



Presenting ODCO Contracting

“The productive & efficient alternative to employment”



**“HELPING YOU
MANAGE YOUR BUSINESS
THE WAY YOU WANT”**



www.auscontracting.com.au

What is ODCO Contracting?

We offer a simple and cost effective, alternative solution to “traditional” employment and the Federal and State laws that surround it.

Operating mainly within the ‘*Common Law*’ arena Australian Contracting Solutions (ACS) is the ultimate Outsourced Package. The system hops out of the employment arena. ACS offers a unique, simple, flexible and cost effective way to legitimately utilise the services of independent contractors without the inherent risks of employment and direct contracting. It’s legal, tried and tested to the High Court of Australia. Our system is a suitable option for businesses wishing to engage independent contractors whilst bypassing the restrictions of the industrial/workplace relations systems. In other words, the new Workchoices’ Reform Legislation will have no effect.

This system has been tested in the High Court of Australia and has been enshrined in Federal Legislation. The Agency Contracting System has obtained additional credibility with the Independent Contractors Bill being passed through Federal Parliament during April 2006.

Australian Contracting Solutions provides the Agency Contracting System throughout Australia. The process is simple and cost effective.

We are not an employment agency; we simply offer a service that engages workers outside of various Employment Laws. With this simple, yet proven system, your business can attract motivated self employed people who are willing to work and treat your business as their business.

Profile

Australian Contracting Solutions has been in operation for the past eight years, and has operations Australia wide. ACS engages only specialised contractors for the administration and management of the contractor payments and the ‘Client’ invoicing process. We have dedicated OHS / Workers Compensation managers (in States where Workers Compensation is compulsory) that conducts risk assessments of the Client work site prior to the client engaging any contractors. Our OHS manager will work with the client to minimise the risk of injury to the contractors and we maintain the services of a Return to Work Coordinator in the event of a workplace injury.

Client Benefits

The advantages of using Agency Contracting are quite enormous, regardless of the size or scope of your business. Workers engaged through agency contracting are not deemed to be employees of your business, are not subject to award conditions, and besides OHS responsibilities, have no employment contractual connection to your business. You are able to place one, some, or all, of your workforce on the system. Most importantly you are the client – the Agency Contracting System responds to your needs.

The system relieves the burden of

- ✓ Payroll Administration
 - ✓ Annual Leave
 - ✓ Workers’ Compensation
 - ✓ Taxation Administration
 - ✓ Superannuation
 - ✓ Payroll Tax
 - ✓ Industrial Legislation
 - ✓ Seniority; Redundancy; Vicarious Liability
 - ✓ Long Service Leave
-

Contractors engaged through us are

- ✓ Bona fide independent contractors
- ✓ Recognised by the ATO and the industrial relations commissions
- ✓ Not required to have an ABN or charge GST (regardless of how much they earn)
- ✓ Not deemed to be employees
- ✓ Does not cost the contractor anything

The Enterprise Test and Agency Contractors

Contractors are not required to pass the enterprise test to maintain their status and continue engagements as *bona fide* contractors.

Independent Contractors engaged by ACS are the only style of independent contractors in Australia that are not required to register for, or charge GST, and do not require an ABN regardless of their earnings.

Whilst contractors are subject to PAYG, they may be able to obtain personal tax rate variations giving them a cash flow management advantage. Electronic Funds Transfer is the method by which all contractors are paid.

Contractor benefits

- ✓ ACS administers all contractors personal taxation payments
- ✓ ACS ensures all contractors are covered for Public Liability Insurance cover (\$10M), Professional Indemnity Insurance (where applicable), Workers compensation and/or accident and sickness insurance
- ✓ Guaranteed payments at pre-agreed rates for all work done
- ✓ The ATO recognises the bona fide contractor status provided by the system.
- ✓ No BAS reporting responsibilities
- ✓ Personalised management of each contractor's requirements.

Payments

Your business pays ACS a single amount for all work performed by the contractors we supply, according to a prearranged contracted price. This reduces administration. Australian Contracting Solutions will only send you, the Client, a single invoice for all work performed by the ODCO Independent Contractor/s.

