

A Generic Model of Regulating Supply Chain Outsourcing

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Introduction

In Australia and other common law countries, judicial, statutory and contractual definitions of employment have traditionally defined the purview of labour laws. This focus on the employment relationship has been ingrained in labour law to the extent that a branch of law (employment law) and a field of work relations (employment relations) have been founded on the concept of direct employment. Moreover, industrial legislation and industrial instruments have been substantially confined to matters pertaining to employers and employees. Consequently, a crucial task of judicial decision-making in labour law proceedings has been to determine whether a worker is an employee whose engagement is governed by social and industrial regulation as distinguished from an independent contractor engaged under commercial contractual principles.¹

This chapter is about a set of interrelated labour law initiatives called “supply chain regulation”. This set of initiatives signals the progressive obsolescence of *direct* employment as a focal point of labour market regulation by labour laws. The promotion of supply chain regulation follows significant expansion in the contingent, grey areas² of work in the Australian labour market that have rendered the legal status of employment an increasingly impotent regulatory category. Supply chain regulation originated in Australia as a response to the exploitation of outworkers in the NSW textile, clothing and footwear (TCF) industry. Consequently it has been (inaccurately) typecast as a regulatory model specific to that industry. Supply chain regulation has also been (inaccurately) portrayed as a mechanism limited to the recovery of wages.

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1 Johnstone R and Mitchell R, “Regulating Work” in Parker C, Scott C, Lacey N and Braithwaite J (eds), *Regulating Law* (Oxford University Press, Oxford, 2004), p 109.

2 O’Donnell A, “‘Non-Standard’ Workers in Australia: Counts and Controversies” (2004) 17 *Australian Journal of Labour Law* 89 at 115.

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