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The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

Independent Contractors Bill 2006

No. , 2006

(Employment and Workplace Relations)

**A Bill for an Act relating to independent
contractors, and for related purposes**

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1 **A Bill for an Act relating to independent**
2 **contractors, and for related purposes**

3 The Parliament of Australia enacts:

4 **Part 1—Preliminary**
5

6 **1 Short title**

7 This Act may be cited as the *Independent Contractors Act 2006*.

8 **2 Commencement**

9 (1) Each provision of this Act specified in column 1 of the table
10 commences, or is taken to have commenced, in accordance with

Part 1 Preliminary

Section 3

1 column 2 of the table. Any other statement in column 2 has effect
2 according to its terms.

3

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	
2. Sections 3 to 43	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	

4 Note: This table relates only to the provisions of this Act as originally
5 passed by the Parliament and assented to. It will not be expanded to
6 deal with provisions inserted in this Act after assent.

7 (2) Column 3 of the table contains additional information that is not
8 part of this Act. Information in this column may be added to or
9 edited in any published version of this Act.

10 **3 Objects of this Act**

- 11 (1) The principal objects of this Act are:
- 12 (a) to protect the freedom of independent contractors to enter
13 into services contracts; and
- 14 (b) to recognise independent contracting as a legitimate form of
15 work arrangement that is primarily commercial; and
- 16 (c) to prevent interference with the terms of genuine independent
17 contracting arrangements.
- 18 (2) The Act achieves these objects, principally, by providing for the
19 rights, entitlements, obligations and liabilities of parties to services
20 contracts to be governed by the terms of those contracts, subject to:

- 1 (a) the rules of common law and equity as applying in relation to
2 those contracts; and
3 (b) the laws of the Commonwealth as applying in relation to
4 those contracts; and
5 (c) the laws of the States and Territories as applying in relation
6 to those contracts, other (in general) than any such laws that
7 confer or impose rights, entitlements, obligations or liabilities
8 of a kind more commonly associated with employment
9 relationships.

10 **4 Definitions**

11 In this Act:

12 ***Commonwealth authority*** means:

- 13 (a) a body corporate established for a public purpose by or under
14 a law of the Commonwealth; or
15 (b) a body corporate:
16 (i) incorporated under a law of the Commonwealth or a
17 State or Territory; and
18 (ii) in which the Commonwealth has a controlling interest.

19 ***constitutional corporation*** means a corporation to which
20 paragraph 51(xx) of the Constitution applies.

21 ***Court*** means the Federal Court of Australia or the Federal
22 Magistrates Court.

23 ***exclusion provisions*** means subsections 7(1) and 10(1).

24 ***independent contractor*** is not limited to a natural person.

25 ***organisation*** has the same meaning as in the *Workplace Relations*
26 *Act 1996*.

27 ***penalty unit*** has the meaning given by section 4AA of the *Crimes*
28 *Act 1914*.

29 ***services contract*** has the meaning given by section 5.

30 ***workplace inspector*** has the same meaning as in the *Workplace*
31 *Relations Act 1996*.

Section 5

1 **5 Services contract**

2 *General meaning*

- 3 (1) A **services contract** is a contract for services:
- 4 (a) to which an independent contractor is a party; and
- 5 (b) that relates to the performance of work by the independent
- 6 contractor; and
- 7 (c) that has the requisite constitutional connection specified in
- 8 subsection (2).

9 Note: Conditions or collateral arrangements relating to a services contract

10 may be taken to be part of the services contract: see subsection (4).

11 *The requisite constitutional connection*

- 12 (2) A contract for services has the **requisite constitutional connection**
- 13 if:
- 14 (a) at least one party to the contract is:
- 15 (i) a constitutional corporation; or
- 16 (ii) the Commonwealth or a Commonwealth authority; or
- 17 (iii) a body corporate incorporated in a Territory in
- 18 Australia; or
- 19 (b) one or more of the following subparagraphs is satisfied:
- 20 (i) the work concerned is wholly or principally to be
- 21 performed in a Territory in Australia;
- 22 (ii) the contract was entered into in a Territory in Australia;
- 23 (iii) at least one party to the contract is a natural person who
- 24 is resident in, or a body corporate that has its principal
- 25 place of business in, a Territory in Australia.
- 26 (3) Without limiting its effect apart from this subsection,
- 27 subparagraph (2)(a)(i) also has the effect it would have if the
- 28 reference to a constitutional corporation were, by express
- 29 provision, confined to a constitutional corporation that has entered
- 30 into the contract for the purposes of the business of the corporation.

1

Conditions and collateral arrangements

2

- (4) A condition or collateral arrangement that relates to a services contract is taken to be part of that services contract if, were the condition or arrangement itself a contract for services, it would have the requisite constitutional connection.

3

4

5

Section 6

1

2 **Part 2—Exclusion of certain State and Territory**
3 **laws**

4

5 **6 Definitions**

6 In this Part:

7 *officer*, of a body corporate, has the same meaning as in the
8 *Corporations Act 2001*.

9 *party*, in relation to a services contract to which a body corporate is
10 a party, includes a person who is an officer of the body corporate.

11 *State or Territory industrial law* has the same meaning as in the
12 *Workplace Relations Act 1996*.

13 **7 Exclusion of certain State and Territory laws**

14 (1) Subject to subsection (2), the rights, entitlements, obligations and
15 liabilities of a party to a services contract are not affected by a law
16 of a State or Territory to the extent that the law would otherwise do
17 one or more of the following:

18 (a) take or deem a party to a services contract to be an employer
19 or employee, or otherwise treat a party to a services contract
20 as if the party were an employer or employee, for the
21 purposes of a law that relates to one or more workplace
22 relations matters (or provide a means for a party to the
23 contract to be so taken, deemed or treated);

24 (b) confer or impose rights, entitlements, obligations or liabilities
25 on a party to a services contract in relation to matters that, in
26 an employment relationship, would be workplace relations
27 matters (or provide a means for rights, entitlements,
28 obligations or liabilities in relation to such matters to be
29 conferred or imposed on a party to a services contract);

30 (c) without limiting paragraphs (a) and (b)—provide for the
31 whole or a part of a services contract:

32 (i) to be void, set aside or otherwise unenforceable; or

Section 8

- 1 (ii) to be amended or varied, or to have effect as if it were
 2 amended or varied;
 3 on an unfairness ground.