Legal Authority

The Agency Contracting System is founded on impeccable legal bona fides. The legal authority for the agency's modus operandi is based on the immutable decisions in the Odco Pty Ltd legal judgements. It is from this incontrovertible legal position that the benefits of contracting services are currently enjoyed by all our agencies' clients. It is a performance-based remuneration system which creates flexibility and accountability.

This system has been ratified by the High Court of Australia. It is a well paid, incentive-based system which does not come under the jurisdiction of either the State or Federal legislation pertaining to union awards and, therefore, does not permit unions or Industrial Commissions to interfere with or overrule any arrangements made between the contractors, the agency or the clients of the agency.

The system is based on legal judgements achieved by the founding Directors of Odco Pty Ltd (trading as Troubleshooters Available), Peter Bosa and Brian Groves. The agency achieved a declaration from the Federal Court defining the legal bona fides of contractors working through our agencies.

The judgements are: -

- (i) The published judgements of the trial judge Woodward, J. in the action Odco Pty Ltd Vs BWIU & Ors. No. VG 151 of 1988 in the Federal Court of Australia (unreported) and dated 24 August 1989.
- (ii) The appeal judgement in BWIU and Ors. Vs Odco Pty Ltd No. VG 322 of 1989 in the Federal Court of Australia reported at (1991) 29 FCR 104.

The BWIU sought leave to appeal this judgement to the High Court and were refused. Simultaneously, the Accident Compensation Commission (Workcare) and Odco Pty Ltd decided to test "deeming" provisions in the Victorian legislation in the Supreme Court (the same "deeming" provisions in State payroll tax legislation). This culminated in the High Court of Australia, Where the agency was determined the "deemed employer" and the contractor the "deemed employee", reinforcing their common law status as contractor and agency. The agency, therefore, is responsible for both the statutory obligations of Workcover and Payroll Tax in Victoria.

The relevant judgement is: -

- (iii) The High Court judgement Accident Compensation Commission Vs. Odco Pty Ltd (trading as Troubleshooters Available) F.C. 90 / 040 of 22 October 1990.

As a result of these judgements, and our work with legislators and regulators, the agency administers all statutory and legal requirements, including Work Cover (in Victoria & QLD), Income Protection Insurance in New South Wales, Payroll Tax and Superannuation. All of our agency contractors carry Public Liability cover. We deduct the Pay As You Go tax from all contractors working through our licensed agencies, regardless of which sector or industry the workers are being supplied.

The Essential Odco Contractual Structures

The Odco Judgements declared that where a worker is supplied to a business user through an administrative agency, and the administrative agency ensures compliance with certain operational procedures then the traditional contracts “of service” and “for service” do not apply.

The work contracts operating are “sui generis” (something different).

The resultant features are;

- Employment does not exist. There is no master-servant relationship and no “right to control” of one party over another.

 - Work is organised on the basis of offer and acceptance of contract to the worker.

 - There is no direct contractual relationship between the worker and the end user business.

 - There is no legal compulsion to work.

 - The contracts do not exploit the workers.

 - The contracts are short term, facilitating the capacity for constant review given changing and fluid market demands. The system is market reactive. Unfair dismissals do not apply given that contracts are offered daily and contractors are outside the unfair dismissal jurisdiction in any case.

 - The work contracts are negotiated, managed and administered through an administrative agency (ACS) acting in a similar manner to a stock exchange.

 - The user business determines the work quality and outcomes through the terms of the contracts on offer.
-



INTRODUCTION

This explanation of Odco - The Independent Contracting System™ (the **Odco System**) has been produced by Harris Legal, the solicitors for OCSA, the company which licenses the Odco System around Australia. The document is intended to assist prospective clients and their legal and accounting advisors in their understanding of the Odco System.

BRIEF HISTORY

The Odco System grew out of a business of supplying contractors developed by Peter Bosa (and later Brian Groves) who ran a business called Troubleshooters Available (**TSA**) operating in the Victorian building industry from the mid 1970's.

That business, which operated through a company called Odco Pty Ltd (**Odco**) supplied contract carpenters, labourers, plumbers and other building tradespersons to the commercial building industry in Melbourne. It was a core aim of TSA that the workers they supplied would always be self-employed contractors and not employees of either TSA or TSA's client builders.

