



# **Independent Contractors Act 2006**

**No. 162, 2006**

**An Act relating to independent contractors, and for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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# Independent Contractors Act 2006

No. 162, 2006

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## An Act relating to independent contractors, and for related purposes

[Assented to 11 December 2006]

The Parliament of Australia enacts:

### Part 1—Preliminary

#### 1 Short title

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

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**2 Commencement**

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
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.	11 December 2006
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.	1 March 2007 (see F2007L00412)

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

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

**3 Objects of this Act**

- (1) The principal objects of this Act are:
- (a) to protect the freedom of independent contractors to enter into services contracts; and
  - (b) to recognise independent contracting as a legitimate form of work arrangement that is primarily commercial; and
  - (c) to prevent interference with the terms of genuine independent contracting arrangements.

- (2) The Act achieves these objects, principally, by providing for the rights, entitlements, obligations and liabilities of parties to services contracts to be governed by the terms of those contracts, subject to:
- (a) the rules of common law and equity as applying in relation to those contracts; and
  - (b) the laws of the Commonwealth as applying in relation to those contracts; and
  - (c) the laws of the States and Territories as applying in relation to those contracts, other (in general) than any such laws that confer or impose rights, entitlements, obligations or liabilities of a kind more commonly associated with employment relationships.

#### **4 Definitions**

In this Act:

***Commonwealth authority*** means:

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

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

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

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

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

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

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

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

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

## 5 Services contract

### *General meaning*

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

Note: Conditions or collateral arrangements relating to a services contract may be taken to be part of the services contract: see subsection (4).

### *The requisite constitutional connection*

- (2) A contract for services has the *requisite constitutional connection* if:
- (a) at least one party to the contract is:
    - (i) a constitutional corporation; or
    - (ii) the Commonwealth or a Commonwealth authority; or
    - (iii) a body corporate incorporated in a Territory in Australia; or
  - (b) one or more of the following subparagraphs is satisfied:
    - (i) the work concerned is wholly or principally to be performed in a Territory in Australia;
    - (ii) the contract was entered into in a Territory in Australia;
    - (iii) at least one party to the contract is a natural person who is resident in, or a body corporate that has its principal place of business in, a Territory in Australia.
- (3) Without limiting its effect apart from this subsection, subparagraph (2)(a)(i) also has the effect it would have if the reference to a constitutional corporation were, by express



provision, confined to a constitutional corporation that has entered into the contract for the purposes of the business of the corporation.

*Conditions and collateral arrangements*

- (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.

## Part 2—Exclusion of certain State and Territory laws

### 6 Definitions

In this Part:

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

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

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

### 7 Exclusion of certain State and Territory laws

- (1) Subject to subsection (2), the rights, entitlements, obligations and liabilities of a party to a services contract are not affected by a law of a State or Territory to the extent that the law would otherwise do one or more of the following:
  - (a) take or deem a party to a services contract to be an employer or employee, or otherwise treat a party to a services contract as if the party were an employer or employee, for the purposes of a law that relates to one or more workplace relations matters (or provide a means for a party to the contract to be so taken, deemed or treated);
  - (b) confer or impose rights, entitlements, obligations or liabilities on a party to a services contract in relation to matters that, in an employment relationship, would be workplace relations matters (or provide a means for rights, entitlements, obligations or liabilities in relation to such matters to be conferred or imposed on a party to a services contract);
  - (c) without limiting paragraphs (a) and (b)—expressly provide for a court, commission or tribunal to do any of the following in relation to a services contract on an unfairness ground:

- (i) make an order or determination (however described) setting aside, or declaring to be void or otherwise unenforceable, all or part of the contract;
- (ii) make an order or determination (however described) amending or varying all or part of the contract.

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

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

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

- (2) Subsection (1) does not apply in relation to:
  - (a) a law of a State or Territory, to the extent that the law deals with matters relating to outworkers (including entry of a representative of a trade union to premises for a purpose connected with outworkers), other than matters mentioned in paragraph (1)(c); or
  - (b) any of the following laws:
    - (i) Chapter 6 of the *Industrial Relations Act 1996* of New South Wales (and any other provision of that Act to the extent that it relates to, or has effect for the purposes of, a provision of Chapter 6);
    - (ii) the *Owner Drivers and Forestry Contractors Act 2005* of Victoria; or
  - (c) a law of a State or Territory that is specified in regulations made for the purposes of this paragraph, to the extent that the law is so specified.

