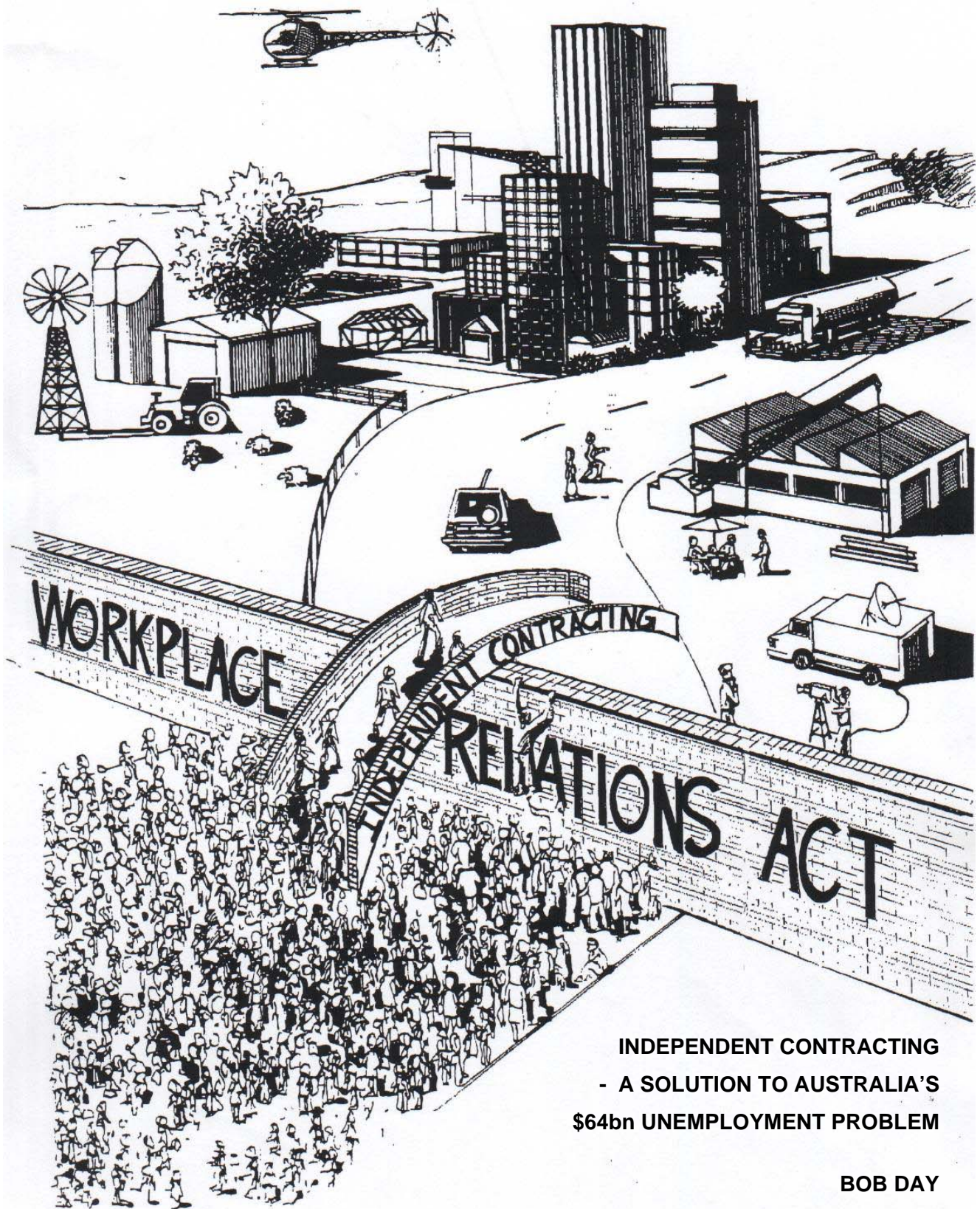


# "Contract Bridge"



**INDEPENDENT CONTRACTING  
- A SOLUTION TO AUSTRALIA'S  
\$64bn UNEMPLOYMENT PROBLEM**

**BOB DAY**

## INTRODUCTION

Contract Bridge, the card game devised by Harry Vanderbilt in 1925 has developed into a social phenomenon unparalleled in the history of card games. The game's brilliance and its vast superiority over other forms of the game lies in the principle that only bids made or "contracted" during the game are counted. Contract partners work together – to the exclusion of all others, in order to win the game. Often, a bid is made in which a partner with few points supports a partner with a much stronger hand. They both equally share the reward by winning the game.