Bosa and Groves felt that this achieved, for both the contractors themselves and the builder clients, much greater levels of flexibility, productivity, and efficiency for the builder clients and higher income for the contractors. They

set up contracts to enshrine these arrangements and ensured that all involved in the arrangements well understood (and reiterated at all times) that the workers supplied were contractors and not employees.

As a direct result of these contractual arrangements, TSA grew very quickly during the 1980's. That growth, and the fact that TSA was working on commercial building sites in Melbourne, avowing themselves to be contractors, did not endear them to the building unions. Those unions commenced trenchant opposition to the presence of TSA contractors on building sites, and made it very clear to TSA's builder clients that industrial consequences would ensue unless contractors supplied by TSA were removed from the particular site concerned.

Eventually that opposition and the activities of the building unions, which was causing substantial loss to TSA, was challenged by TSA in a Federal Court action against the building unions. The primary union was then called the Building Workers Industrial Union of Australia (now the CFMEU). That action alleged that the unions had breached Section 45D of the *Trade Practices Act 1974(Cth)*, in that their actions in requiring builders to remove contractors supplied by TSA from building sites were secondary boycotts in breach of that section of the Act.

The core decision which the Federal Court had to make in that action was whether, at common law, the workers supplied by TSA were contractors or employees of either TSA or the builder clients.

Mr Justice Woodward delivered the trial judgment in that case of *Odco Pty Ltd v BWIU & Ors* on 24 August 1989 (**the Odco Decision**). He determined that the workers supplied by TSA were contractors and not employees of anyone. That trial judgment is unreported but copies are freely available and a reading of the first 127 pages of that judgment (which deal with the

contractor/employee question) is recommended. Woodward J., in those pages, describes the system of supplying contractors used by TSA in great detail and provides the best analysis of those contractual arrangements and how they result in the workers being contractors and not employees.

The BWIU appealed the trial judgment but the Full Court of the Federal Court (Wilcox, Burchett & Ryan JJ.) unanimously dismissed the appeal. The appeal decision *BWIU and Ors -v- Odco Pty Ltd* is reported at (1991) 99 ALR 735 and (1991) 29 FCR 104.

The BWIU then sought special leave to appeal to the High Court. Special leave was unanimously refused.

Following those successes, Bosa and Groves saw an opportunity to spread their unique method of supplying contractors to industry (which had now received the endorsement of the High Court) to industries outside the building industry and around Australia. Odco sold the rights to the Odco System to Odco Contracting Systems Australia Pty Ltd (**OCSA**), a company set up specifically to license the Odco System. Bosa (since Groves passed away in 1996) has been the majority shareholder of OCSA which commenced to license the Odco System in 1994.

OCSA now licenses the Odco System to licensed agencies in all States and Territories of Australia. Licensees operate in all major capital cities in Australia and in many regional centres. Contractors currently working through the Odco System include farm hands, doctors, secretaries, personal assistants, managers, process workers, child care workers, shearers, fishermen, metal trade workers, transport drivers, public servants, telemarketers, printers, security guards, sales people, cleaners, building workers and many others. There are approximately 50 OCSA licensees using

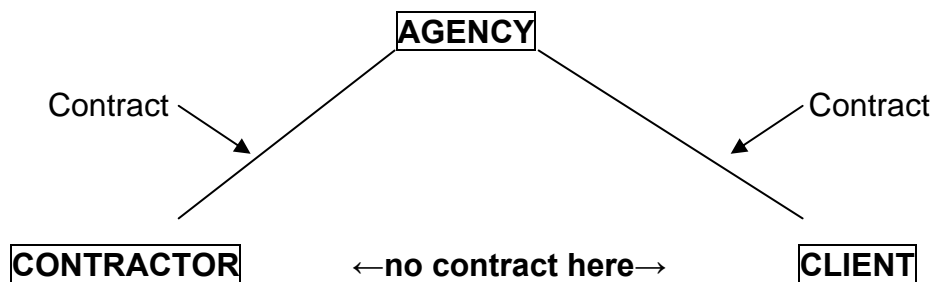
the Odco System around Australia. The contractors working through those licensees, on any one day, are well into the thousands.

PRINCIPLES OF THE ODCO DECISION

The Odco System is based squarely on the contractual arrangements, documents and principles adjudicated upon in the Odco Decision.

