgins, the father and champion of labour regulation.

Although protectionism today has few serious defenders and while open financial markets are no longer controversial, freedom of contract has been diminished in Australia in recent decades. When Francis Fukuyama predicted that the end of history had occurred, with a complete vindication of the liberal market economy over state planning, he underestimated the implacable resistance of many in the West to the ideas that had delivered that triumph.

Let us not kid ourselves: our standing and status as independent contractors remains under threat. There are people who do not like us and they will use any arguments that come to hand as ammunition against us; for example, that we are merely engaged in an elaborate scheme to avoid tax. That argument has no legs and has proven to be



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baseless, but it is endlessly repeated.

Contractors are paid for performance—not for time. Arrangements like these—based on personal values rather than the values of the collective—are a threat to many.

Writing in *The Adelaide Advertiser* at the time of the Ralph Report/Trade Contractor debate, Professor Cliff Walsh, Director of the SA Centre for Economic Studies, wrote that the outcome of the HIA's fight to protect the independent status of trade contractors was 'A victory for the industry ... and particularly important to its customers because the subcontract system contributes strongly to efficiency, adaptability and cost-competitiveness.'

I'd like to extend that even more and argue that the outcome we saw in that case represented a victory not just for the subbies and their customers, but for the economy generally and, like ripples in a pond, extending out to every Australian.

After eight years of Coalition Government, our labour market is anything but free. We still have a system of wage

regulation that condemns many young people to unemployment—particularly entry-level apprenticeships. We impose conditions on dismissal that inflict unemployment on the unskilled and the disabled. We shackle both employers and employees, particularly employees, with regulations which impose significant financial burdens on both parties.

There is still a huge amount of reform that has to be put in place if the Australian labour market is to provide the jobs, the opportunities and the prosperity which it could provide if we took the word freedom seriously.

Better than anyone else, we know, the social, economic, and personal benefits of independent contracting and we need to be championing our cause unceasingly.

The important point I want to make in all this is that independent contracting does not break through the existing Industrial Relations system—it breaks with it. It is a world of work with a culture based on freedom, respect and mutual benefits. Although it draws some support from statutes, ►

it relies for its support on the common law.

Mutually agreeable contracts allow the parties to jettison the old compulsory entitlements in favour of all-inclusive remuneration arrangements. Independent contracting recognizes that people have a God-given right to work as hard as they like, for as long as they like, in order to achieve the things they want in life.

We know that this can be arduous and sometimes risky. But we prefer the rewards that this demanding way of life offers. Why should anyone have the right to deny us this freedom?

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the parties themselves aren't capable of knowing what is in their best interest? No individual can possess either the knowledge or the selflessness to make these kinds of decisions for somebody else. Independent contractors absolutely reject the idea that they are unable to determine for themselves what is in their best interests.

So, where do we go from here? First, I believe the Federal Government must actively promote independent contracting as an alternative to traditional employment. Public advertising campaigns, targeted information to employers about the legal and commercial basis upon which independent contracting is based, and its flexibility

should set an example in its own employment practices and look to independent contracting wherever possible. The United States set such a pattern in the 1970s when it adopted a 'non-dependency on direct employment' strategy, which proved to be a turning point in American labour relations. Unemployment levels since then have been consistently lower than in Australia, despite America's much higher levels of illiteracy.

If Australia had the same proportion of its working-age population employed as the US does, we would have another 600,000 people in employment. In other words, we could bring our unemployment levels down to the 2 per cent mark.

Recent events in other nations, however, have reminded us of a powerful truth, namely, that 'Freedom is never free.'

This Summit is a start.

Independent contractors are the most innovative and resourceful of Australia's workers. They bear more risk and show more courage than just about any other sector of the workforce. We must apply those same great virtues to agitating for labour market reform and protection of our own precious liberties.

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All presentations to the Summit and ICA's extensive coverage of independent contractor issues can be found at <http://www.contractworld.com.au>

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It has been calculated that the regulations and restrictions in our labour market cost Australia over \$60 billion per annum. That is the economic cost of our unemployment and under-employment problem. Of course, the true social cost is incalculable. Lives are wasted, talent is destroyed and opportunities are lost every day because people are not permitted to act in their own interests.

What possible basis can there be to render unlawful a common-law contract—entered into by willing parties—to achieve a lawful and productive outcome that is in the self-determined interest of each of the parties other than some paternalistic belief that

as an option available to very many Australian workers, should be the first consideration.

Promotional campaigns should emphasize the simplicity and flexibility of independent contracting and provide sample contract templates and checklists to ensure compliance with the legal requirements of this new paradigm.

With the active commitment of a Federal Government to such a campaign, a new growth industry would emerge offering aggregated services to independent contractors—accounting, insurance, BAS returns, contract management and other advisory services—allaying concerns that many of today's unemployed may not be up to the requirements of running their own business.

Second, the Federal Government