

“Redefining work relationships through contractors – legal and policy developments”

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ABSTRACT

In the lead up to the 2004 Federal election, the Prime Minister announced that a re-elected Coalition government would introduce a new Independent Contractors Act to enshrine and protect the status of independent contractors. The Act would be designed, he said, to enhance workers’ ‘freedom to contract’ and encourage independent contracting as a legitimate working arrangement.

This paper examines the scope of this proposed Independent Contractors Act. In Part I, we discuss the policy behind the proposed reforms and examine the present State and Federal legislative provisions which the Government says are inhibiting contractors’ ‘freedom to contract’. We also look at current judicial approaches for distinguishing between employees and contractors, including approaches developed to uncover ‘sham’ independent contractor arrangements which have posed an important challenge for courts and policy-makers.

In Part II, we examine the reforms introduced in the area of taxation law. In this context, the Government has introduced measures to curb the growth of independent contractor arrangements. However, it is argued that these reforms do little to combat the problem of sham independent contractor arrangements in other contexts and that, from a tax practitioner’s perspective, the initiatives are an example of failed tax reform.

In Part III, we look at the policy implications of the government’s proposed reforms. We also examine the convergence between the Government’s approach in this area and its Ageing workforce policies. The question, whether we are seeing a new model for regulation in Australia, is also considered.