4 Note 1: For the meaning of *workplace relations matter*, see section 8.

5 Note 2: For the meaning of *unfairness ground*, see section 9.

6 Note 3: Division 1 of Part 5 provides for a transitional period during which the
 7 State and Territory laws (other than laws that provide as mentioned in
 8 paragraph (1)(c)) may continue to apply despite this subsection.

9 (2) Subsection (1) does not apply in relation to:

- 10 (a) a law of a State or Territory, to the extent that the law:
 11 (i) applies to a services contract to which an outworker is a
 12 party; and
 13 (ii) makes provision, otherwise than as mentioned in
 14 paragraph (1)(c), in relation to such a contract; or
 15 (b) any of the following laws:
 16 (i) Chapter 6 of the *Industrial Relations Act 1996* of New
 17 South Wales (and any other provision of that Act to the
 18 extent that it relates to, or has effect for the purposes of,
 19 a provision of Chapter 6);
 20 (ii) the *Owner Drivers and Forestry Contractors Act 2005*
 21 of Victoria;
 22 (iii) any instrument made under a provision of a law referred
 23 to in subparagraph (i) or (ii); or
 24 (c) a law of a State or Territory that is specified in regulations
 25 made for the purposes of this paragraph, to the extent that the
 26 law is so specified.

8 What are workplace relations matters

- 28 (1) Subject to subsection (2), *workplace relations matter* means any of
 29 the following matters:
 30 (a) remuneration, allowances or other amounts payable to
 31 employees;
 32 (b) leave entitlements of employees;
 33 (c) hours of work of employees;
 34 (d) enforcing or terminating contracts of employment;

Section 8

- 1 (e) making, enforcing or terminating agreements (not being
2 contracts of employment) determining terms and conditions
3 of employment;
- 4 (f) disputes between employees and employers, or the resolution
5 of such disputes;
- 6 (g) industrial action by employees or employers;
- 7 (h) any other matter that is substantially the same as a matter that
8 relates to employees or employers and that is dealt with by or
9 under:
- 10 (i) the *Workplace Relations Act 1996*; or
11 (ii) a State or Territory industrial law;
- 12 unless the matter is specified in regulations made for the
13 purposes of this paragraph;
- 14 (i) any other matter specified in regulations made for the
15 purposes of this paragraph.
- 16 (2) None of the following is a *workplace relations matter*:
- 17 (a) prevention of discrimination or promotion of EEO, but only
18 if the State or Territory law concerned is neither a State or
19 Territory industrial law nor contained in such a law;
- 20 (b) superannuation;
- 21 (c) workers compensation;
- 22 (d) occupational health and safety (including entry of a
23 representative of a trade union for a purpose connected with
24 occupational health and safety);
- 25 (e) child labour;
- 26 (f) the observance of a public holiday, except the rate of
27 payment of an employee for the public holiday;
- 28 (g) deductions from wages or salaries;
- 29 (h) industrial action affecting essential services;
- 30 (i) attendance for service on a jury;
- 31 (j) professional or trade regulation;
- 32 (k) consumer rights;
- 33 (l) taxation;
- 34 (m) any other matter specified in regulations made for the
35 purposes of this paragraph.

9 What is an unfairness ground

- 1
- 2 (1) Subject to subsection (2), each of the following grounds is an
- 3 ***unfairness ground*** in relation to a services contract:
- 4 (a) the contract is unfair;
- 5 (b) the contract is harsh or unconscionable;
- 6 (c) the contract is unjust;
- 7 (d) the contract is against the public interest;
- 8 (e) the contract is designed to, or does, avoid the provisions of:
- 9 (i) the *Workplace Relations Act 1996*; or
- 10 (ii) a State or Territory industrial law; or
- 11 (iii) an award, agreement or other instrument made under a
- 12 law referred to in subparagraph (i) or (ii);
- 13 (f) the contract provides for remuneration at a rate that is, or is
- 14 likely to be, less than the rate of remuneration for an
- 15 employee performing similar work;
- 16 (g) any other ground that is substantially the same as a ground
- 17 specified in any of paragraphs (a) to (f);
- 18 (h) any other ground specified in regulations made for the
- 19 purposes of this paragraph.
- 20 (2) A ground specified in subsection (1) is not an ***unfairness ground***
- 21 in relation to a services contract to the extent that the ground
- 22 relates to matters that, because of subsection 8(2), are not
- 23 workplace relations matters.

10 Regulations may specify laws that are intended to be excluded

- 24
- 25 (1) The rights, entitlements, obligations and liabilities of a party to a
- 26 services contract are not affected by a law of a State or Territory
- 27 that is specified in regulations made for the purposes of this
- 28 subsection, to the extent that the law is so specified.
- 29 (2) To avoid doubt, subsection (1) has effect even if a law specified in
- 30 regulations made under that subsection:
- 31 (a) is a law referred to in paragraph 7(2)(a) or (b); or
- 32 (b) deals with matters that, because of subsection 8(2), are not
- 33 workplace relations matters.

Section 11

1

2

Part 3—Unfair contracts

3

4

11 Application of Part

5

(1) This Part applies to a services contract, other than:

6

(a) a services contract to the extent that the contract relates to the performance of work by the independent contractor for the private and domestic purposes of another party to the contract; or

7

8

9

10

(b) without limiting paragraph (a), a services contract to which an independent contractor that is a body corporate is a party, unless the work to which the contract relates is wholly or mainly performed by:

11

12

13

14

(i) a director of the body corporate; or

15

16

(ii) a member of the family of a director of the body corporate.