The foundation of the Odco System is that it creates contractual relationships whereby the worker is a contractor and not an employee of either the licensed agency or the licensed agency's client. There are only two contracts; that between the contractor and the agency and that between the agency and the client. Neither of those contracts are contracts of employment. Those two contracts provide all of the essential terms of the whole arrangement. There is no contract whatsoever between the contractor and the client.

So, the arrangement looks like this:



It is this part of the Odco System which is unique. The Odco Decision found that even though the contractors were directed in their work on a day-to-day basis by the client, this did not create a contract between the client and the contractor as that control occurred by virtue of the other two contracts which were already in existence.

In fact, the Odco System makes it clear to clients that the contractors are “yours to direct”. Accordingly, the usual argument that direction or control by the client creates a contract of employment between the client and the contractor is removed, because that control occurs by way of the already existing arrangement. Any other instances of direct contact between the client and the contractor, which are inevitable on a day-to-day basis, are also accepted by the Odco Decision as being part of the original two contracts.

The converse applies for the contract between the agency and the contractor. While there is a contract between them, it is not a contract of employment because the agency does not control the contractor and has no right to do so. These fundamental principles of the Odco System remain the same whether the industry is the Victorian building industry or, for example, the Queensland shearing industry. Since the principles remain the same, the Odco System can, and does, work in all sorts of different industries throughout Australia.

ROLE OF OCSA

OCSA explains to all licensees at the commencement of their licence in an induction training session, that it is absolutely essential that they adhere strictly to the contractual principles of the Odco System. The licensees know that the Odco System is marketed to clients on the basis that no employment relationships are involved. OCSA is very aware that departures from the Odco System by licensees may result in employment relationships being created which would then undermine the foundation of the system as described above.

If that occurs, the legal integrity of the Odco System and therefore its value to licensees and marketability by licensees to their clients is called into question. Therefore, OCSA is constantly vigilant and continually reminds its licensees by regular bulletins, seminars, conferences and training to be constantly

looking for any breaches or potential breaches of the principles of the Odco System.

The continual reminders and education about the importance of maintaining the legal integrity of the Odco System are also reinforced by those requirements being contractual obligations of the licensees to OCSA. In particular, the Licence Agreement provides for audits by OCSA of each licensee's use of the system. Such audits are carried out regularly by a director of OCSA.

The sole purpose of the audits is to ensure that the licensees are properly following the procedures set down by OCSA in the use of the Odco System and that the legal integrity of the system is not being compromised in any way. Clients, or potential clients, of licensees are welcome to ask OCSA for the results of audits of a particular licensee at any time.

In this way OCSA ensures that each licensee is operating the Odco System at all times in accordance with the Odco Decision and that the contractual principles of the Odco Decision are being strictly adhered to, so that clients of that licensee can at all times trust that the workers being supplied are contractors.

SUBSEQUENT CASES ENDORSING ODCO CONTRACTING®

From the commencement of licensing of the system in 1994 and therefore its operation in wide spread industries throughout Australia until 2006, there were 4 decided cases where the Odco System was closely examined by a Full Bench of the Australian Industrial Relations Commission, a Full Bench of the Queensland Industrial Relations Commission and 2 different single Commissioners of the New South Wales Industrial Relations Commission. Each of those cases involved widely differing industries and circumstances and **all determined that the contractors supplied by a licensed agency**

using the Odco System (Odco Contractors) were contractors and not employees.

The 4 cases are:

1. ***Kangan Batman TAFE v Fox***; an unreported decision of the Full Bench of the Australian Industrial Relations Commission dated 25 October 1999.

This was a case involving a lecturer supplied to a technical and further education (TAFE) College who made an unfair dismissal claim pursuant to Section 170CE of the *Workplace Relations Act 1996*. She worked as a lecturer for the TAFE College, supplied by an OCSA licensee pursuant to the Odco System, for the whole of an academic year and carried out virtually identical duties to other lecturers who were clearly employed by the TAFE College. Towards the end of the academic year, she was informed by the OCSA licensee that she was no longer required and brought her unfair dismissal claim.

