



Australian Government

Office of the Australian Building and
Construction Commissioner

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ABCC Industry Update

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Independent contractors legislation passed

For the first time in Australia, legislation provides for the recognition and protection of independent contractors in the Australian workplace. The reforms introduced by the legislation will protect the freedom of independent contractors to enter into arrangements that are primarily commercial relationships, free from workplace relations regulations. The reforms also protect genuine employees from being treated as independent contractors through sham contracting arrangements.

The reforms are given effect through:

- the *Independent Contractors Act 2006* (IC Act); and
- the *Workplace Relations Legislation Amendment (Independent Contractors) Act 2006* (WR Act).
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The legislation is expected to come into effect during the first quarter of 2007.

The legislation will:

- override state and territory laws which deem independent contractors as employees depriving them of their choice to work as independent contractors;
- provide a fairer and more accessible national unfair contracts review mechanism for independent contractors; and
- maintain existing arrangements for owner-drivers in New South Wales and Victoria.

The reform introduces a statutory regime prohibiting 'sham arrangements'. A sham arrangement is one where an employer seeks to avoid taking

responsibility for the legal entitlements due to employees, by misrepresenting a genuine employment relationship as an independent contracting relationship.

The legislation makes certain conduct of an employer a contravention of the law. This includes:

- misrepresenting to an employee that they are an independent contractor, when in actual fact they are an employee;
- dismissing or threatening to dismiss an employee with the sole purpose of re-engaging them as an independent contractor performing the same or substantially the same work; and
- making a false statement attempting to persuade an employee to become an independent contractor.

The legislation creates, as far as possible, one uniform unfair contracts jurisdiction in the Federal sphere with a framework for the courts to judge whether a contract is harsh or unfair.

Who is an independent contractor?

There is no general definition of 'independent contractor' in the legislation. As a result, the common law definition of 'independent contractor' is retained.

There are a number of well established indicators that courts and tribunals consider when determining whether a particular contractual relationship is an independent contractor arrangement.

What is the role of the ABCC?

The ABC Commissioner will enforce the provisions of the legislation, as it relates to building industry participants or building work.

The amendments also mean the ABC Commissioner or an ABC inspector may institute proceedings under the IC Act, or the sham arrangements provisions.

If you need more detailed advice on the new independent contractors legislation call the ABCC hotline on 1800 003 338 for assistance.

ABCC – keeping costs down

A recent report issued by the Institute of Public Affairs titled "[Industrial Relations and the struggle to build in Victoria](#)" demonstrates the positive impact that the ABCC has had on the building and construction industry.

The briefing paper case studies the Eastlink Tollway project (Eastlink), the largest single infrastructure project undertaken in Victoria. It analyses the impact that changes in the industrial relations environment have had on whether public and private projects are completed on time and on budget. The paper assesses the factors that have typically contributed to rising costs and delays on construction projects in Victoria, such as non-working union delegates, unproductive days, VBIA Agreement disruption, sham OHS disputes and sham weather disputes.

Author Ken Phillips estimates that Eastlink would have cost at least \$295 million more had it been constructed prior to the introduction of WorkChoices, the strengthening of the Building Code and the establishment of the ABCC.

ABCC operation over holiday period

To celebrate the festive season, ABCC offices around Australia will close for the Christmas break from midday on Friday December 22 2006, reopening again on Tuesday 2 January 2007. The ABCC hotline will continue to operate as normal during this period.

If you would like to make a comment about this circular or even discuss topics that are of interest to you, please call Sandra Scalise on 03 8509 3025 or Tillie Priestley on 03 8509 3027. If you do not wish to receive further information of this kind from the ABCC, please let us know by contacting the Hotline on 1800 003 338.

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