17

(2) In this section:

18

director has the same meaning as in the *Corporations Act 2001*.

19

12 Court may review services contract

20

(1) An application may be made to the Court to review a services contract on either or both of the following grounds:

21

22

(a) the contract is unfair;

23

(b) the contract is harsh.

24

Note: A proceeding pending in the Federal Magistrates Court may be transferred to the Federal Court of Australia: see Part 5 of the *Federal Magistrates Act 1999*.

25

26

27

(2) An application under subsection (1) may be made only by a party to the services contract.

28

1 **13 Limitation on applications for review of services contracts—**
2 **prescribed circumstances**

3 An application to review a services contract must not be made
4 under subsection 12(1) in the circumstances prescribed by the
5 regulations.

6 **14 Limitation on applications for review of services contracts—**
7 **other proceedings in progress**

- 8 (1) An application to review a services contract must not be made
9 under subsection 12(1) if other review proceedings have been
10 commenced in relation to the services contract, unless the other
11 review proceedings:
12 (a) have been discontinued by the person who commenced them;
13 or
14 (b) have failed for want of jurisdiction.
- 15 (2) A person must not commence other review proceedings in relation
16 to a services contract if an application to review the contract has
17 been made under subsection 12(1), unless:
18 (a) the application has been discontinued by the person who
19 made it; or
20 (b) the proceedings in relation to the application have failed for
21 want of jurisdiction.
- 22 (3) In this section:

23 ***other review proceedings*** means proceedings in relation to a
24 services contract under a provision of a law of a State or Territory
25 that makes provision as mentioned in paragraph 7(1)(c) and is not
26 affected by the exclusion provisions.

27 Note: Paragraph 7(1)(c) relates to laws that provide for contracts to be void
28 etc. on an unfairness ground.

29 **15 Powers of Court**

- 30 (1) In reviewing a services contract in relation to which an application
31 has been made under subsection 12(1), the Court may have regard
32 to:
-

Section 16

- 1 (a) the relative strengths of the bargaining positions of the parties
2 to the contract and, if applicable, any persons acting on
3 behalf of the parties; and
4 (b) whether any undue influence or pressure was exerted on, or
5 any unfair tactics were used against, a party to the contract;
6 and
7 (c) whether the contract provides total remuneration that is, or is
8 likely to be, less than that of an employee performing similar
9 work; and
10 (d) any other matter that the Court thinks is relevant.
- 11 (2) If, in reviewing a services contract, the Court has regard to the
12 matter referred to in paragraph (1)(c), the Court must also consider
13 whether the terms of the contract and the total remuneration
14 provided under the contract are commensurate with the terms of,
15 and remuneration provided under, other services contracts relating
16 to the performance of similar work in the particular industry.
- 17 (3) If the Court forms the opinion that a ground referred to in
18 subsection 12(1) is established in relation to the whole or a part of
19 the services contract, the Court must record its opinion, stating
20 whether the opinion relates to the whole or a specified part of the
21 contract.
- 22 (4) The Court may form the opinion that a ground referred to in
23 subsection 12(1) is established in relation to the whole or a part of
24 the services contract even if the ground was not canvassed in the
25 application.
- 26 (5) The Court must exercise its powers under this section in a way that
27 furthers the objects of this Act as far as practicable.

28 Note: An alternative dispute resolution process (for example, mediation)
29 may be used to deal with some or all of the matters in dispute in a
30 proceeding under this Part: see Part 4 of the *Federal Magistrates Act*
31 1999 and section 53A of the *Federal Court of Australia Act 1976*.

32 **16 Orders that Court may make**

- 33 (1) If the Court records an opinion under section 15 in relation to a
34 services contract, the Court may make one or more of the
35 following orders in relation to the opinion:

Section 17

- 1 (a) an order setting aside the whole or a part of the contract;
 2 (b) an order varying the contract.
- 3 (2) An order may only be made for the purpose of placing the parties
 4 to the services contract as nearly as practicable on such a footing
 5 that the ground on which the opinion is based no longer applies.
- 6 (3) If an application under this Part is pending, the Court may make an
 7 interim order if it considers it is desirable to do so to preserve the
 8 position of a party to the services contract.
- 9 (4) An order takes effect on the date of the order or a later date
 10 specified in the order.
- 11 (5) A party to the services contract may apply to the Court to enforce
 12 an order by injunction or otherwise as the Court considers
 13 appropriate.
- 14 (6) Subject to section 14, this section does not limit any other rights of
 15 a party to the services contract.
- 16 Note 1: The rights of a party to a services contract may be affected by the
 17 exclusion provisions.
- 18 Note 2: An appeal may be brought to the Federal Court of Australia from a
 19 judgment of the Federal Magistrates Court: see section 24 of the
 20 *Federal Court of Australia Act 1976*.

17 Costs only where proceeding instituted vexatiously

- 21
- 22 (1) A party (the *first party*) to a proceeding (including an appeal) in a
 23 matter arising under this Part must not be ordered to pay costs
 24 incurred by any other party to the proceeding unless the first party
 25 instituted the proceeding vexatiously or without reasonable cause.
- 26 (2) Despite subsection (1), if a court hearing a proceeding (including
 27 an appeal) in a matter arising under this Part is satisfied that a party
 28 (the *first party*) to the proceeding has, by unreasonable act or
 29 omission, caused another party to the proceeding to incur costs in
 30 connection with the proceeding, the court may order the first party
 31 to pay some or all of those costs.
- 32 (3) In this section:

Part 3 Unfair contracts

Section 17

1 **costs** includes all legal and professional costs and disbursements,
2 and expenses of witnesses.