## **8 What are workplace relations matters**

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

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- (e) making, enforcing or terminating agreements (not being contracts of employment) determining terms and conditions of employment;
  - (f) disputes between employees and employers, or the resolution of such disputes;
  - (g) industrial action by employees or employers;
  - (h) any other matter that is substantially the same as a matter that relates to employees or employers and that is dealt with by or under:
    - (i) the *Workplace Relations Act 1996*; or
    - (ii) a State or Territory industrial law;unless the matter is specified in regulations made for the purposes of this paragraph;
  - (i) any other matter specified in regulations made for the purposes of this paragraph.
- (2) None of the following is a *workplace relations matter*:
- (a) prevention of discrimination or promotion of EEO, but only if the State or Territory law concerned is neither a State or Territory industrial law nor contained in such a law;
  - (b) superannuation;
  - (c) workers compensation;
  - (d) occupational health and safety (including entry of a representative of a trade union for a purpose connected with occupational health and safety);
  - (e) child labour;
  - (f) the observance of a public holiday, except the rate of payment of an employee for the public holiday;
  - (g) deductions from wages or salaries;
  - (h) industrial action affecting essential services;
  - (i) attendance for service on a jury;
  - (j) professional or trade regulation;
  - (k) consumer protection;
  - (l) taxation;
  - (m) any other matter specified in regulations made for the purposes of this paragraph.

**9 What is an unfairness ground**

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

**10 Regulations may specify laws that are intended to be excluded**

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

## Part 3—Unfair contracts

### 11 Application of Part

- (1) This Part applies to a services contract, other than:
  - (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
  - (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:
    - (i) a director of the body corporate; or
    - (ii) a member of the family of a director of the body corporate.

- (2) In this section:

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

### 12 Court may review services contract

- (1) An application may be made to the Court to review a services contract on either or both of the following grounds:
  - (a) the contract is unfair;
  - (b) the contract is harsh.

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*.

- (2) An application under subsection (1) may be made only by a party to the services contract.
- (3) In reviewing a services contract, the Court must only have regard to:
  - (a) the terms of the contract when it was made; and

- (b) to the extent that this Part allows the Court to consider other matters—other matters as existing at the time when the contract was made.
- (4) For the purposes of this Part, *services contract* includes a contract to vary a services contract.

Note: The effect of subsection (4) is that a contract to vary a services contract can be reviewed under this Part, as the contract to vary will itself be a services contract.

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

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

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

- (1) An application to review a services contract must not be made under subsection 12(1) if other review proceedings have been commenced in relation to the services contract, unless the other review proceedings:
- (a) have been discontinued by the person who commenced them; or
  - (b) have failed for want of jurisdiction.
- (2) A person must not commence other review proceedings in relation to a services contract if an application to review the contract has been made under subsection 12(1), unless:
- (a) the application has been discontinued by the person who made it; or
  - (b) the proceedings in relation to the application have failed for want of jurisdiction.
- (3) In this section:

*other review proceedings* means proceedings in relation to a services contract:

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- (a) under a provision of a law of a State or Territory that makes provision as mentioned in paragraph 7(1)(c) and is not affected by the exclusion provisions; or
- (b) under a provision of a law of the Commonwealth, or of a State or Territory, that is specified in regulations made for the purposes of this paragraph.

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

### 15 Powers of Court

- (1) In reviewing a services contract in relation to which an application has been made under subsection 12(1), the Court may have regard to:
  - (a) the relative strengths of the bargaining positions of the parties to the contract and, if applicable, any persons acting on behalf of the parties; and
  - (b) whether any undue influence or pressure was exerted on, or any unfair tactics were used against, a party to the contract; and
  - (c) whether the contract provides total remuneration that is, or is likely to be, less than that of an employee performing similar work; and
  - (d) any other matter that the Court thinks is relevant.
- (3) If the Court forms the opinion that a ground referred to in subsection 12(1) is established in relation to the whole or a part of the services contract, the Court must record its opinion, stating whether the opinion relates to the whole or a specified part of the contract.
- (4) The Court may form the opinion that a ground referred to in subsection 12(1) is established in relation to the whole or a part of the services contract even if the ground was not canvassed in the application.

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



**16 Orders that Court may make**

- (1) If the Court records an opinion under section 15 in relation to a services contract, the Court may make one or more of the following orders in relation to the opinion:
  - (a) an order setting aside the whole or a part of the contract;
  - (b) an order varying the contract.
- (2) An order may only be made for the purpose of placing the parties to the services contract as nearly as practicable on such a footing that the ground on which the opinion is based no longer applies.
- (3) If an application under this Part is pending, the Court may make an interim order if it considers it is desirable to do so to preserve the position of a party to the services contract.
- (4) An order takes effect on the date of the order or a later date specified in the order.
- (5) A party to the services contract may apply to the Court to enforce an order by injunction or otherwise as the Court considers appropriate.
- (6) Subject to section 14, this section does not limit any other rights of a party to the services contract.

Note 1: The rights of a party to a services contract may be affected by the exclusion provisions.

Note 2: An appeal may be brought to the Federal Court of Australia from a judgment of the Federal Magistrates Court: see section 24 of the *Federal Court of Australia Act 1976*.

