

2004

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Industrial Relations)

Fair Work Contracts Bill 2004

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THE LEGISLATIVE ASSEMBLY
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(Minister for Industrial Relations)

Fair Work Contracts Bill 2004

A Bill for

An Act about certain work contracts, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Fair Work Contracts Act 2004*.

4 **2 Commencement**

5 This Act commences on 1 July 2006.

6 *Note* The naming and commencement provisions automatically commence on
7 the notification day (see Legislation Act, s 75 (1)).

8 **3 Object of Act**

9 The object of this Act is to ensure fair conditions for workers under
10 work contracts.

11 **4 Application outside ACT**

12 This Act extends to—

13 (a) a work contract made, or amended, in the ACT for work
14 outside the ACT; and

15 (b) a work contract made, or amended, outside the ACT for work
16 in the ACT.

17 **5 Dictionary**

18 The dictionary at the end of this Act is part of this Act.

19 *Note 1* The dictionary at the end of this Act defines certain terms used in this
20 Act, and includes references (*signpost definitions*) to other terms
21 defined elsewhere in this Act.

22 For example, the signpost definition ‘*contract worker*—see section 9.’
23 means that the term ‘contract worker is defined in that section.

1 *Note 2* A definition in the dictionary (including a signpost definition) applies to
2 the entire Act unless the definition, or another provision of the Act,
3 provides otherwise or the contrary intention otherwise appears (see
4 Legislation Act, s 155 and s 156 (1)).

5 **6 Notes**

6 A note included in this Act is explanatory and is not part of this Act.

7 *Note* See the Legislation Act, s 127 (1), (4) and (5) for the legal status of
8 notes.

9 **7 Offences against Act—application of Criminal Code etc**

10 Other legislation applies in relation to offences against this Act.

11 *Note 1* *Criminal Code*

12 The Criminal Code, ch 2 applies to all offences against this Act (see
13 Code, pt 2.1).

14 The chapter sets out the general principles of criminal responsibility
15 (including burdens of proof and general defences), and defines terms
16 used for offences to which the Code applies (eg *conduct*, *intention*,
17 *recklessness* and *strict liability*).

18 *Note 2* *Penalty units*

19 The Legislation Act, s 133 deals with the meaning of offence penalties
20 that are expressed in penalty units.

1 **Part 2 Key concepts**

2 **8 Work contract**

3 (1) A *work contract* is a contract for services for the doing of work in
4 an industry.

5 **Example of work contract**

6 A contract under which a person is to transport goods, or install electrical fittings,
7 and—

- 8 • is paid to achieve a particular result or outcome; and
9 • must supply plant and equipment, or tools of trade, for the work needed to
10 achieve the result or outcome; and
11 • is, or would be, liable for the cost of rectifying any defect in the work done.

12 *Note* An example is part of the Act, is not exhaustive and may extend, but
13 does not limit, the meaning of the provision in which it appears (see
14 Legislation Act, s 126 and s 132).

15 (2) To remove any doubt, a work contract does not include a contract of
16 employment.

17 **9 Contract worker**

18 A *contract worker* under a work contract is a person engaged to do
19 work under the contract.

20 **10 Principal**

21 The *principal* under a work contract is a party to the contract other
22 than a contract worker.

Part 3 Review of work contracts

11 Applications for review

- (1) Application may be made to the consumer and trader tribunal for review of a work contract.
- (2) An application may be made only—
 - (a) by an interested person; and
 - (b) on the ground that the work contract is unfair.
- (3) For this part, each of the following is an *interested person*:
 - (a) a party to the work contract;
 - (b) an industrial organisation whose rules entitle it to represent the industrial interests of a contract worker under the work contract, if the organisation acts with the written consent of the worker;
 - (c) an industrial organisation whose rules entitle it to represent the industrial interests of a principal under the work contract, if the organisation acts with the written consent of the principal.

Note 1 If a form is approved under s 27 for this provision, the form must be used.

Note 2 A fee may be determined under s 28 for this provision.

12 Remuneration cap—individual contract workers

- (1) The tribunal may review a work contract under which the contract worker is an individual only if the total value of the remuneration for the worker under the contract is, during the relevant period, less than the remuneration cap.