The case reinforces the principles of the Odco Decision discussed above. In particular, the Full Bench found that there were only two contracts in existence as there was no intention to create legal relations between the TAFE lecturer and the TAFE College because both understood that everything they did was already governed by the existing two separate contracts between each of them and the agency. Much direct contact between the TAFE lecturer and her direct supervisor at the TAFE College in which many “employment like” conditions were discussed, was seen in that light. Her claim was dismissed because she was not an employee.

2. ***AWU Queensland v Hammonds Pty Ltd & Ors***; an unreported decision of the Full Bench of the Queensland Industrial Relations Commission dated 15 November 2000.

This case involved the Queensland shearing industry, where an OCSA licensee supplied shearing teams to graziers in central Queensland pursuant to the Odco System. A then newly introduced section of the

Queensland Industrial Relations Act allowed a Union to make application to the Queensland Commission that a certain class of workers should be “declared” to be employees. The first such application was brought by the AWU Queensland against the licensee. The first question for the Commission to determine was whether the Odco Contractors were already employees at common law.

It was unanimously determined that they were **not** employees. Again, many of their working conditions could be said to be similar to that of employee shearers in the industry. It was the existence of the contractual arrangements created by the Odco System and the clear intention of all parties which was the basis of that finding.

Further, the Commission refused the AWU's application to "declare" the Odco Contractors to be employees. It found the Odco Contractors had freely chosen to be contractors and wished to remain working as contractors.

3. ***Sheehan v Australian Contracting Solutions*** IRC 1782 of 2000, another unfair dismissal case (this time in the New South Wales State Commission) brought by a meat worker working in an abattoir in Griffith, New South Wales. That Odco Contractor had previously been an employee of the abattoir prior to entering into a contract arrangement by way of the Odco System.

After a couple of years of working in that manner, the Odco Contractor was advised by the licensed agency that his services were no longer required by the abattoir. The Commission found that all parties, and in particular the Odco Contractor, understood when entering into the contractual arrangements pursuant to the Odco System, that those contracts created a whole new arrangement where the Odco Contractor was no longer an employee and became a contractor.

4. ***AMIEU v Australian Independent Contractors Agency & Anor*** [2004] NSWIRComm 238; known as the “*Sunnybrand Chickens Case*”, another decision of the NSW State IR Commission.

This was an application by the Newcastle branch of the Meatworker’s Union (the **Union**) alleging award breaches by Sunnybrand Chickens (**SBC**), a client of AICA, which was and is a licensee of OCSA. AICA was supplying contractors by use of the Odco System, to SBC as chicken boners. The Union alleged that the contractors were employees and, as a result, were entitled to sick leave, holiday pay, etc. pursuant to the applicable Award. The Commissioner determined that the contractors were not employees. He said (at page 21):

“The issue descends to... Does the Odco model fit in the poultry industry. That the Odco form of contracting is a legitimate means of engaging labour is not challenged. [The Union] seeks to make distinction between the building industry and the activities of chicken boning which analysis is not sustained.

It is safe to conclude that persons properly engaged in the Odco system... do not become employees... On the evidence before me I conclude that [the workers] are bona fide independent contractors. They clearly intend to be, conduct themselves in that manner, and are treated as independent contractors by both AICA and SBC.”

The Sunnybrand Chickens Case is the latest case dealing with the Odco System in Australia. As can be seen from the Commissioner’s comments it is a ringing endorsement of the Odco System, in an industry as far removed from the building industry as could be imagined.

OTHER CASES ABOUT ODCO CONTRACTING®

Country Metropolitan Agency Contracting Services Pty Ltd v Slater: a decision of the Full Bench of the South Australian Workers Compensation Tribunal dated 30 May 2003 reported at (2003) SAWCT 57.

This was a case involving a tomato picker supplied to a national primary production company in South Australia. She was injured while working and lodged a Workers Compensation Claim.

On the particular facts of the case, the Odco Contractor was found to be an employee by a dedicated Workers Compensation Tribunal which leaned towards finding the worker to be an employee so that compensation could be awarded.

Unfortunately, the particular worker was paid at a rate only marginally above what was the minimum wage. That fact and the “lowly” nature of the work carried on did not appeal to the Workers Compensation Judge at first instance, who was able to distinguish the Odco Decision itself and the first 3 cases set out above.