1
2 **Part 4—Contract outworkers in the textile, clothing**
3 **and footwear industry**

4 **Division 1—Preliminary**

5 **18 Object of Part**

6 The object of this Part is to ensure that an individual who is an
7 outworker in the textile, clothing or footwear industry (other than
8 an employee in that industry) is paid not less than:

- 9 (a) the amount he or she would have been entitled to be paid,
10 because of the Australian Fair Pay and Conditions Standard,
11 if he or she had been an employee; or
12 (b) the minimum rate of pay (if any) to which he or she is
13 entitled under a law of a State or Territory.

14 **19 Definitions**

15 In this Part:

16 *Australian Fair Pay and Conditions Standard* has the same
17 meaning as in the *Workplace Relations Act 1996*.

18 *breach* has the same meaning as in the *Workplace Relations Act*
19 *1996*.

20 *contract outworker* means an individual who:

- 21 (a) is a party to a services contract; and
22 (b) performs work under it for another party or parties to the
23 contract.

24 *eligible court* means:

- 25 (a) the Court; or
26 (b) a District, County or Local Court; or
27 (c) a magistrates court.

28 *judgment* has the same meaning as in the *Workplace Relations Act*
29 *1996*.

Section 19

- 1 **legal practitioner** has the same meaning as in the *Workplace*
2 *Relations Act 1996*.
- 3 **occupier** has the same meaning as in the *Workplace Relations Act*
4 *1996*.
- 5 **premises** has the same meaning as in the *Workplace Relations Act*
6 *1996*.
- 7 **TCF outwork** means work:
- 8 (a) that comprises packing, processing or otherwise working on
9 articles or materials for the textile, clothing or footwear
10 industry; and
- 11 (b) is performed in or about:
- 12 (i) private residential premises; or
- 13 (ii) premises that are not business or commercial premises
14 of anyone who is obliged under the contract to pay for
15 the work performed.

**Division 2—Protection of contract outworkers in the
textile, clothing and footwear industry**

20 Minimum rate of pay

(1) To the extent that work performed under and in accordance with a services contract to which a contract outworker is a party is work that:

(a) is performed by:

(i) the contract outworker; or

(ii) one or more other individuals who are not parties to the contract; and

(b) is TCF outwork;

a person who is obliged under the contract to pay for the work performed must pay the contract outworker and each other individual not less than the statutory amount calculated under subsection (3) for his or her work.

(2) The obligation imposed by subsection (1) on a person to pay not less than the statutory amount for work performed under a services contract does not apply to that person to the extent that the obligation relates to work performed under another services contract.

Example: A person (the *head contractor*) enters into a services contract with a contract outworker (the *first contract outworker*) under which the first contract outworker is to provide shirts. If the first contract outworker enters into a services contract with another individual (the *second contract outworker*) to perform the work of sewing the shirts, while the first contract outworker performs the work of packing the shirts, the statutory minimum in respect of the sewing would be owed by the first contract outworker to the second contract outworker (but not by the head contractor to either the first or second contract outworker). The statutory minimum in respect of the packing would be owed by the head contractor to the first contract outworker.

(3) The *statutory amount* owed to the contract outworker and to each other individual is the amount that he or she would have been entitled to be paid because of Division 2 of Part 7 of the *Workplace Relations Act 1996* for the work mentioned in subsection (1) if he or she had performed the work as an employee.

1

2 **Division 3—Enforcement and compliance**

3 **Subdivision A—Workplace inspectors**

4 **22 Powers of workplace inspectors**

5 *Purpose for which powers of workplace inspectors can be*
6 *exercised*

- 7 (1) The powers of a workplace inspector under this section may be
8 exercised for the purpose of ascertaining whether section 20 is
9 being, or has been, observed.

10 *Powers of workplace inspectors*

- 11 (2) The powers of a workplace inspector are:
- 12 (a) to, without force, enter:
- 13 (i) premises on which the workplace inspector has
14 reasonable cause to believe that work to which
15 section 20 applies is being, or has been, performed; or
- 16 (ii) a place of business in which the workplace inspector has
17 reasonable cause to believe that there are documents
18 relevant to the purpose set out in subsection (1); and
- 19 (b) on premises or in a place referred to in paragraph (a):
- 20 (i) to inspect any work, material, machinery, appliance,
21 article or facility; and
- 22 (ii) as prescribed, to take samples of any goods or
23 substances; and
- 24 (iii) to interview any person; and
- 25 (iv) to require a person having the custody of, or access to, a
26 document relevant to that purpose to produce the
27 document to the workplace inspector within a specified
28 period; and
- 29 (v) to inspect, and make copies of or take extracts from, a
30 document produced to the workplace inspector; and
- 31 (vi) to require a person to tell the workplace inspector who
32 has custody of a document; and

Section 22

1 (c) to require a person, by notice, to produce to the workplace
2 inspector a document relevant to the purpose set out in
3 subsection (1).

4 Note: Contravening a requirement under this section to produce a document
5 may be an offence under section 819 of the *Workplace Relations Act*
6 *1996*.

7 *When may the powers be exercised?*

8 (3) A workplace inspector may exercise the powers in subsection (2) at
9 any time during ordinary working hours or at any other time at
10 which it is necessary to do so for the purpose set out in
11 subsection (1).

12 *Production of documents*

13 (4) If a person who is required under subparagraph (2)(b)(iv) to
14 produce a document contravenes the requirement, a workplace
15 inspector may, by written notice served on the person, require the
16 person to produce the document at a specified place within a
17 specified period of not less than 14 days.

18 Note: Contravening a requirement under this section to produce a document
19 may be an offence under section 819 of the *Workplace Relations Act*
20 *1996*.

21 (5) Where a document is produced to a workplace inspector under
22 paragraph (2)(c) or subsection (4), the workplace inspector may:

23 (a) inspect, and make copies of or take extracts from, the
24 document; and

25 (b) retain the document for such period as is necessary for the
26 purpose of exercising powers or performing functions as a
27 workplace inspector.

28 (6) During the period for which a workplace inspector retains a
29 document, the workplace inspector must permit the person
30 otherwise entitled to possession of the document, or a person
31 authorised by the person, to inspect, and make copies of or take
32 extracts from, the document at all reasonable times.

