

2004-2005-2006

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Workplace Relations Legislation
Amendment (Independent Contractors)
Bill 2006**

No. , 2006

(Employment and Workplace Relations)

**A Bill for an Act to amend the *Workplace Relations
Act 1996*, and for related purposes**

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1 **A Bill for an Act to amend the *Workplace Relations***
2 ***Act 1996, and for related purposes***

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act may be cited as the *Workplace Relations Legislation*
6 *Amendment (Independent Contractors) Act 2006*.

7 **2 Commencement**

8 (1) Each provision of this Act specified in column 1 of the table
9 commences, or is taken to have commenced, in accordance with
10 column 2 of the table. Any other statement in column 2 has effect
11 according to its terms.
12

Schedule 1—Sham arrangements

Part 1—General provisions

Workplace Relations Act 1996

1 After Part 21

Insert:

Part 22—Sham arrangements

900 Misrepresenting an employment relationship as an independent contracting arrangement

- (1) A person contravenes this subsection if:
- (a) the person is a party to a contract with an individual; and
 - (b) the person makes a representation to the individual that the contract is a contract for services under which the individual performs work, or is to perform work, for the person as an independent contractor; and
 - (c) the contract, as in force at the time of the representation, is a contract of employment under which the person is the employer of the individual, rather than a contract for services under which the individual performs work as an independent contractor.

Note: In this subsection, **employer** and **employment** have the meanings given by subsections 6(1) and 7(1) respectively.

- (2) A person does not contravene subsection (1) if the person proves that, at the time the person made the representation concerned, the person:
- (a) believed that the contract was a contract for services rather than a contract of employment; and
 - (b) could not reasonably have been expected to know that the contract was a contract of employment rather than a contract for services.

Note: In this subsection, **employment** has its ordinary meaning—see paragraph 4(2)(pa) of Schedule 2.

1 (3) Subsection (1) is a civil remedy provision.

2 Note: Division 3 of Part 14 contains other provisions relevant to civil
3 remedies.

4 **901 Misrepresenting a proposed employment relationship as a**
5 **proposed independent contract arrangement**

6 (1) A person contravenes this subsection if:

7 (a) the person offers to enter into a contract with an individual;
8 and

9 (b) the person makes a representation to the individual that the
10 contract, if entered into, would be a contract for services
11 under which the individual would perform work for the
12 person as an independent contractor; and

13 (c) the contract, if entered into, would be a contract of
14 employment under which the person would be the employer
15 of the individual, rather than a contract for services under
16 which the individual would perform work as an independent
17 contractor.

18 Note: In this subsection, **employer** and **employment** have the meanings
19 given by subsections 6(1) and 7(1) respectively.

20 (2) A person does not contravene subsection (1) if the person proves
21 that when the person made the representation concerned, the
22 person:

23 (a) believed that if the contract had been entered into, it would
24 have been a contract for services rather than a contract of
25 employment; and

26 (b) could not reasonably have been expected to know that if the
27 contract had been entered into, it would have been a contract
28 of employment rather than a contract for services.

29 Note: In this subsection, **employment** has its ordinary meaning—see
30 paragraph 4(2)(pb) of Schedule 2.

31 (3) Subsection (1) is a civil remedy provision.

32 Note: Division 3 of Part 14 contains other provisions relevant to civil
33 remedies.

902 Dismissal etc. for purpose of engaging certain persons as independent contractors

- (1) An employer contravenes this subsection if:
- (a) the employer dismisses, or threatens to dismiss, an individual who:
 - (i) is an employee of the employer; and
 - (ii) performs particular work for the employer; and
 - (b) the employer's sole or dominant purpose in dismissing or threatening to dismiss the individual is to engage the individual as an independent contractor to perform the same work, or substantially the same work, under a contract for services.
- (2) Subsection (1) is a civil remedy provision.
- Note: Division 3 of Part 14 contains other provisions relevant to civil remedies.
- (3) It is presumed, in proceedings under Division 3 of Part 14 alleging a contravention of subsection (1), that the employer's sole or dominant purpose was the purpose referred to in paragraph (1)(b), unless the employer proves otherwise.

