

An Exploration of Control in the Context of Vertical Disintegration

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Introduction

It is well established that the concept of control is a key indicator in ascertaining the presence of an employer/employee relationship.¹ It is the contention of this chapter that control operates in working relationships that fall outside the employer/employee type. However, one of the failures of labour law is said to be the fact that it has been unable to extend its reach to these relationships.² Over the past two decades or more, businesses have increasingly resorted to casting off non-core aspects of their business or “contracting in” a service or function that they are unwilling to build into the core. This process, commonly described as vertical disintegration, has resulted in an increasing diversity of arrangements in which businesses deal with outsourced companies and form part of supply chains and franchises. In this process, many workers who would previously have been regarded as employees of the core business become disassociated from it and associated in alternative ways, through what are regarded as independent contracts or independent businesses. This has two important related consequences: first, from the worker’s point of view it means that many of them are no longer covered by the protective reach of employment laws which usually apply to contracts of employment strictly so called; secondly, the core business is able to abdicate its responsibilities for which they arguably *should* be legally and ethically responsible in relation to the security and welfare of that group.

The purpose of this chapter is to undertake an examination of the idea and operation of control in relation to a set of arrangements that commonly occur in the context of disintegrated businesses. If the presence of control is to continue as an important test for ascribing responsibility in work relations between parties, then it is important to understand the

1 *Hollis v Vabu Pty Ltd* (2001) 181 ALR 263.

2 See Stewart A “Redefining Employment? Meeting the Challenge of Contract and Agency Labour” (2002) 15 *Australian Journal of Labour Law* 235, and Stewart A “‘Atypical’ Employment and the Failure of Labour Law” (1992) 18 *Australian Bulletin of Labour* 217.

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