

# Independent Contractors Bill 2006



**Practical Advice - Commercial Outcomes**

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# Key parts to *IC Bill 2006*

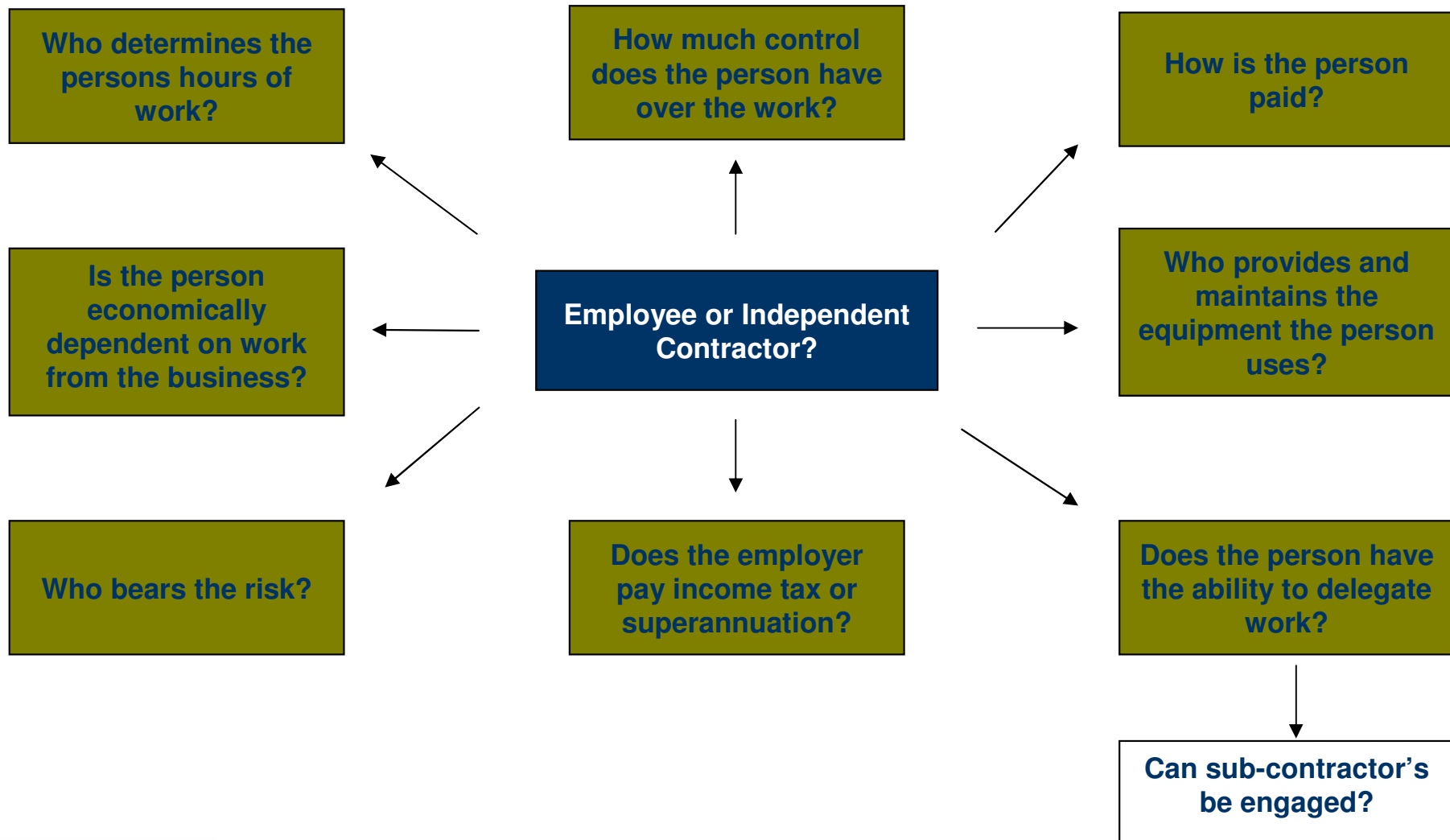
## Principles

- **Choice by workers to be independent must be respected**
- **To encourage environment of creativity, innovation and flexibility – independent contractor often become SME's**
- **Genuine independent contractors should be governed by commercial law & not industrial law**
- **Flexibility of independent contractors coupled with current skills shortage.**

## Who is an independent contractor?

- **Employee:** Contract *of* service
- **Independent Contractor:** Contract *for* services
- **No legislative definition**

# Multi-Factor Test



# Key parts to *IC Bill 2006*

## **New national jurisdiction for the review of “services contracts”**

- Industrial law -v- commercial law
- Federal Court of Australia and Federal Magistrates Court
- Reviews services contracts on grounds of unfairness or harshness, except to the extent the dispute relates to a workplace relations matter

# Key parts to *IC Bill 2006*

The Bill defines “services contracts” as:

**What is a  
“services  
contract”**

- A contract with an independent contractor is a party;
- A contract that relates to the performance of work by the independent contractor; and
- A contract that has the requisite constitutional connection (e.g. a trading corporation).

# Key parts to *IC Bill 2006*

## What is a “workplace relations matter”

### Includes

- Leave entitlements
- Hours of work
- Enforcing or terminating contracts of employment
- Industrial action

### Does not Include

- Prevention of discrimination
- Workers compensation
- OH&S
- Liability for payroll tax and superannuation

# Key parts to *IC Bill 2006*

## **Excludes state and territory laws**

### **To the extent that:**

- The laws would effect the rights, entitlements, obligations or liabilities of a party to a services contract in relation to workplace relations matters
- The laws would deem a common law independent contractor to be an employee
- The laws provide for review of services contracts on the basis of unfairness in relation to a workplace relations matter

# Key parts to *IC Bill 2006*

**Preserves state and territory laws for outworkers and owner-drivers**

**Maintains existing state and territory legislation in relation to :**

- Owner-drivers in the road transport industry
- Contracted outworkers in the textile, clothing and footwear industry

**Will be reviewed by Federal Government in 2007**

# Key parts to *IC Bill 2006*

## SHAM ARRANGEMENTS

If you

Knowingly make a false statement to persuade an employee to become an independent contractor

Dismiss (or threaten to dismiss) an employee so as to re-engage as an independent contractor

Heavy penalties apply

# Key parts to *IC Bill 2006*

## Transition

- 3 year transitional period for “deemed” employees and the businesses that engage them to decide what to do

## What happens now?

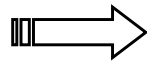
- Labour hire code of practice to be developed
- Bill due to go before parliament on 27 November 2006

# Key parts to *IC Bill 2006*

## What next?

- Review status of all “contractors”
- Review any agreements in place with “contractors”

### CAUTION



If a “contractor” is actually an employee, this will affect a corporations headcount.

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**Questions?**

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