903 Prohibited conduct for purpose of engaging certain persons as independent contractors

- (1) A person who employs, or has at any time employed, an individual to perform particular work contravenes this subsection if:
- (a) the person makes a statement that the person knows is false; and
 - (b) the person's intention in making the statement is to persuade or influence the individual to enter into a contract for services under which the individual will perform, as an independent contractor, the same work, or substantially the same work, for the person.
- (2) Subsection (1) is a civil remedy provision.
- Note: Division 3 of Part 14 contains other provisions relevant to civil remedies.

904 Penalty for contravention

- (1) The Court may, on application by an eligible person, make an order imposing a pecuniary penalty on a person who has contravened subsection 900(1), 901(1), 902(1) or 903(1).
- (2) The maximum penalty that may be imposed under subsection (1) is:
- (a) 60 penalty units for an individual; or
 - (b) 300 penalty units for a body corporate.
- (3) Each of the following is an *eligible person* for the purposes of this section:
- (a) a workplace inspector;
 - (b) an individual affected by the contravention;
 - (c) an organisation of employees of which the individual affected by the contravention is (or has applied to become) a member, if it is acting with the written consent of the individual.

905 Meaning of Court

In this Part:

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

2 After paragraph 4(2)(p) of Schedule 2

Insert:

- (pa) subsection 900(2);
- (pb) subsection 901(2);

1

2 **Part 2—Provision relating to Victoria**

3 *Workplace Relations Act 1996*

4 **3 After Division 11 of Part 21**

5 Insert:

6 **Division 11A—Sham arrangements**

7 **886A Additional effect of Act—sham arrangements**

8 Without affecting its operation apart from this section, section 902
9 also has effect in relation to the dismissal, or threatened dismissal,
10 by an employer of an employee in Victoria, and for this purpose:

- 11 (a) each reference in that section to an employer (within the
12 meaning of that section) is to be read as a reference to an
13 employer (within the meaning of this Division) in Victoria;
14 and
15 (b) each reference in that section to an employee (within the
16 meaning of that section) is to be read as a reference to an
17 employee (within the meaning of this Division) in Victoria.

**Schedule 2—Consequential amendments and
transitional provisions**

**Part 1—Consequential amendments and transitional
provisions relating to TCF outworkers**

Workplace Relations Act 1996

1 Subparagraph 169(1)(a)(v)

Omit “(other than section 905)”.

2 Subsection 819(1)

Omit “or subparagraph 906(2)(b)(iv), paragraph 906(2)(c) or subsection 906(4)”, substitute “or subparagraph 22(2)(b)(iv), paragraph 22(2)(c) or subsection 22(4) of the *Independent Contractors Act 2006*”.

3 Part 22

Repeal the Part.

4 Saving—regulations under section 913

Despite the repeal of subsection 913(1) of the *Workplace Relations Act 1996* by item 3 of this Schedule, a regulation in force under that section as in force immediately before the commencement of that item continues in force after that commencement as if it had been made under subsection 30(1) of the *Independent Contractors Act 2006* as in force after that commencement.

**5 Saving—investigations and proceedings under the
Workplace Relations Act 1996 in progress at the reform
commencement**

- (1) This item applies to an investigation or proceeding in relation to a breach, or suspected breach, of subsection 905(1) of the *Workplace Relations Act 1996* as in force before the reform commencement that:
- (a) was commenced before the reform commencement under Part 22 of the *Workplace Relations Act 1996*; and
 - (b) was not completed or finally determined, as the case requires, before the reform commencement.

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- 1 (2) Despite the repeal of Part 22 of the *Workplace Relations Act 1996* by
2 item 3 of this Schedule, that Part continues to apply to the investigation
3 or proceeding mentioned in subitem (1) after the reform commencement
4 as if the Part had not been repealed.
- 5 (3) In this item:
- 6 ***reform commencement*** means the commencement of Part 2 of the
7 *Independent Contractors Act 2006*.

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Part 2—Consequential amendments relating to unfair contracts

Building and Construction Industry Improvement Act 2005

6 Section 47

Repeal the section.

Workplace Relations Act 1996

7 Sections 832 to 834

Repeal the sections.

Note: Section 40 of the *Independent Contractors Act 2006* is a transitional provision relating to this item.