In the world of work, traditional employment, ie the employer-employee relationship has become so regulated that it has, in the words of former Harvard Professor Richard Epstein, *"...created a legal edifice of stunning complexity. Protective laws abound on every conceivable aspect of the subject: health, safety, wages, superannuation, unionization, hiring, promotion, dismissal, annual leave, long service leave, retirement, discrimination, access and disability. The volumes of regulation, rulings, and cases on each of these bodies of law would take a treatise to summarize fully. In the face of this mind-numbing complexity, we cannot accord (this edifice) any presumption legitimacy, which has been created by a set of elaborate legislative compromises and political deals. It has been fuelled by the perception that employers dictate the terms of employment to their workers in their relentless pursuit of the bottom line, but at the same time are so irrational, so subject to whim, caprice and prejudice, that they cannot be allowed to set the employment rules for their own workplaces."*

Independent Contracting offers more than a glimmer of hope in redressing this awful situation. It is a paradigm shift which has the potential to revolutionise the Australian economy. Its brilliance lies, as is so often the case, in its simplicity. Contract partners working with one another for their mutual benefit.

Over 1½ million independent contractors have so far crossed the Contract Bridge.

The firmly entrenched positions of the ALP and the Democrats effectively means that the prospect of getting any meaningful reform of the Workplace Relations Act through the Senate now seems fairly remote. This does not bode well for the unemployed, the underemployed, the Budget and Australia's economy in general. This may, however prove to be a blessing in disguise. Sometimes, the only way to achieve a break**through** is to consider a break-**with**.

The seemingly impenetrable wall which separates those in need of work and those in need of workers must somehow be scaled. The current Workplace Relations Act has become such an immovable object that it is now time to consider alternatives to reforming the Act in our ongoing quest to reduce unemployment, lift productivity, increase incomes and improve the living standards of working men and women.

Independent Contracting provides that alternative.

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. It relies on both existing legislation and the common law and the legal principles upon which it is based have been consistently upheld in a series of recent High Court, NSW Court of Appeal and AIRC judgements<sup>1</sup>. The Alienation of Personal Services Legislation of 2001 also provides the Federal Government (and the Tax Office) with a solid framework within which to recognize bona fide contractual relationships. Such Federal legislation would also automatically over-ride any attempt by State Governments to “deem” all contracting to be “employment”.

When business owners more fully understand the doctrine of – as former Prime Minister Robert Menzies once put it, “*the sanctity of contract*” and see the determination of the Federal Government to defend those principles, they will realise why such a dramatic increase in independent contracting has occurred in recent years and how they too could equally apply it to their own businesses. 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.

And people are voting with their feet. Independent contracting has grown from 5 per cent of the workforce to over 20 per cent in just 10 years ie over 1.5 million people.

Independent contracting offers people a real choice between traditional employment with its familiar benefits – award protection, annual leave, long service leave, sick leave, maternity leave, superannuation, redundancy payments etc etc, and a new structure which provides a legal mechanism for business owners and individuals to make arrangements which suit the parties themselves rather than one-size-fits-all, out-dated arrangements which have the added involvement of heavy-handed, self-interested third parties.

Mutually agreeable contracts allow the parties to jettison all the old compulsory entitlements in favour of all-inclusive remuneration arrangements. They include – again, if both parties agree, the understanding that either party may terminate the contract at any time and for any reason. Unfair dismissal claims, the “legal greenmail” which haunts most small business and are a major disincentive to small business owners to employ new staff, can simply be taken out of the equation. And ironically, it is the small business sector which has the greatest capacity for generating new jobs. Big business, by contrast, is investing heavily in new technology so it can **reduce** its workforce.

Independent contracting has other benefits too which small business owners are rapidly discovering.

