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
Contents

1 Short title ........................................................................................... 1
2 Commencement ................................................................................. 1
3 Schedule(s) ........................................................................................ 2

Schedule 1—Sham arrangements 3
   Part 1—General provisions 3
      Workplace Relations Act 1996 3
   Part 2—Provision relating to Victoria 7
      Workplace Relations Act 1996 7

Schedule 2—Consequential amendments and transitional provisions 8
   Part 1—Consequential amendments and transitional provisions 8
      relating to TCF outworkers
         Workplace Relations Act 1996 8
   Part 2—Consequential amendments relating to unfair contracts 10
      Building and Construction Industry Improvement Act 2005 10
      Workplace Relations Act 1996 10
A Bill for an Act to amend the *Workplace Relations Act 1996*, and for related purposes

The Parliament of Australia enacts:

1 **Short title**

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

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.
## Commencement information

<table>
<thead>
<tr>
<th>Column 1</th>
<th>Column 2</th>
<th>Column 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Provision(s)</td>
<td>Commencement</td>
<td>Date/Details</td>
</tr>
<tr>
<td>1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table</td>
<td>The day on which this Act receives the Royal Assent.</td>
<td></td>
</tr>
<tr>
<td>2. Schedule 1</td>
<td>Immediately after the commencement of the provision(s) covered by table item 3.</td>
<td></td>
</tr>
</tbody>
</table>

1. 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 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.
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.
(3) Subsection (1) is a civil remedy provision.

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

901 Misrepresenting a proposed employment relationship as a proposed independent contract arrangement

(1) A person contravenes this subsection if:

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

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

(c) the contract, if entered into, would be a contract of employment under which the person would be the employer of the individual, rather than a contract for services under which the individual would perform 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 when the person made the representation concerned, the person:

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

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

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

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

Note: Division 3 of Part 14 contains other provisions relevant to civil 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.
Schedule 1  Sham arrangements
Part 1  General provisions

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);
Part 2—Provision relating to Victoria

Workplace Relations Act 1996

3 After Division 11 of Part 21

Insert:

Division 11A—Sham arrangements

886A Additional effect of Act—sham arrangements

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

(a) each reference in that section to an employer (within the meaning of that section) is to be read as a reference to an employer (within the meaning of this Division) in Victoria; and

(b) each reference in that section to an employee (within the meaning of that section) is to be read as a reference to an 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.
Consequential amendments and transitional provisions  **Schedule 2**
Consequential amendments and transitional provisions relating to TCF outworkers

**Part 1**

(2) Despite the repeal of Part 22 of the *Workplace Relations Act 1996* by item 3 of this Schedule, that Part continues to apply to the investigation or proceeding mentioned in subitem (1) after the reform commencement as if the Part had not been repealed.

(3) In this item:

*reform commencement* means the commencement of Part 2 of the *Independent Contractors Act 2006*. 

---

*Workplace Relations Legislation Amendment (Independent Contractors) Bill 2006*  No. 9, 2006
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.