1 *Notices under paragraph (2)(c)*

2 (7) The notice referred to in paragraph (2)(c) must:

3 (a) be in writing; and

4 (b) be served on the person; and

5 (c) require the person to produce the document at a specified
6 place within a specified period of not less than 14 days.

7 Service may be effected by sending the notice to the person's fax
8 number.

9 *Person must produce document even if it may incriminate him or*
10 *her*

11 (8) A person is not excused from producing a document under
12 paragraph (2)(c) on the ground that the production of the document
13 may tend to incriminate the person.

14 *Limited use immunity for documents produced*

15 (9) If an individual produces a document under this section, the
16 document produced and any information or thing (including any
17 document) obtained as a direct or indirect consequence of the
18 production of the document is not admissible in evidence against
19 the individual in any criminal proceedings, other than proceedings
20 for an offence against section 819 of the *Workplace Relations Act*
21 *1996*.

22 (10) If a workplace inspector proposing to enter, or being on, premises
23 is required by the occupier to produce evidence of authority, the
24 workplace inspector is not entitled to enter or remain on the
25 premises without producing to the occupier the workplace
26 inspector's identity card.

27 **Subdivision B—Penalties**

28 **23 Imposition and recovery of penalties**

29 (1) If a person breaches subsection 20(1), a penalty may be imposed
30 by an eligible court.

31 (2) If:

Section 24

- 1 (a) 2 or more breaches of subsection 20(1) are committed by the
2 same person; and
3 (b) the breaches arose out of a course of conduct by the person;
4 and
5 (c) a court has not imposed a penalty on the person in respect of
6 any of the breaches;
7 the breaches are taken for the purposes of this section to constitute
8 a single breach of that subsection.
- 9 (3) The maximum penalty that may be imposed under subsection (1)
10 for a breach of subsection 20(1) is:
11 (a) 300 penalty units for a body corporate; or
12 (b) 60 penalty units in other cases.
- 13 (4) An application to an eligible court for the imposition of a penalty
14 under subsection (1) may be made by:
15 (a) a workplace inspector; or
16 (b) an individual to whom the obligation concerned is owed.
- 17 (5) If, in a proceeding against a person under this section, it appears to
18 the court that an individual has not been paid an amount that the
19 person was required to pay, the court may order the person to pay
20 to the individual the amount of the underpayment.
- 21 (6) An order must not be made under subsection (5) in relation to so
22 much of an underpayment as relates to any period more than 6
23 years before the commencement of the proceeding.
- 24 (7) A proceeding under this section in relation to a breach of
25 subsection 20(1) must be commenced not later than 6 years after
26 the commission of the breach.
- 27 (8) A penalty imposed under subsection (1) is payable to the
28 Commonwealth, or to some other person if the eligible court so
29 directs.

24 Recovery of amounts of pay

- 30
31 (1) If a person is required by subsection 20(1) to pay an amount to an
32 individual, the amount of the payment may be sued for in an
33 eligible court by:
-

- 1 (a) a workplace inspector; or
2 (b) an individual to whom the payment is required to be paid.
- 3 (2) A proceeding under this section in relation to a requirement under
4 subsection 20(1) to pay an amount to an individual must be
5 commenced not later than 6 years after the person was required to
6 make the payment to the individual.

7 **25 Interest up to judgment**

- 8 (1) In exercising its powers under section 23 or in a proceeding under
9 section 24, an eligible court must, on application:
- 10 (a) order that there be included in the sum for which an order is
11 made or judgment given, interest at such rate as the eligible
12 court thinks fit on all or any part of the money for all or any
13 part of the period between the date when the cause of action
14 arose and the date on which the order is made or judgment
15 entered; or
- 16 (b) without proceeding to calculate interest in accordance with
17 paragraph (a), order that there be included in the sum for
18 which an order is made or judgment given a lump sum
19 instead of any such interest.
- 20 (2) Subsection (1) does not:
- 21 (a) authorise the giving of interest on interest or of a sum instead
22 of such interest; or
- 23 (b) apply in relation to any debt on which interest is payable as
24 of right, whether by virtue of an agreement or otherwise; or
- 25 (c) authorise the giving of interest, or a sum instead of interest,
26 except by consent, on any sum for which judgment is given
27 by consent.
- 28 (3) Subsection (1) does not apply if good cause is shown to the
29 contrary.

30 **26 Interest on judgment**

- 31 A debt under a judgment or order of an eligible court made under
32 section 23 or 24 carries interest from the date on which the
33 judgment is entered or order made at such rate as would apply

Section 27

1 under section 52 of the *Federal Court of Australia Act 1976* if the
2 debt were a judgment debt to which that section applies.

3 **27 Plaintiffs may choose small claims procedure in magistrates**
4 **courts**

- 5 (1) An action started by a person under section 24 in a magistrates
6 court is to be dealt with in accordance with this section if the
7 person indicates, in a manner mentioned in subsection (5) or by
8 rules of court relating to that court, that he or she wants a small
9 claims procedure to apply.
- 10 (2) The procedure is governed by the following conditions:
- 11 (a) the court may not award an amount exceeding \$10,000;
- 12 (b) the court may act in an informal manner, is not bound by any
13 rules of evidence, and may act without regard to legal forms
14 and technicalities;
- 15 (c) at any stage of the action, the court may amend the papers
16 initiating the action if sufficient notice is given to any party
17 adversely affected by the amendment;
- 18 (d) a person is not entitled to be represented by a legal
19 practitioner unless the court permits;
- 20 (e) if the court permits a party to be represented by a legal
21 practitioner, the court may, if it thinks fit, do so subject to
22 conditions designed to ensure that no other party is unfairly
23 disadvantaged.
- 24 (3) If the case is heard in a court of a Territory, the regulations may
25 (despite paragraphs (2)(d) and (e)) prohibit or restrict legal
26 representation of the parties.
- 27 (4) Despite paragraphs (2)(d) and (e), if:
- 28 (a) the case is heard in a court of a State; and
- 29 (b) in a particular proceeding in that court (whatever the nature
30 of the proceeding), the law of the State prohibits or restricts
31 legal representation of the parties;
- 32 regulations made under this Act may prohibit or restrict legal
33 representation of the parties to the same extent as that law.

