

# AUSTRALIAN BUSINESS LAW REVIEW

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## ARTICLES

**Employees, Contractors and Hybrid Workers: Rethinking Legal Categories in the Sharing Economy’s Platform-User-Provider Model** – *Juan Diaz-Granados and Benedict Sheehy*

A major issue in the sharing economy is the legal category of parties providing services through platform technologies. The categorisation of these service providers as employees, independent contractors or hybrid workers has become increasingly contested and legally complex. Taking doctrinal and comparative lenses, the article analyses the different approaches that legislatures, courts and legal scholars have taken vis-à-vis this categorisation in the jurisdictions of Australia, the United States, the United Kingdom and Canada. Using the Platform-User-Provider analytical framework, it evaluates whether and how distinct categories of workers fit within platform-based businesses, and ultimately finds that existing employment tests and worker categorisations are ill-suited to the complex legal relationships that comprise this new model. As a result, courts must look to other legal categories and even to other jurisdictions to solve the normative questions that the orthodox distinction between employees and independent contractors fails to answer. .... 240

**Determining Whether an Employment or Independent Contractor Relationship Exists and the Relevance of Contractual Performance to Its Interpretation** – *Anthony Gray*

A recent High Court decision considered important questions regarding principles of contractual interpretation when actual performance differs from the form of the contract, and how a court should determine the true nature of a working relationship. On the former, a majority of the Court took a formalist view of contract interpretation; on the latter, a majority signalled a return to a kind of organisation test that earlier decisions had discarded. On the former, this position isolates Australian law from that pertaining in jurisdictions elsewhere. It is submitted the position of the second joint reasons is preferred, taking into account actual performance in interpreting the contract. It also defends the multi-factorial approach traditionally taken to questions regarding the true nature of a working relationship. .... 270

**Stability of Private Health Insurance in Australia: Analysis and Proposal of a Legislative Framework to Boost Participation** – *Marlou Smits, Josefa Henriquez, Adrian Melia and Francesco Paolucci*

This article critiques the legal framework of private health insurance (PHI) in Australia and, in particular, the regulations aimed at stabilising the PHI industry by encouraging individuals to participate in the system. While PHI regulation originally included community rating, over time a number of other schemes were introduced, such as loadings, the Medicare

Levy Surcharge and rebates, and the more recent age-based discounts and product tiers. How well these regulations interact with each another and address participation has been brought into question. It is argued that these regulations have failed to stabilise the industry and thereby have placed the system at risk of a participation death spiral. The article recommends fundamental, systemic changes to address stabilisation of the PHI industry by better aligning incentives of both consumers and insurers through legislation. .... 291

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