PREFACE

The housing industry is a real world example of free enterprise.

For over 40 years it has been one of the few sectors of the Australian economy that has managed to escape the clutches of the centralized wage-fixing system. It has operated almost entirely on the basis of individual contracts between individual trade contractors (subbies) and builders. As a result Australia has one of the most efficient, cost-effective, dispute-free workplace arrangements in the country – and world-class standards of housing to boot.

As well, the general public has understood the role of subbies for generations seeing them heading out of their driveways at six in the morning – cement mixers and generators in tow. People admire them and don't begrudge them the money they make for their risk and effort.

FOREWORD

The great Edward Shann wrote his luminous Economic History of Australia in the late 1920s, just before the Great Depression brought much suffering to Australian people. His underlying theme was the struggle between those on the one hand who valued freedom and enterprise, and those on the other hand who valued subordination and hierarchy. That struggle began with the founding settlement at Sydney Cove in 1788 and has been a continuing feature of Australian life ever since.

By serendipity, the domestic housing industry in Australia came under the aegis of the spiritual descendants of John Macarthur and the fiercely independent gold-diggers of the 1850s. The workers who comprise that industry are independent, free people, who doff their cap to no man. They call themselves contractors, because their working lives are built around contracts, many of them based in the first instance, on a handshake. As a consequence, probably unintended, Australia has a domestic housing industry which is arguably the most competitive in the world and, as a result, Australians enjoy a higher standard of housing than their cousins in Western Europe or North America.

Bob Day is a stalwart defender of the freedom which is the defining characteristic of the industry in which he now plays an important part. I commend this tract not only to his colleagues in the housing industry, but to all those concerned with the state of labour market regulation in Australia generally.

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Melbourne

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TRADE CONTRACTORS AND THE RALPH REPORT

One of the few iron laws in politics is the "law of unintended consequences". Every Grand Plan, every overdue reform, inevitably leaves victims in its wake. And the more elegant the solution and the more mesmerizing the effect on bureaucrats, the more likely it is that it will adversely effect – or sometimes even ruin – hard-working people in small and medium sized businesses who end up "falling between the cracks in the legislation".

Part of the problem is that when it comes to public policy, one size seldom fits all. There's also the likelihood that those worst affected will be the least organized when it comes to arguing their case in the media and lobbying politicians and public servants. Not to mention a growing level of suspicion in the electorate when any interest group tries to make out a case for special treatment or exemption (especially on taxation), no matter how convincing the argument. Too often it's only the big end of town which gets much of an audience.

The art of good government lies in knowing when to depart from elegant solutions and Grand Plans, and send the bureaucrats back to the drawing board. Federal Treasurer Peter Costello's recent defence of trade contractors who would have been ravaged by a literal-minded application of the recommendations of the Ralph Report, is a shining example – a good deed in a dangerous world.

What I'd like to do in this submission is dispel four equally false and equally foolish propositions put forward by the proponents of these perennial Grand Plans:

1. According to the Grand Plan and the Tax Office, trade contractors' earnings ought to be treated in exactly the same way as all other taxpayers. This, they say, is a matter of simple justice. And I don't know about you, but whenever I hear the words 'simple' and/or 'justice' I get very nervous.
2. According to the Grand Plan and the Tax Office, increasing taxes would result in increasing revenue.
3. According to the Grand Plan and the Industrial Relations Club, ever-increasing interference in people's working lives would make them happier at home and more productive at work and,
4. According to the Grand Plan, changing the Tax Act so that "any trade contractor who derives 80% or more of his or her income from one source should be treated as an employee for tax purposes", would have actually benefitted independent contractors.

Each of these four propositions is demonstrably wrong and I shall deal with each in turn.