The Full Bench of the Workers Compensation Tribunal then determined that:

“The factual findings... and [the trial Judges] ultimate decision were clearly open to him on the evidence before him... Therefore... it is not for us to substitute what our view may have been nor to interfere with that decision even if at first instance we may have formed a different view.”

Since the avenue of appeal to the Supreme Court of South Australia has been removed by the South Australian legislature, OCSA was unable to appeal that decision.

This was definitely a case which “turned on its own facts”. It simply serves to reinforce the vigilance which OCSA continues to adopt with its licensees in respect of the operation of the Odco System. The case has no ramifications for the proper use of the Odco System.

Later in 2003, the Full Court of the Federal Court of Australia handed down a decision in the case of *Damevski v Endoxos Pty Ltd* on 14 November 2003 reported at [2003] FCAFC 252.

This was a case involving an attempted “conversion” of a cleaning company’s workforce of cleaners from employees to contractors. The OCSA licensee who attempted that “conversion” applied the principles of the Odco System poorly.

The cleaner made an unfair dismissal claim and the Full Court found him to be an employee. The Court said that only “lip service” was paid to the principles of the Odco System, without putting all of its substantive arrangements in place.

Again, this was a case which turned on its own particular facts and was a particularly poor application of the principles of the Odco System by the parties involved. In the Sunnybrand Chickens Case discussed above, the *Damevski* decision was raised. The Commissioner said that:

“The circumstances of chicken boners contracted to SBC through AICA are distinguishable from *Damevski*,” ... because that case was a poor application of the principles of the Odco System.

This case serves again to impress upon all involved in the Odco System that they must be eternally vigilant as to their application of the principles. OCSA has never professed that the Odco System is fool proof. If it was, and was

only a matter of signing a couple of documents, anyone could do it. 50 licensees supplying thousands of contractors to a range of industries over the last 10 years has shown that if the principles are properly applied, which OCSA and its licensees continue to strive to maintain, no employment relationships will be created.

AWARD COVERAGE

All Federal Awards in Australia are based on the power of the Federal Government to make laws in respect of employment contained in the Constitution. Therefore, Awards can only apply to workers who are employees.

State Awards, where they exist, follow the same formula and are expressed to apply only to employees.

Accordingly, any worker who **is not working pursuant to a contract of employment** is **not** governed by Award conditions.

However, OCSA ensures that all of its licensees adhere strictly to a principle that Odco Contractors receive remuneration which is **greater than** the total benefits received by an employee working in similar circumstances.

The reasons for this are:

1. The Odco Decision makes it clear that the true intention of the parties is the crucial element. If a worker, working through the Odco System, is worse off financially than an employee working in similar circumstances, it raises a question that such a worker may not have the true intention to be a contractor. No such possibility exists with OCSA Contractors because of the above principle practiced by all OCSA licensees.
-

2. There exists in the *Workplace Relations Act 1996* and in some States, unfair contracts legislation which allows the AIRC or the State Commission to examine the benefits received by contractors and make comparison with employees doing similar work to ensure that those contractors are receiving benefits at least equal to those of an employee.
3. OCSA and its licensees make it very clear to clients that the Odco System is not a cheap labour system. Its significant advantages are in the flexibility, productivity, efficiency and ease of use of the system to clients and contractors.

EXEMPTIONS FROM LOG OF CLAIMS AND THE INDUSTRIAL RELATIONS SYSTEM

As further confirmation that Awards do not apply to Odco Contractors, there have been 3 occasions since 1994 when one or more OCSA licensees has been served with a Log of Claims by a Union.

On each occasion, submissions to that Union that the licensees do not have any employees, because the Odco Decision means that the workers they supply are contractors and not employees, have been successful. The Log of Claims has been dropped by the Union as against the particular licensee on each occasion.

Further confirmation that the Unions accept that the Odco System supplies contractors, not employees was the very large Log of Claims served on all labour hire agencies in Australia by the AMWU in late 2000, No. 24167 of 2000. **OCSA licensees are the only substantial group of “labour hire” agencies in Australia who were not made subject to that Log of Claims by the AMWU.**

UNFAIR DISMISSAL

The unfair dismissal provisions of the *Workplace Relations Act 1996* and similar legislation in some States, require as a precondition to the particular Industrial Relations Commission having jurisdiction over such a claim, that the applicant be an employee of the respondent.