Independent Contracting avoids the time-consuming practice of contributing to long service and superannuation schemes and, most importantly, the responsibility to deduct tax. Independent contractors send their own tax payments to the ATO via quarterly BAS statements. The advantage of simplicity in these matters cannot be underestimated and anyone who's had to do this paperwork (or pay someone else to do it for them) will understand the substantial benefits it offers.

Some of the areas where independent contracting has been most successful to date include: farm contracting, building trades, journalism, franchising, courier drivers, child-minding, window cleaning, mobile mechanics, contract gardeners (eg Jim's Mowing), domestic chores, car detailing, mail delivery, pool maintenance and pet grooming. It also provides retirees with tremendous opportunities to re-engage the workplace in circumstances which suit their lifestyles. In fact, over 50% of those aged 60 and over who are still working are doing so in their own business<sup>2</sup>. The new tax system (ANTS) is steadily eroding the informal or ‘black’ economy, and as the demand for outsourcing in these areas grows, there will be room for significant growth in this sector. And the more clearly the advantages of the contracting alternative are explained, the greater the propensity to embrace this concept will be.



Maintaining the existing Award System along with consistently high levels of unemployment and all its associated ills (drugs, crime, violence, poor health, teenage pregnancy and even suicide) has been conservatively estimated as costing the economy over \$60 billion<sup>3</sup>. As N R Evans puts it, *“The cost of maintaining the Australian labour market regulatory apparatus is significant...and that does not include the cost of maintaining the Department of Employment and Workplace Relations. The problem with the Department however, is not its costs but its beliefs. A significant part of that Department is committed to upholding the Higgins legacy, and has not the slightest regard for Government policy. The argument that people should be free to work for market rates, and to look after themselves generally, is as abhorrent to them as it was to Higgins himself.”*

*“The economic burden which the Higgins legacy places on Australia is, first, a burden of huge transaction costs and risks associated with every employment relationship. Second, it effectively excludes from the labour market a large segment of the poorest and least capable section of the community and third, it transfers a large part of the post 15 and 16 years old cohorts from workplace experience, notably apprenticeships, into educational institutions where they waste their time and everyone else’s. No one has asked whether the drug problem, which seems to be getting worse amongst young people, is related to this phenomenon.”*

Any inroads into such a structure deserves considered attention.

A starting point for the Federal Government could be the active promotion of independent contracting as an alternative to traditional employment arrangements. Public advertising campaigns, targeted information to employers about the legal and commercial basis upon which independent contracting is based and its flexibility as an option to which many don’t yet realize they are entitled, should be the first consideration. Promotional campaigns should emphasize the simplicity and flexibility of independent contracting and provide sample contract templates and check-lists (see attached) to ensure compliance with the legal requirements of the new paradigm.

The Federal Government should also set an example in its own employment practices and look to independent contracting wherever possible. The USA in the 1970s set such a pattern when it adopted a non-dependency on direct employment strategy which proved to be a turning point in American labour relations. US employment levels have been consistently lower than Australia’s despite its much higher levels of illiteracy and unskilled labour. Australia’s archaic Award System is the primary reason for the disparity. It is complicated (550 pages of rules and regulations), expensive and inherently dangerous.

In an interview with *The Australian Financial Review*<sup>4</sup>, the US’s top international economic official in the US Treasury, Dr John Taylor, the man tipped as most likely to succeed Dr Alan Greenspan as Chairman of the US Federal Reserve said, whilst lauding Australia’s economic management, *“I always worry about unemployment being too high in Australia. I would hope that there would be ways to deal with unemployment. And that has to do with flexibility of the labour markets and laws with respect to wages.”*

Dr Taylor went on to say, *“We’ve been fortunate in the US that the unemployment rate has been low in recent years...it got down below 4 per cent. A very flexible, dynamic labour market can be one in which, if people want to move to a different job, it’s a very short period of time when they are unemployed. When kids graduate from school they can get a job quickly.”*

He contrasted the Australian labour market with America’s, *“When people look at the US they mention the flexibility in the labour market and the ability of firms to make decisions about the workforce, to structure pay in ways in which are related to the performance and skills of the workers.”*

In other words, freedom and prosperity go hand in hand.