- 1 (5) For the purposes of subsection (1), the manner in which a person
2 indicates that he or she wants a small claims procedure to apply to
3 an action that the person starts in a magistrates court is:
4 (a) by:
5 (i) endorsing the papers initiating the action with a
6 statement that the person wants a small claims
7 procedure to apply to the action; or
8 (ii) lodging with the court a paper that identifies the action
9 and states that the person wants a small claims
10 procedure to apply to the action; and
11 (b) by serving a copy of the papers initiating the action, together
12 with a copy of the paper (if any) mentioned in
13 subparagraph (a)(ii), on every other party to the action.
- 14 (6) Subsection (5) does not apply to an action that a person starts in a
15 magistrates court if rules of court relating to that court prescribe
16 the manner in which the person indicates that he or she wants a
17 small claims procedure to apply to the action.

18 **28 Enforcement of penalties etc.**

- 19 (1) If an eligible court has:
20 (a) imposed a pecuniary penalty under this Part; or
21 (b) ordered the payment of an amount under subsection 23(5) or
22 as a result of the operation of section 24; or
23 (c) ordered the payment of costs or expenses;
24 a certificate signed by a registrar, specifying the amount payable
25 and by whom and to whom respectively it is payable, may be filed
26 in an eligible court.
- 27 (2) A certificate filed in a court under subsection (1) is enforceable in
28 all respects as a final judgment of the court in which it is filed.
- 29 (3) If there are 2 or more creditors under a certificate, process may be
30 issued separately by each creditor for the enforcement of the
31 certificate as if there were separate judgments.

Part 4 Contract outworkers in the textile, clothing and footwear industry

Division 3 Enforcement and compliance

Section 29

1 **29 General provisions**

2 (1) Division 3 of Part 14 of the *Workplace Relations Act 1996* has
3 effect as if a breach of subsection 20(1) were a contravention of a
4 civil remedy provision within the meaning of that Division.

5 (2) This section is subject to section 27.

1

2 **Division 4—Record-keeping**

3 **30 Records relating to services contracts with contract outworkers**

4

(1) The regulations may make provision in relation to:

5

(a) the making of outworker records by a person who is a party
6 to a services contract and who is subject to an obligation
7 under subsection 20(1); and

8

(b) the making of outworker records by a contract outworker
9 who is a party to a services contract and to whom an
10 obligation is owed under subsection 20(1) in relation to the
11 contract; and

12

(c) the inspection of records mentioned in paragraphs (a) and (b);
13 and

14

(d) the giving of records mentioned in paragraphs (a) and (b) (or
15 a copy of them) by a party to the contract concerned to one or
16 more other parties to the contract; and

17

(e) the retention of outworker records by parties to the contract
18 concerned; and

19

(f) civil penalties for contraventions of the regulations, not
20 exceeding:

21

(i) 5 penalty units for an individual; or

22

(ii) 25 penalty units for a body corporate.

23

(2) In subsection (1):

24

outworker records, in relation to a services contract, means records
25 relating to the contract to the extent that work to be performed
26 under the contract is TCF outwork.

Section 31

1

2 **Part 5—Transitional provisions**

3 **Division 1—State and Territory laws other than unfair**
4 **contracts laws**

5 **31 Definitions**

6 In this Division:

7 *continuation contract*, in relation to a services contract, has the
8 meaning given by section 32.

9 *contract period* means the period in relation to which a contract
10 has effect.

11 *covers*: a reform opt-in agreement *covers* a services contract as
12 described in subsection 33(3).

13 *date of effect*, in relation to a reform opt-in agreement, has the
14 meaning given by subsection 33(2).

15 *pre-reform commencement contract* means a services contract that
16 was entered into before the reform commencement.

17 *reform commencement* means the commencement of Part 2.

18 *reform opt-in agreement* has the meaning given by subsection
19 33(1).

20 *related continuation contract* has the meaning given by subsection
21 32(3).

22 *State or Territory contractor laws* means the laws of the States and
23 Territories, as in force from time to time after the reform
24 commencement, to the extent that they would, apart from this
25 Division, be affected by the exclusion provisions, but not including
26 laws to the extent that they make provision as mentioned in
27 paragraph 7(1)(c).

28 Note: Paragraph 7(1)(c) relates to laws that provide for services contracts to
29 be void etc. on an unfairness ground. Transitional provisions relating

1 to the effect of Part 2 on such laws are contained in Division 2 of this
2 Part.

3 **32 Continuation contracts and related continuation contracts**

4 *Continuation contracts*

- 5 (1) A services contract (the *later contract*) is a *continuation contract*
6 in relation to a pre-reform commencement contract if:
7 (a) the parties to the later contract are the same as the parties to
8 the pre-reform commencement contract; and
9 (b) one or more of the following subparagraphs is satisfied in
10 relation to the later contract:
11 (i) the later contract is entered into pursuant to an option or
12 similar right contained in the pre-reform
13 commencement contract, or contained in another
14 contract that is a continuation contract in relation to the
15 pre-reform commencement contract;
16 (ii) the contract period of the later contract immediately
17 follows the contract period of the pre-reform
18 commencement contract;
19 (iii) the contract period of the later contract immediately
20 follows the contract period of another contract that is a
21 continuation contract in relation to the pre-reform
22 commencement contract; and
23 (c) the later contract relates to the performance of the same kind
24 of work as the pre-reform commencement contract.