- 1 (2) In this section:
- 2 *relevant period* means—
- 3 (a) the 12-month period before the day the application to review
- 4 the contract is made to the tribunal; or
- 5 (b) if the contract has been terminated in the 12-month period
- 6 mentioned in paragraph (a)—the 12-month period before the
- 7 day the contract is terminated.
- 8 *remuneration cap* means \$200 000, WCI indexed.

9 **13 Revenue cap—corporate contract workers**

- 10 (1) The tribunal may review a work contract under which the contract
- 11 worker is a corporation only if satisfied the gross revenue of the
- 12 corporation from all sources is, during the relevant period, less than
- 13 the revenue cap.
- 14 (2) In this section:
- 15 *relevant period* means—
- 16 (a) the 12-month period before the day the application to review
- 17 the contract is made to the tribunal; or
- 18 (b) if the contract has been terminated in the 12-month period
- 19 mentioned in paragraph (a)—the 12-month period before the
- 20 day the contract is terminated.
- 21 *revenue cap* means \$200 000, WCI indexed.

22 **14 Time limit for applications—terminated contracts**

- 23 The tribunal may review a work contract that has been terminated
- 24 only if the application for review is made no later than 12 months
- 25 after the day the contract is terminated.

15 Representative parties

(1) This section applies if 2 or more people have the same or a similar work contract, whether or not it is with the same principal.

(2) An application may be made to the tribunal under this part in relation to the contract by any of those people on behalf of some or all of them.

(3) Unless the tribunal orders otherwise, a proceeding under this part may also be continued against any of those people on behalf of some or all of them.

(4) At any stage of a proceeding to which this section applies, the tribunal may appoint a party to the proceeding, or someone else, to represent some or all of the people having the same or a similar work contract.

(5) If the tribunal appoints someone under subsection (4) who is not already a party to the proceeding, the tribunal must join the person as a party to the proceeding.

Note The *Consumer and Trader Tribunal Act 2003*, s 28 (2) provides for the tribunal to join a person as party to a proceeding.

(6) An order made in a proceeding to which this section applies binds everyone represented by a person appointed under subsection (4) but must not be enforced against anyone not a party to the proceeding without the tribunal's leave.

(7) An application for leave under subsection (6) must be made in writing.

Note 1 If a form is approved under s 27 for this provision, the form must be used.

Note 2 A fee may be determined under s 28 for this provision.

(8) The applicant must give a copy of the application to each person against whom the order is sought to be enforced.

1 (9) The tribunal may, by written order, exempt a represented person
2 from an order mentioned in subsection (6) if satisfied that facts or
3 matters peculiar to the person would make it unfair for the person to
4 be bound by the order.

5 (10) The tribunal may also act under subsection (9) on its own initiative.

6 **16 Review of work contract**

7 (1) The tribunal must, on application under section 11, review a work
8 contract and decide whether it is unfair.

9 (2) In reviewing the work contract, the tribunal must consider the
10 following:

11 (a) the relative strength of the bargaining positions of the parties to
12 the contract and, if applicable, anyone acting for a party;

13 (b) whether any undue influence or pressure was exerted on, or
14 any unfair tactics were used against, a party to the contract;

15 (c) whether the contract provides for any payment by the contract
16 worker and the provisions about the payment if the contract is
17 terminated;

18 **Example of payment by contract worker**

19 payment for goodwill, plant or equipment

20 *Note* An example is part of the Act, is not exhaustive and may extend,
21 but does not limit, the meaning of the provision in which it
22 appears (see Legislation Act, s 126 and s 132).

23 (d) any action taken by a party to mitigate any claimed unfairness
24 under the contract.

25 (3) The tribunal may also consider anything else the tribunal considers
26 relevant.

- 1 **17 Unfairness under work contracts**
- 2 (1) This section does not limit the cases in which the tribunal may find
- 3 that a work contract is unfair.
- 4 (2) However, the tribunal may decide that a work contract is unfair if
- 5 satisfied about any of the following:
- 6 (a) the contract provides for remuneration at a rate that is, or is
- 7 likely to be, less than the rate of remuneration for an employee
- 8 doing similar work;
- 9 (b) the contract avoids, or is designed to avoid, the provisions of
- 10 an industrial award or agreement;
- 11 (c) the contract, if terminated, does not result in the contract
- 12 worker being treated fairly in relation to any amount paid by
- 13 the worker under the contract;
- 14 (d) the contract is, or appears to be, against the public interest.
- 15 **Example for par (c)**
- 16 the contract does not provide for repayment of the amount paid or compensation
- 17 for the contract worker
- 18 **Example for par (d)**
- 19 the effect of the contract, or a series of similar contracts, would adversely affect
- 20 the safety of workers or a section of the public
- 21 *Note* An example is part of the Act, is not exhaustive and may extend, but
- 22 does not limit, the meaning of the provision in which it appears (see
- 23 Legislation Act, s 126 and s 132).
- 24 (3) Also, the tribunal may decide that a work contract is unfair—
- 25 (a) as originally made; or
- 26 (b) as subsequently amended; or
- 27 (c) because of the conduct of a party.
-

