

**Submission
No 4**

**INQUIRY INTO IMPACT OF TECHNOLOGICAL AND
OTHER CHANGE ON THE FUTURE OF WORK AND
WORKERS IN NEW SOUTH WALES**

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I wish to address the issue of the increasing casualisation of the workforce through the use of “independent contractors” who are, on any sensible measure, employees; the undesirable impact of this trend; the way the current state of the law facilitates this; and the need for law reform to remedy the situation.

I should start by saying that, although not an employment law specialist, I am a lawyer with an interest in this area of law and have followed legal developments in this area.

Classifying a worker as an employee not only benefits the worker by providing the protection of awards and unfair dismissal rights, it also provides societal benefits by both recognising the dignity of work and avoiding cost-shifting.

If a worker is actually an employee it is not in the public interest for the costs of that worker’s injuries or the consequences of that worker’s negligence to be borne by the public as opposed to the worker’s employer. Yet this is what is occurring currently as workers’ compensation and vicarious liability depend on a worker being an employee, yet workers who are really employees are not recognised as such at law.

This was illustrated by the recent decision of the Full Court of the Federal Court of Australia where the court felt constrained by the existing state of the law to classify a builder’s labourer as an independent contractor in circumstances where, on any common sense measure the worker would have been classified as an employee – *Construction, Forestry, Maritime, Mining and Energy Union v Personnel Contracting Pty Ltd* [2020] FCAFC 122

In that case the worker concerned generated no good will and didn’t run his own business yet was classified, reluctantly by the court, as an independent contractor.

Legislative intervention is required to make it clear that where a worker is not running his own business i.e. isn’t generating good will which he can monetise, that worker is treated as an employee as opposed to the current situation where the worker can be classified as an independent contractor.