1. The case for taking contractors off the existing Prescribed Payments System and making them PAYE employees has that simple "what's good for the goose is good for the gander" appeal to it. Yet John Ralph himself – the author of the Ralph Report, recommended – as the Treasurer put it: *"That those people who are genuine independent contractors should be able to go into the business taxation system".*

   Thankfully, the new law (*'The Alienation of Personal Services Bill')* which was passed in May this year should now significantly simplify the system. It will clarify the detail of work-related tax deductions and recognise the crucial differences between employees and independent contractors. Under the new law, a contractor now needs only to meet any one of the following four tests to maintain his or her contractor status:

   1. Employ or engage other (including apprentices) to do at least 20% of their work; or
   2. Advertise for work and have at least two clients; or
   3. Maintain and use a separate business premises (not shared); or
   4. Be paid by results, provide tools and equipment and bear responsibility for rectification of defective work.

   This is an eminently sensible approach.

   I do concede, however, that some anomalies have developed in this area between the private and public sectors where, for example, in State-provided transport services I am told, some employees were classified as 'sub-contractors' and just 're-contracted' each and every week. The difference here however is that these so called 'sub-contractors' don't have liabilities if the bus crashes nor are they required to pay the insurance premiums. Hence they are not subcontractors at all and the new law preserves these fundamental distinctions. If however, they were required to buy the buses,

become responsible for the timetable and not get paid if they didn't deliver, they would – and should, be able to claim contractor status.

Given that the proposed changes will affect around a quarter of a million contractors, the proposed two year transitional arrangements will give the Tax office adequate time to sort out their bona fides. And for Shadow Treasurer, Simon Crean to label them a bunch of "tax cheats", as he did in Parliament at the time, is hysterical nonsense and is a regrettable retreat from the previous, sensible position articulated by Paul Keating in his Japan speech in 1992, on the need for further deregulation of the labour market and a move towards more individual contracts. The Labor Party now seems to be attacking the entrepreneurial small business people it once claimed to be encouraging.

2. The second element of the Grand Plan was that increasing taxes would lead to increasing revenue. In reality, the only certain consequence would be an ever-expanding and more arrogant inspectorate within the Tax Office. Geoffrey Lehmann, the senior tax partner at Price Waterhouse Coopers has recently analysed tax changes in Sweden which make nonsense of this odd assumption. Geoff Lehmann noted that, in Sweden - famous for its heavy-handed tax gathering, "*an estimated 75 per cent of tax administration is occupied with business tax matters but accounts for only 4 or 5 per cent of total tax revenue. Globalisation and freer flows of capital have now made business tax into something of "a dinosaur". When Sweden halved the company tax rate from 60 per cent to 30 per cent in 1994 total company tax revenue tripled."*

The lessons that can be applied to the Australian system, and to businesses both large and small, are plain enough. As many have long argued, the flatter the tax rate the higher the level of compliance. The less compliance costs and the less invasive the inspectorate, the more revenue raised (and less resentfully) and the less private ingenuity is wasted on tax avoidance schemes.

In the first parliamentary debate over the new law, Simon Crean claimed that it would reduce revenue by between $2.4 billion and $3 billion. The Treasurer replied that the effect on total revenue had been fully costed in the calculations and that it would actually **increase** revenue by $190m in 2000/1 rising to an extra $515m in 2003/4. Given the recent international experience in tax reform and the economic track records of both men, I know which one I'm more inclined to believe, particularly in light of Peter Costello's proprietorial attitude to his budget surpluses.

3. The third proposition – that increased interference in people's working lives would make them more virtuous and productive citizens is a variation on the title of this submission – *"I'm from the Government and I'm here to help you"*. It beggars belief. The Industrial Relations Club, with its self-serving objective of monitoring everything from "fairness" in the workplace arrangements of family firms, to actual output, is classic bureaucratic fantasy.

By contrast, take the housing industry as a real world example of free enterprise. For over 40 years the housing industry has been one of the few sectors of the Australian economy that has managed to escape the clutches of the centralized wage-fixing system. It has operated almost entirely on the basis of individual contracts between individual trade contractors and builders. As a result we have one of the most efficient, cost-effective, dispute-free workplace arrangements in the country and world-class standards of housing to boot.

Study after study of the housing industry's subcontract system has shown that it works well and offers a decent and satisfactory standard of living for the self-employed tradesperson.