**17 Costs only where proceeding instituted vexatiously**

- (1) A party (the *first party*) to a proceeding (including an appeal) in a matter arising under this Part must not be ordered to pay costs incurred by any other party to the proceeding unless the first party instituted the proceeding vexatiously or without reasonable cause.
- (2) Despite subsection (1), if a court hearing a proceeding (including an appeal) in a matter arising under this Part is satisfied that a party (the *first party*) to the proceeding has, by unreasonable act or omission, caused another party to the proceeding to incur costs in

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connection with the proceeding, the court may order the first party to pay some or all of those costs.

(3) In this section:

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

## **Part 5—Transitional provisions**

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

#### **31 Definitions**

In this Division:

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

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

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

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

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

*reform commencement* means the commencement of Part 2.

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

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

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

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

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

**32 Continuation contracts and related continuation contracts**

*Continuation contracts*

- (1) A services contract (the *later contract*) is a *continuation contract* in relation to a pre-reform commencement contract if:
- (a) the parties to the later contract are the same as the parties to the pre-reform commencement contract; and
  - (b) one or more of the following subparagraphs is satisfied in relation to the later contract:
    - (i) the later contract is entered into pursuant to an option or similar right contained in the pre-reform commencement contract, or contained in another contract that is a continuation contract in relation to the pre-reform commencement contract;
    - (ii) the contract period of the later contract immediately follows the contract period of the pre-reform commencement contract;
    - (iii) the contract period of the later contract immediately follows the contract period of another contract that is a continuation contract in relation to the pre-reform commencement contract; and
  - (c) the later contract relates to the performance of the same kind of work as the pre-reform commencement contract.

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

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

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

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

*Related continuation contracts*

- (3) A services contract is a ***related continuation contract*** in relation to another services contract if:
  - (a) the following subparagraphs are satisfied:
    - (i) the other services contract is a pre-reform commencement contract;
    - (ii) the first-mentioned services contract is a continuation contract in relation to the other contract; or
  - (b) the 2 services contracts are continuation contracts in relation to the same pre-reform commencement contract.

### **33 Reform opt-in agreement**

- (1) A ***reform opt-in agreement*** is an agreement in writing, signed by the parties to the agreement, to one or more of the following effects:
  - (a) that the parties no longer want the State or Territory contractor laws to apply to a specified services contract, or to any related continuation contracts in relation to the specified contract, that the parties have entered into or may enter into;
  - (b) that the parties no longer want the State or Territory contractor laws to apply to any services contracts of a specified class, or to any related continuation contracts in relation to any contracts in the specified class, that the parties have entered into or may enter into;
  - (c) that the parties no longer want the State or Territory contractor laws to apply to any services contracts that they have entered into or may enter into.

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

- (2) A reform opt-in agreement's ***date of effect*** is:
  - (a) the date on which the agreement is entered into; or
  - (b) if a later date is specified in the agreement as its date of effect—that later date.

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

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

- (1) A person must not:
  - (a) take or threaten to take any action; or
  - (b) refrain, or threaten to refrain, from taking any action; with intent to coerce another person (the *targeted person*) to enter into, or to not enter into, a reform opt-in agreement.
- (2) A person must not knowingly make a false statement with intent to persuade or influence another person (the *targeted person*) to enter into, or to not enter into, a reform opt-in agreement.
- (3) If a person breaches subsection (1) or (2), a penalty may be imposed by the Court.
- (4) The maximum penalty that may be imposed under subsection (3) for a breach of subsection (1) or (2) is:
  - (a) 300 penalty units for a body corporate; or
  - (b) 60 penalty units in other cases.
- (5) An application to the Court for the imposition of a penalty under subsection (3) may be made by:
  - (a) a workplace inspector; or
  - (b) the targeted person; or
  - (c) an organisation of employees, or an organisation or association of employers, of which the targeted person is a member, if it is acting with the written consent of the targeted person.
- (6) A penalty imposed under subsection (3) is payable to the Commonwealth, or to some other person if the Court so directs.

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

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

#### *Services contracts to which this section applies*

- (1) This section applies to a services contract (the *relevant contract*) if:
- (a) the relevant contract:
    - (i) is a pre-reform commencement contract; or
    - (ii) is a continuation contract in relation to a pre-reform commencement contract; and
  - (b) some or all of the contract period of the relevant contract occurs after the reform commencement; and
  - (c) the contractor law test is satisfied in relation to the relevant contract (see subsection (2)).
- (2) The contractor law test is satisfied in relation to the relevant contract if one of the following paragraphs applies to the contract that, as between the relevant contract and its related continuation contracts (if any), is the contract (the *test contract*) that was entered into both before the reform commencement and closest to the reform commencement:
- (a) if the contract period of the test contract did not start before the reform commencement—one or more of the State or Territory contractor laws would have applied before the reform commencement in relation to the test contract if its contract period had started when it was entered into;
  - (b) if the contract period of the test contract started before the reform commencement—one or more of the State or Territory contractor laws applied before the reform commencement in relation to the test contract.
- (3) For the purpose of subsection (2), a reference to the State or Territory contractor laws, in relation to a time before the reform