Independent Contracting provides us with the opportunity to address the very problems that Dr Taylor so clearly enunciates.

Such a campaign as described above would undoubtedly spark a major political row with the union movement and the ALP. The prospect of such a row brings to mind well known strategist Peter Drucker’s famous axiom on successful positioning – *“Be Daring, Be First, Be Different”*.

---

<sup>1</sup> Hollis v Vabu Pty Ltd (2001) HCA44; Vabu Pty Ltd v Federal Commissioner of Taxation (1996) 33ATR537; Dennis William Graham v Mayne Nickless (2001/5368)

<sup>2</sup> ABS

<sup>3</sup> The Pearl of Great Price – Review Paper, N R Evans 2002.

<sup>4</sup> AFR 8<sup>th</sup> April, 2002

# ARE YOU AN INDEPENDENT CONTRACTOR?

This check-list will assist you in determining whether or not you are a bona fide independent contractor. If you answer “yes” to all (or most of) the statements listed below then your status as an independent contractor is reasonably secure. It is however, the overall way you work that is important. You need to acknowledge, and the people for whom you do work must acknowledge, that neither of you wishes to engage in an “employer – employee” relationship. Making sure you follow this ‘20 point’ assessment will help you avoid any uncertainty.

	Yes	No
1. I became an independent contractor - and remain so, of my own free will.	<input type="checkbox"/>	<input type="checkbox"/>
2. I trade as either an individual, a partnership, a registered business name or Pty Ltd company.	<input type="checkbox"/>	<input type="checkbox"/>
3. I advertise for business.	<input type="checkbox"/>	<input type="checkbox"/>
4. My primary objective is the achievement of an ‘end result’.	<input type="checkbox"/>	<input type="checkbox"/>
5. I am paid by invoice for completed work - although hourly rates may be used as a convenient basis for calculating invoice amounts.	<input type="checkbox"/>	<input type="checkbox"/>
6. I accept that work lasts for the term of each particular job or contract.	<input type="checkbox"/>	<input type="checkbox"/>
7. I freely accept the financial terms contained within the contracts I enter into.	<input type="checkbox"/>	<input type="checkbox"/>
8. I acknowledge and accept that the basis of agreement between myself and the other party is what is contained in the contract.	<input type="checkbox"/>	<input type="checkbox"/>
9. I acknowledge that no part of the financial consideration of the contracts I enter into has been withheld for holiday pay, sick leave, long service leave, superannuation, or any other statutory ‘employment-related’ provision.	<input type="checkbox"/>	<input type="checkbox"/>
10. I profit from my work but also acknowledge that there are risks associated with running my own business as an independent contractor.	<input type="checkbox"/>	<input type="checkbox"/>
11. I accept work on the basis of offer and free acceptance. I am not obliged to accept work and I may reject work if I so desire.	<input type="checkbox"/>	<input type="checkbox"/>
12. I reserve the right to employ or sub-contract any aspect of the work I do to another person.	<input type="checkbox"/>	<input type="checkbox"/>
13. I reserve to right to employ an apprentice or trainee in the execution of the contracts I enter into.	<input type="checkbox"/>	<input type="checkbox"/>
14. I control the way I work however discussions with and direction from my clients may be a normal commercial need.	<input type="checkbox"/>	<input type="checkbox"/>
15. I have discretion and flexibility regarding work performance including start and finish times.	<input type="checkbox"/>	<input type="checkbox"/>
16. I accept responsibility for any defective or remedial work which was my doing.	<input type="checkbox"/>	<input type="checkbox"/>
17. I provide my own tools and equipment depending on the needs of the job.	<input type="checkbox"/>	<input type="checkbox"/>
18. My taxation obligations are managed through the PAYG system & PSI systems.	<input type="checkbox"/>	<input type="checkbox"/>
19. I provide my own public liability and sickness and accident insurance cover.	<input type="checkbox"/>	<input type="checkbox"/>
20. All contracts I enter into whether verbal or in writing and are consistent with the above principles.	<input type="checkbox"/>	<input type="checkbox"/>