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To **Members of the Tasmanian Legislative Council**
(By email)

Re **Retrospective Payroll Tax Tasmania.**
Request for deferral of the Pay-Roll Tax Amendment Bill 2003

Date **30 November 2003**

Independent Contractors of Australia (ICA) is a national association of independent contractors dedicated to protecting the rights of independent contractors. Independent contractors are small-business people.

Late last week, ICA was contacted by a number of worried independent contractors concerned that legislation being rushed through the Tasmanian Parliament will significantly disadvantage independent contractors who use the services of labour hire companies either as workers or as users.

ICA has been briefed on the situation and, in response to representations from Tasmanian independent contractors, asks members of the Tasmanian Legislative Council if they would defer consideration of the Bill pending community consultation.

Based on information received, it would appear that the Bill will seriously affect the rights of small businesses in Tasmania, including those of independent contractors, to have access to normal payroll tax threshold entitlements if they choose to work through any form of labour hire. This would particularly impact on information technology workers, home-based workers and many others.

It would appear that the issue of independent contractors and small business entitlement to tax relief if they are under the threshold has not been adequately considered. The haste with which the Bill is being pushed raises concern. More time is needed for community consultation.

ICA has been advised that the following summarises the situation:

1. In 2000, all States' payroll tax bases were threatened by a Victorian Supreme Court ruling achieved by the giant multi-national labour hire company Drake. The ruling declared that the workers supplied by Drake to their clients were not employees of Drake and that, consequently, Drake did not have a liability for payroll tax.

2. As a result of Drake, all States had to amend their payroll tax legislation to embrace labour hire companies. Most States, and in particular NSW and Victoria, structured their legislation to ensure that if a labour hire company supplied a small business, payroll tax was not required until the small business exceeded their normal exemption threshold. Tasmania likewise structured its legislation to achieve this small business-positive result.
3. The Tasmanian 2000 legislation says that liability for payroll tax “...*does not apply to an amount that would be exempt from payroll tax if the contract worker were paid by the client as an employee...*” The Second reading speech from 2000 said “*It is therefore imperative ... to ensure equity in the treatment of wages for payroll tax purposes, irrespective of the way in which workers are engaged.*” The notes on clauses for the 2000 Bill stated “...*any amount that would not have been liable for payroll tax if the client of the employment agent had directly engaged the worker, is not liable for payroll tax.*”
4. From 2000 until early 2003, the Tasmanian Government accepted payroll tax returns on the basis that small businesses using labour hire were exempt from tax if they were below the threshold. In early 2003, the Tasmanian Government seemed to change its position, without explanation, claiming that the small business exemption does not and never did apply.
5. In mid-2003, it is understood that the Tasmanian Solicitor-General advised the government that their new interpretation of the legislation was wrong and that, under the Act, small businesses using labour hire did have threshold entitlement.
6. In seeking to justify removing the small business tax relief, the Government in its second reading speech (November 2003) stated “*An exception is provided where employment agency workers are on-hired to clients that qualify for an exemption from payroll tax*” but “...*legal advice has indicated that some doubt exists as to the interpretation of the current exemption arrangements...*” and “...*this amendment represents nothing more than a clarification of the original intent behind the Payroll Tax Acts employment agency provisions.*”

Given that these broad facts are accurate, it would appear that there is some confusion admitted by the government that the wording of the legislation did not accord with the intent. It is puzzling that it has taken 3 years (2000 to 2003) for the government to respond to this legislative ‘error’. Further, it is a puzzle as to why there is a sudden move to close off payroll tax threshold entitlement to Tasmanian small business so quickly and just before Christmas.

Deferment of the Bill, pending clarification by the government of their intent in regard to Tasmanian small business payroll tax exemptions, would seem to make common sense. Discussions with the Tasmanian small business community would seem advisable.

With thanks for your consideration.

The Committee of
Independent Contractors of Australia