



Am I an Independent Contractor?

The Australian Government's independent contractors legislation aims to protect the status of independent contractors in the workplace.

The *Independent Contractors Act 2006* recognises the role independent contractors play in Australian workplaces.

The laws ensure that genuine independent contractors are not treated as employees. The laws also protect genuine employees from being treated as independent contractors.

Most independent contractors run their own business, control their own working times and decide how and where they undertake work. Many independent contractors also advertise their business, provide their own tools and equipment and may pay others to carry out work on their behalf.

In contrast, employees are typically subject to controls on how, where and when their work is performed. They are paid regularly and cannot pay someone else to do their work for them.

HOW DO I KNOW IF I AM AN INDEPENDENT CONTRACTOR?

The courts have adopted a multi-factor test to determine whether a person is an employee or independent contractor. No single issue will be determinative. However, courts will place greater weight on some matters, in particular, on the right to control the manner in which the work is performed.

In applying the test, a court will look at the whole relationship and make a decision on balance. Any written agreement stating the nature of a relationship as either employment or contractual is relevant but not conclusive.

Building industry participants should use the common law test to assist in a self-assessment of their status. **A table summarising the common law test is provided on this fact sheet.** If in doubt, it is strongly recommended you seek independent legal advice.

In the instance of a dispute, it is the court that will ultimately decide whether the relationship is that of an independent contractor or an employee.

WHAT IF I AM AN INDEPENDENT CONTRACTOR UNDER TAXATION OR SUPERANNUATION LAWS?

An individual may be called a 'contractor' according to other federal and state laws. This does not automatically make them an independent contractor for the purpose of the independent contractors legislation.

For example, even if an individual is classed as a 'contractor' for taxation purposes, this will not necessarily mean that they are an independent contractor under independent contractors legislation. Being a contractor for tax purposes may be a relevant consideration but does not determine an individual's status for independent contractors legislation purposes.

Some state laws also treat contractors as employees, in particular workers' compensation laws.

WHAT IF I HAVE AN AUSTRALIAN BUSINESS NUMBER (ABN)?

Having or obtaining an ABN does not automatically mean that a person will be classed as an independent contractor for the purposes of the independent contractors legislation.

FURTHER INFORMATION

The Office of the Australian Building and Construction Commissioner

- Hotline: 1800 003 338
- Website: www.abcc.gov.au

Department of Education, Employment and Workplace Relations

- Independent Contractors Hotline: 1300 667 850
- Website: www.workplace.gov.au

Summary of Common Law Test *		
Factor	Indicative of Employment	Indicative of Independent Contracting
Do I have control over the way I perform a task?	No	Yes
Do I supply/maintain my tools or equipment?	No	Yes
Do I work standard hours?	Yes	No
Am I paid according to task completion, rather than receiving wages based on time worked?	No	Yes
Do I incur any loss or receive any profit from the job?	No	Yes
Do I accept responsibility for any defective or remedial work which was my doing?	No	Yes
Am I free to work for others at the same time?	No	Yes
Do I accept that work lasts for the term of each particular task or contract?	No	Yes
Do I have the right to employ or subcontract any aspect of my work to another person?	No	Yes
Do I have the right to employ an apprentice or trainee in the execution of contracts?	No	Yes
Do I understand the arrangement between us as a contract for services?	No	Yes
Is tax deducted by the hirer from my pay?	Yes	No
Do I provide my own public liability and sickness and accident insurance cover?	No	Yes
Do I receive paid holidays or sick leave?	Yes	No
Do I render tax invoices for payment?	No	Yes
Do I file GST returns?	No	Yes

*The outcome of this test is not determined by adding the number of factors and no one factor will be conclusive. If in doubt, it is strongly recommended that you seek independent legal advice.

Please note: The Australian Government has proposed changes to the building industry legislation. The contents of this fact sheet will apply until the BCII Act is amended.



Need language help?

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