**Part 5** Transitional provisions

**Division 1** State and Territory laws other than unfair contracts laws

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

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

*Exclusion provisions do not apply*

- (4) Subject to subsection (5), the exclusion provisions do not apply in relation to the State or Territory contractor laws in relation to so much of the contract period of the relevant contract as occurs after the reform commencement and before the first of the following days (the *transition day*):
  - (a) the date of effect of a reform opt-in agreement (if any) that covers the contract;
  - (b) the first day after the end of the period of 3 years that started on the reform commencement.

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

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

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

- (6) If:
  - (a) the contract period of the relevant contract ends before the transition day; and
  - (b) there is no further contract between the parties that (disregarding subsection (7)) is a related continuation contract in relation to the relevant contract;the consequences that result from the contract period ending (including consequences relating to the fact that there is no further contract as mentioned in paragraph (b)) are as provided by or under the relevant terms of any contract between the parties, the State or Territory contractor laws and any other relevant laws.



Note: The independent contractor may (for example) have an entitlement under the State or Territory contractor laws to recover an amount on account of accrued entitlements (such as leave), an entitlement to a reinstatement or re-engagement remedy, or an entitlement to a redundancy payment.

- (7) If:
- (a) in a situation to which subsection (6) applies, the independent contractor obtains a remedy that results in his or her reinstatement or re-engagement, with effect from a time before the transition day; and
  - (b) the services contract (the *remedy contract*) under which he or she is reinstated or re-engaged would not otherwise be a continuation contract in relation to:
    - (i) if subparagraph (1)(a)(i) applies—the relevant contract; or
    - (ii) if subparagraph (1)(a)(ii) applies—the pre-reform commencement contract referred to in that subparagraph;
- the remedy contract is taken to be such a continuation contract.

*What if the contract period does not end before the transition day?*

- (8) If the contract period of the relevant contract does not end before the transition day, the contract is to be treated, for the purposes of the State or Territory contractor laws, as if, on the transition day, it had been brought to an end by agreement of the parties (rather than by the unilateral act of one party).

Note: Because of this subsection, the occurrence of the transition day may trigger an entitlement under a State or Territory contractor law to recover an amount on account of accrued entitlements (such as leave). But the occurrence of the transition day should not trigger an entitlement under such a law to a reinstatement or re-engagement remedy, or to a redundancy payment, as such remedies are generally not available for the ending of contracts by agreement.

### **36 How section 35 applies if there is a transfer of business**

*When this section applies to a post-transfer contract—general*

- (1) Subject to subsection (2), this section applies to a services contract (the *post-transfer contract*) if:
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- (a) under a services contract (the *first contract*) between an independent contractor and another person (the *former principal*), the independent contractor performs or performed work of a particular kind for a business; and
- (b) the first contract:
  - (i) is a pre-reform commencement contract; or
  - (ii) is a continuation contract in relation to a pre-reform commencement contract; and
- (c) after the reform commencement, there is a transfer (by whatever means, and however described) of all or part of the business; and
- (d) the post-transfer contract is a services contract, entered into by the independent contractor with another person, that is for the performance, after the transfer takes effect, of the same kind of work for the business or the transferred part of the business.

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

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

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

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

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

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

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

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

## Division 2—Unfair contracts laws

### 38 Definition

In this Division:

*reform commencement* means the commencement of Part 2.

### 39 New applications relating to unfair contracts

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

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

- (1) This section applies to an application in relation to a contract for services that was made before the reform commencement under section 832 of the *Workplace Relations Act 1996* if the proceeding (including any appeal to a court in relation to the proceeding) in relation to the application was not finally determined before the reform commencement.
- (2) Despite the repeal of sections 832, 833 and 834 of the *Workplace Relations Act 1996* by the *Workplace Relations Legislation Amendment (Independent Contractors) Act 2006*, those sections continue to apply to the application after the reform commencement as if they had not been repealed.

### 41 Applications under an excluded State or Territory law in progress at the reform commencement

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

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

## Part 6—Regulations

### 42 Regulations may make provision for transitional matters

- (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*.
- (2) Without limiting subsection (1), regulations made for the purpose of that subsection may prescribe modifications of Division 1 of Part 5.
- (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.
- (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.
- (5) In this section:  
*modifications* includes additions, omissions and substitutions.

### 43 Power to make regulations

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

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*[Minister's second reading speech made in—  
House of Representatives on 22 June 2006  
Senate on 13 September 2006]*

(101/06)