25 Note 1: See also subsection 35(7), under which a contract may be taken to be
26 a continuation contract.

27 Note 2: For how this section applies in a transfer of business situation, see
28 section 36.

- 29 (2) For the purposes of subparagraphs (1)(b)(ii) and (iii), the contract
30 period of a services contract is taken to immediately follow the
31 contract period of another services contract even if those periods
32 are interrupted by an interval, but only if that interval:
33 (a) is consistent with a regular pattern of contracting between the
34 parties to the contracts; or

Section 33

1 (b) is covered by regulations made for the purposes of this
2 paragraph.

3 *Related continuation contracts*

4 (3) A services contract is a ***related continuation contract*** in relation to
5 another services contract if:

6 (a) the following subparagraphs are satisfied:

7 (i) the other services contract is a pre-reform
8 commencement contract;

9 (ii) the first-mentioned services contract is a continuation
10 contract in relation to the other contract; or

11 (b) the 2 services contracts are continuation contracts in relation
12 to the same pre-reform commencement contract.

13 **33 Reform opt-in agreement**

14 (1) A ***reform opt-in agreement*** is an agreement in writing, signed by
15 the parties to the agreement, to one or more of the following
16 effects:

17 (a) that the parties no longer want the State or Territory
18 contractor laws to apply to a specified services contract, or to
19 any related continuation contracts in relation to the specified
20 contract, that the parties have entered into or may enter into;

21 (b) that the parties no longer want the State or Territory
22 contractor laws to apply to any services contracts of a
23 specified class, or to any related continuation contracts in
24 relation to any contracts in the specified class, that the parties
25 have entered into or may enter into;

26 (c) that the parties no longer want the State or Territory
27 contractor laws to apply to any services contracts that they
28 have entered into or may enter into.

29 Note: The agreement must relate to the whole body of the State or Territory
30 contractor laws (rather than just to some of those laws).

31 (2) A reform opt-in agreement's ***date of effect*** is:

32 (a) the date on which the agreement is entered into; or

33 (b) if a later date is specified in the agreement as its date of
34 effect—that later date.

- 1 (3) A reform opt-in agreement *covers* a services contract if the
2 agreement is to the effect that the parties to the agreement no
3 longer want the State or Territory contractor laws to apply to the
4 contract (whether the parties' intent is expressed as mentioned in
5 paragraph (1)(a), (b) or (c)).
- 6 (4) A purported revocation or variation of a reform opt-in agreement is
7 of no effect for the purposes of this Division.

8 **34 Prohibited conduct in relation to reform opt-in agreements**

- 9 (1) A person must not:
10 (a) take or threaten to take any action; or
11 (b) refrain, or threaten to refrain, from taking any action;
12 with intent to coerce another person (the *targeted person*) to enter
13 into, or to not enter into, a reform opt-in agreement.
- 14 (2) A person must not knowingly make a false statement with intent to
15 persuade or influence another person (the *targeted person*) to enter
16 into, or to not enter into, a reform opt-in agreement.
- 17 (3) If a person breaches subsection (1) or (2), a penalty may be
18 imposed by the Court.
- 19 (4) The maximum penalty that may be imposed under subsection (3)
20 for a breach of subsection (1) or (2) is:
21 (a) 300 penalty units for a body corporate; or
22 (b) 60 penalty units in other cases.
- 23 (5) An application to the Court for the imposition of a penalty under
24 subsection (3) may be made by:
25 (a) a workplace inspector; or
26 (b) the targeted person; or
27 (c) an organisation of employees, or an organisation or
28 association of employers, of which the targeted person is a
29 member, if it is acting with the written consent of the targeted
30 person.
- 31 (6) A penalty imposed under subsection (3) is payable to the
32 Commonwealth, or to some other person if the Court so directs.

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- 1 (7) Division 3 of Part 14 of the *Workplace Relations Act 1996* has
2 effect as if a breach of subsection (1) or (2) were a contravention of
3 a civil remedy provision within the meaning of that Division.

4 **35 Continued application of the State or Territory contractor laws**
5 **to certain services contracts**

6 *Services contracts to which this section applies*

- 7 (1) This section applies to a services contract (the *relevant contract*)
8 if:
9 (a) the relevant contract:
10 (i) is a pre-reform commencement contract; or
11 (ii) is a continuation contract in relation to a pre-reform
12 commencement contract; and
13 (b) some or all of the contract period of the relevant contract
14 occurs after the reform commencement; and
15 (c) the contractor law test is satisfied in relation to the relevant
16 contract (see subsection (2)).
- 17 (2) The contractor law test is satisfied in relation to the relevant
18 contract if one of the following paragraphs applies to the contract
19 that, as between the relevant contract and its related continuation
20 contracts (if any), is the contract (the *test contract*) that was
21 entered into both before the reform commencement and closest to
22 the reform commencement:
23 (a) if the contract period of the test contract did not start before
24 the reform commencement—one or more of the State or
25 Territory contractor laws would have applied before the
26 reform commencement in relation to the test contract if its
27 contract period had started when it was entered into;
28 (b) if the contract period of the test contract started before the
29 reform commencement—one or more of the State or
30 Territory contractor laws applied before the reform
31 commencement in relation to the test contract.
- 32 (3) For the purpose of subsection (2), a reference to the State or
33 Territory contractor laws, in relation to a time before the reform

1 commencement, is a reference to laws that would have been State
2 or Territory contractor laws if:

- 3 (a) this Division had been in force at that time; and
4 (b) the reform commencement had occurred before that time.

5 *Exclusion provisions do not apply*

- 6 (4) Subject to subsection (5), the exclusion provisions do not apply in
7 relation to the State or Territory contractor laws in relation to so
8 much of the contract period of the relevant contract as occurs after
9 the reform commencement and before the first of the following
10 days (the *transition day*):

- 11 (a) the date of effect of a reform opt-in agreement (if any) that
12 covers the contract;
13 (b) the first day after the end of the period of 3 years that started
14 on the reform commencement.

15 Note: If the exclusion provisions do not apply, the State or Territory
16 contractor laws will continue to apply.

- 17 (5) The regulations may provide that subsection (4) does not affect the
18 application of the exclusion provisions in relation to a specified
19 State or Territory contractor law, either:

- 20 (a) generally; or
21 (b) as specified in the regulations.