Since Odco Contractors are not employees of anyone, unfair dismissal provisions cannot apply to them. This position has been specifically confirmed in both the Federal and New South Wales State jurisdictions by the 2 cases discussed above which were unfair dismissal cases, *Kangan Batman Tafe v Fox* and *Sheehan v Australian Contracting Solutions*. The third unfair dismissal case above of *Damevski v Endoxos* involved the unusual situation of a poorly attempted “conversion” which does not have the wide application of the other two cases.

WorkChoices

Most will be aware of the amendments to the *Workplace Relations Act 1996* brought about by the “WorkChoices” legislation which came into operation in March 2006. There were substantial amendments to the unfair dismissal provisions but, as discussed above, those provisions do not apply to contractors through the Odco System. Therefore, the WorkChoices changes to unfair dismissal do not apply. Odco Contractors remain exempt.

In fact, since WorkChoices only applies to employees, it does not affect Odco Contractors at all. This is another substantial advantage of the Odco System. Clients do not have to understand the enormous complexities of WorkChoices. The standard common law of contract applies, with which all businesses are familiar.

CONCLUSION

The client users of the Odco System provided by OCSA licensed agencies can rest assured that, apart from the most flexible, productive and efficient system of engaging workers in Australia, they will also benefit from the following legal advantages:

1. The workers supplied, regardless of the industry in which they are working, are contractors and not employees of anyone.
2. The contractors are not subject to Awards, unfair dismissal or the industrial relations system in general. Clients **do**, of course, need to comply with relevant OH&S legislation and ensure they provide a safe workplace for all workers on their worksites, whether employees or contractors. Licensees will work with their clients to meet these obligations in respect to proper safety awareness and induction processes.
3. Apart from the invoice paid to the licensed agency, clients can be totally comfortable that they have no liability for any other on-costs or exposure to any other liability such as superannuation or workers compensation.

QUERIES

OCSA is happy to provide answers to any queries, copies of the Odco Decision, or any other information. Go to odco.com.au.

Steven Harris
HARRIS LEGAL

INFORMATION FOR ACCOUNTANTS

Tax issues for independent contractors working through licensed Odco® agencies:

This is intended to be a summary of general information related to the tax situation for Odco® contractors, following the July 2000 reforms to the tax system. ***It does not constitute legal or taxation advice and must not be construed as such.***

What are Odco® contractors?

Odco® contractors are independent self-employed contractors who provide their services through licensed Odco® agencies, under arrangements where

- No common law employment exists
- The contractor provides his/her services on a daily basis, on a contract with the Odco® agency.
- The agency arranges for the contractor to provide his/her services to a client business of the agency.
- There is *no contract* of any sort between the contractor and the end-user business.

Odco® contractors and PAYG

- Previously Odco® contractors were taxed under the PPS taxation system. With the reforms of July 2000, all workers are taxed under PAYG, regardless of their common law status. However, Odco® contracting is aptly described in the Labour Hire provisions of the PAYG system, refer Guide to PAYG for Business, p32.
- The Odco® agency has a clear statutory responsibility to withhold and remit PAYG on behalf of individual contractors, and supplies all contractors with a remittance advice detailing that withholding.

Rate of Tax Withheld

- Contractors may elect to be taxed using the prescribed tax tables.
 - Odco® contractors may elect to have tax withheld at a flat rate of 20%, as all licensed Odco® agencies are party to a Class Variation. Verification of this Class Variation can be supplied if required.
 - Contractors may also elect to have a higher rate deducted, but must complete an Upwards Variation Withholding Declaration and lodge that with the agency.
 - The option of either the tax tables or flat tax enables the contractor to assess their personal tax situation, in conjunction with their tax or financial advisor, and choose the method that best suits their affairs.
 - Contractors trading as an entity – see section below.
-

Alienation of Personal Services Income – or the ‘80%’ Rule

- Contractors providing their services through an agency may be affected by the alienation of personal services income measure.
- Does not apply to individual contractors or sole traders.
- Only applies to contractors supplying their services through structured entities.
- The ‘results test’ is a trigger for other tests to determine the tax nature of the entity’s business.
- Does not affect the obligation of the agency to withhold PAYG tax where it applies.