Trade contractors work to their own agendas and cycles in ways that suit them and homebuilders who develop longstanding relationships with good contractors use their services as much as possible. The new law is a distinct improvement on previous proposals because it recognizes those long-term stable relationships.

Another feature of Australian trade contractors is that they have a work culture all their own which is as distinctive and at least as dependent on co-operation, mutual trust and dare I say "mateship" as trade unionism purports to engender. As well, I think the general public have understood the role of subbies for generations seeing them heading out of their driveways at six in the morning – cement mixers and generators in tow. People admire them and don't begrudge them the money they make for their risk and effort.

Contractors are paid for performance - not for time. Any non-standard arrangement like this is a threat to the union mindset and I suspect that these concerns were as much in evidence in Simon Crean's attack in Parliament as the alleged shortfalls in revenue. Unions have always wanted to conscript subbies into their dwindling ranks and along with tax officialdom and the IR Club have, at

every opportunity, tried to turn independent contractors into employees. Unions already have secured footholds in just about every area of the construction industry and have significant influence in areas such as superannuation, health funds, training, occupational health and safety rehabilitation, insurance and even labour hire firms. Their campaign to control the supply of labour never ends.

Writing in the Adelaide Advertiser at the time of the trade contractor debate, Professor Cliff Walsh, Director of the SA Centre for Economic Studies wrote that the outcome of the HIA's fight to protect the independent status of subcontractors was… *"A victory for the industry… and particularly important to its customers because the subcontract system contributes strongly to efficiency, adaptability and cost-competitiveness."*

I'd like to extend that even more and suggest that such an outcome as we have seen in this case represents a victory for all concerned – the subbies themselves, the customers, the economy, in fact every Australian.

4. The fourth, and last, proposition I want to deal with was the proposal to change the Tax Act so that "any trade contractor who derives 80% or more of his or her income from one source should be treated as an employee for tax purposes".

This was by far the most contentious proposal in the Ralph Report as far as the housing industry was concerned. The Grand Plan here was to remove tax considerations once and for all from the industrial relations arguments as to who is or is not an employee.

Like most Grand Plans, it sounds good in theory and one could argue that determining an individual's status as an employee or an independent contractor should not be based on his or her tax status. The linkeage of the two has historically been, to say the least, unfortunate. Workplace Relations commentator Ken Phillips is right when he says that the *"common dependence of income tax systems and industrial relations power, in determinations of master and servant employment, has over time caused tax collection authorities to become engaged in an alliance with industrial relations regulators. The two authorities with outwardly different agendas have found themselves in the same colluding bed."*

But for trade contractors to have surrendered their independence without a fight, or to allow the government to take away their independence for the sake of convenient revenue collection would have been madness. To have meekly submitted to this would have been to disregard 40 years of warfare in favour of a millennial vision of the lamb and the lion lying down together. The result would have been carnage. Certainly we're at the beginning of a new millennium, but have the carnivores in question really become vegetarians? I don't think so.

We all know what the Industrial Relations Club and the union movement would have tried to do if it hadn't been for HIA's and Peter Costello's intervention, because they've tried it all before. They would have argued that this new class of PAYE/PAYG taxpayers (trade contractors) fell outside the award structure and they would have immediately attempted to recruit them into the unions. The Industrial Relations Commission and the Federal Court would put in their oar in various bureaucratic ways, interfering in the contractors' relationships, to insist on them being covered by the relevant award provisions, sick leave, maternity leave, holiday pay and goodness knows what else. It would have taken away from trade contractors their God-given right to work as hard as they like, as long as they like , in order for them to achieve the things they want in life.

It's gratifying to note that once more the attempt has failed.

Sadly though, this is not the end of the story. Even as we go to print independent contractors are being targetted by various State (Labor) Governments around the country to "deem" them to be employees – whether they like it or not.

Again, I get very nervous when Governments start passing laws that can 'deem' an apple to be an orange. They clearly are not the same and the distinction must be maintained in law as well as in fact.

The war is far from over.