22 *What if the contract period ends before the transition day?*

- 23 (6) If:

- 24 (a) the contract period of the relevant contract ends before the
25 transition day; and
26 (b) there is no further contract between the parties that
27 (disregarding subsection (7)) is a related continuation
28 contract in relation to the relevant contract;

29 the consequences that result from the contract period ending
30 (including consequences relating to the fact that there is no further
31 contract as mentioned in paragraph (b)) are as provided by or under
32 the relevant terms of any contract between the parties, the State or
33 Territory contractor laws and any other relevant laws.

- 1 (a) under a services contract (the *first contract*) between an
2 independent contractor and another person (the *former*
3 *principal*), the independent contractor performs or performed
4 work of a particular kind for a business; and
5 (b) the first contract:
6 (i) is a pre-reform commencement contract; or
7 (ii) is a continuation contract in relation to a pre-reform
8 commencement contract; and
9 (c) after the reform commencement, there is a transfer (by
10 whatever means, and however described) of all or part of the
11 business; and
12 (d) the post-transfer contract is a services contract, entered into
13 by the independent contractor with another person, that is for
14 the performance, after the transfer takes effect, of the same
15 kind of work for the business or the transferred part of the
16 business.

17 *Section does not apply to a post-transfer contract if reform opt-in*
18 *agreement has already taken effect*

- 19 (2) This section does not apply to the post-transfer contract if:
20 (a) a reform opt-in agreement covered the first contract, or
21 covered another contract that is a continuation contract in
22 relation to:
23 (i) if subparagraph (1)(b)(i) applies—the first contract; or
24 (ii) if subparagraph (1)(b)(ii) applies—the pre-reform
25 commencement contract referred to in that
26 subparagraph; and
27 (b) the reform opt-in agreement's date of effect is before the
28 transfer takes effect.

29 Note: If this subsection applies, subsection (3) will not apply and so the
30 post-transfer contract cannot be a continuation contract.

31 *If section applies, post-transfer contract may be continuation*
32 *contract (even though parties are not the same)*

- 33 (3) If this section applies to the post-transfer contract, then, in
34 determining for the purpose of section 35 whether the post-transfer
35 contract is a continuation contract in relation to:

Part 5 Transitional provisions

Division 1 State and Territory laws other than unfair contracts laws

Section 37

- 1 (a) if subparagraph (1)(b)(i) applies—the first contract; or
2 (b) if subparagraph (1)(b)(ii) applies—the pre-reform
3 commencement contract referred to in that subparagraph;
4 the following provisions have effect:
5 (c) the parties to the post-transfer contract are taken to be the
6 same as the parties to the contract referred to in whichever of
7 paragraphs (a) and (b) of this subsection applies;
8 (d) subsection 32(2) has effect as if that subsection also
9 contained a paragraph referring to the interval being because
10 of the transfer of the business or the part of the business.

11 **37 Application of the State or Territory contractor laws in relation**
12 **to pre-reform commencement matters not affected by**
13 **exclusion provisions**

14 The exclusion provisions do not affect the application of the State
15 or Territory contractor laws in relation to matters that occurred
16 before the reform commencement.

1

2 **Division 2—Unfair contracts laws**

3 **38 Definition**

4 In this Division:

5 *reform commencement* means the commencement of Part 2.

6 **39 New applications relating to unfair contracts**

7 An application in relation to a services contract may be made under
8 Part 3 even if the contract was entered into before the reform
9 commencement.

10 **40 Applications under the *Workplace Relations Act 1996* in progress**
11 **at the reform commencement**

12 (1) This section applies to an application in relation to a contract for
13 services that was made before the reform commencement under
14 section 832 of the *Workplace Relations Act 1996* if the proceeding
15 (including any appeal to a court in relation to the proceeding) in
16 relation to the application was not finally determined before the
17 reform commencement.

18 (2) Despite the repeal of sections 832, 833 and 834 of the *Workplace*
19 *Relations Act 1996* by the *Workplace Relations Legislation*
20 *Amendment (Independent Contractors) Act 2006*, those sections
21 continue to apply to the application after the reform
22 commencement as if they had not been repealed.

23 **41 Applications under an excluded State or Territory law in**
24 **progress at the reform commencement**

25 (1) This section applies to a proceeding in relation to a contract for
26 services that was commenced before the reform commencement
27 under a law of a State or Territory that makes provision as
28 mentioned in paragraph 7(1)(c) if the proceeding (including any
29 appeal) was not finally determined before the reform
30 commencement.

Part 5 Transitional provisions
Division 2 Unfair contracts laws

Section 41

- 1 (2) The exclusion provisions do not apply in relation to the law of the
2 State or Territory (including any law relating to appeals) to the
3 extent that it relates to the proceeding (including any appeal).

1

2

Part 6—Regulations

3

4

42 Regulations may make provision for transitional matters

5

(1) The regulations may make provision for matters of a transitional, saving or application nature arising out of, or relating to, the provisions of this Act or of the *Workplace Relations Legislation Amendment (Independent Contractors) Act 2006*.

6

7

8

9

(2) Without limiting subsection (1), regulations made for the purpose of that subsection may prescribe modifications of Division 1 of Part 5.

10

11

12

(3) Subject to subsection (4), despite subsection 12(2) of the *Legislative Instruments Act 2003*, regulations made for the purpose of subsection (1) of this section may be expressed to take effect from a date before the regulations are registered under that Act.

13

14

15

16

(4) Subsection (3) does not apply to regulations that create, modify or otherwise affect a provision that makes a person liable to an offence or civil penalty.

17

18

19

(5) In this section:

20

modifications includes additions, omissions and substitutions.

21

43 Power to make regulations

22

The Governor-General may make regulations prescribing matters:

23

(a) required or permitted by this Act to be prescribed; or

24

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

25