Odco® Contractors and ABN

Any Odco® contractor, whether an individual operating under their own name or a registered business name (sole trader), or an entity may apply for and obtain an ABN. However different tax rules do apply.

- An individual or sole trader, whether with an ABN or not, must have PAYG tax withheld.
- An entity with an ABN will not have PAYG tax withheld, and does not need to complete a TFN declaration. That entity is responsible for its taxation affairs.
- An entity without an ABN must have 48.5% PAYG tax deducted.

Odco® Contractors and GST

- If the contractor is an individual or a sole trader with a registered business name, GST cannot be charged to the agency. Withholding tax applies. The contractor may be registered for GST and may include GST in the charge rate for other business arrangements.
- If the contractor supplies his/her services through an entity and that entity has an ABN and is registered for GST, then GST should be included in the contractor rate agreed to between the contractor and the agency. PAYG tax is not withheld under these circumstances. The entity is responsible for reporting to the ATO for its PAYG instalments and GST.

Superannuation

- Odco® arrangements are not covered by the SGAA.
 - To ensure no economic disadvantage, a component for superannuation is included in the contractor rate.
 - Contractors are encouraged to make their own personal contributions to a superannuation scheme of their choice.
 - Those personal contributions may be tax deductible expenses for the contractor, and subject to statutory limits.
 - Contractors may make arrangements with the agency to assist in the administration of their personal superannuation deductions.
-

The Client rate and GST

The agency must include GST in its charge rate to the end-user client business. It is a Taxable Supply. The client will claim the GST as an input tax, as with any other taxable supply, when it completes its BAS statements.

Final outcome

- ✓ ACS offers a proven, legal engagement system
 - ✓ It allows our clients and contractors the freedom they require
 - ✓ Certainty of costs and profits, relating to engagement of staff, is restored
 - ✓ We offer your business a unique win-win partnership.
 - ✓ Contractors recognised as contractors regardless of routine or period of engagement
 - ✓ Single invoice regardless of the number of contractors engaged
 - ✓ Ability to provide ACS contract labour invoices by cost centre or site
 - ✓ Awards or Minimum Conditions of Employment do not apply
 - ✓ No accumulation of entitlements
 - ✓ No industrial agreement registration issues
 - ✓ Australia wide
 - ✓ Contractors are recognised by the ATO
 - ✓ Not affected by the Personal Services Income 80/20 Rule
 - ✓ Over 30,000 contractors nationwide
 - ✓ No Workers' Compensation premium increases
 - ✓ No superannuation administration
 - ✓ No payroll administration
 - ✓ No group certificates
 - ✓ Allows you to focus on your business rather than your labour
 - ✓ No redundancies in the case of industry downturns
 - ✓ Our system is proven and tested to the high court of Australia
 - ✓ Strengthened by a federal act
-

Closing: A Cost Comparison

Australian Contracting Solutions offers your business a proven contract management system with which you can compete and succeed.

We can help increase your productivity; save you time, money and effort in developing a totally flexible workforce.

Agency Contracting hops from the employment arena and negates the new 'Work Choices' headaches.

Agency Contracting can be fully understood if you compare your current situation and cost to the alternative offered.

Thanks for taking the time to read the above information.

A presentation on our service will answer your queries, and learning more about your business will enable us to offer a detailed comparison.

CONTACTS

NEW SOUTH WALES / QUEENSLAND / VICTORIA / TASMANIA

Primary Contracting Services Pty Ltd
Leeton Operations Centre
PH: 1300 720 784
Contact: John Nardi
Email: jnardi@auscontracting.com.au

SOUTH AUSTRALIA

Trenwith and Associates Pty Ltd
2a Newham Road
SPRINGFIELD SA 5062
PH: 08 8379 1140
FAX: 08 8379 1142
Contact: Paul Trenwith
Email: auscontracting@bigpond.com

WESTERN AUSTRALIA

Contracting Solutions Pty Ltd
90 Goodwood Parade
BURSWOOD WA 6100
PH: 1300 857 722
FAX: 1300 857 733
Contact: Ray Crake
Email: rcrake@auscon.com.au