- 1 **18 Orders to amend or set aside unfair work contract**
- 2 (1) This section applies if the tribunal decides that a work contract is
- 3 unfair.
- 4 (2) The tribunal may, by written order—
- 5 (a) amend the contract; or
- 6 (b) set aside all or any part of the contract; or
- 7 (c) if the contract has been terminated—reinstate the contract with
- 8 any amendment the tribunal considers fair and reasonable.
- 9 (3) The amendment of a work contract, including a reinstated work
- 10 contract, may include—
- 11 (a) the omission of any provision of the contract; and
- 12 (b) the insertion of new and substituted provisions into the
- 13 contract.
- 14 (4) An order under this section may only be made for the purpose of
- 15 putting the parties to the work contract as nearly as practicable on a
- 16 footing that avoids the contract being unfair.
- 17 (5) An order under subsection (3) may be expressed to commence on—
- 18 (a) the day the order is made; or
- 19 (b) if a later date of commencement is stated in the order—that
- 20 later date.
- 21 **19 Orders for compensation**
- 22 (1) This section applies if the tribunal is satisfied that an order under
- 23 section 18 would be inadequate for putting the parties to the work
- 24 contract as nearly as practicable on a footing that avoids the contract
- 25 being unfair.

1 (2) The tribunal may, in writing, order a party to the work contract to
2 pay a stated amount of compensation to another party to the
3 contract.

4 (3) An order for compensation may be made instead of, or in addition
5 to, an order under section 18.

6 **20 Orders prohibiting further unfair work contracts**

7 (1) This section applies if the tribunal is satisfied that—

8 (a) a principal under a work contract found to be unfair is likely to
9 enter into another unfair work contract as principal; or

10 (b) if the principal mentioned in paragraph (a) is a corporation—an
11 executive officer of the corporation is likely to—

12 (i) enter into an unfair work contract as principal; or

13 (ii) be an executive officer of a corporation likely to enter
14 into an unfair work contract.

15 (2) The tribunal may, in writing, order the person not to enter into a
16 work contract of a stated kind.

17 (3) In this section:

18 *executive officer*, of a corporation, means a person, by whatever
19 name called and whether or not the person is a director of the
20 corporation, who is concerned with, or takes part in, the
21 corporation's management.

1 **Part 4 Tribunal proceedings**

2 **21 Additional powers**

3 The powers of the tribunal under this Act are additional to those
4 under the *Consumer and Trader Tribunal Act 2003*.

5 **22 Costs**

6 (1) The tribunal may require a party to a proceeding arising from an
7 application under this Act to pay all or any part of the costs of
8 another party reasonably incurred in relation to the proceeding if
9 satisfied about any of the following:

- 10 (a) an application by the party is frivolous or vexatious;
11 (b) the party acted unreasonably in pursuing, or failing to settle, a
12 matter before the tribunal;
13 (c) the party contravenes a tribunal direction.

14 (2) However, the tribunal may award costs under subsection (1) only if
15 satisfied that it is in the interests of justice to do so.

16 (3) In deciding whether it is in the interests of justice to award costs, the
17 tribunal must consider the following:

- 18 (a) whether the party's actions were deliberate or could easily
19 have been avoided;
20 (b) whether (and if so, the extent to which) the party's actions
21 affected the tribunal's ability to conduct the proceeding in
22 accordance with the *Consumer and Trader Tribunal Act 2003*,
23 section 21 (Principles about tribunal procedures);
24 (c) the importance to the community of people being able to afford
25 to bring applications to the tribunal under this Act;

- 1 (d) the relative financial capacities of the parties to meet the costs
2 of the proceeding.
- 3 (4) The tribunal may also consider anything else the tribunal considers
4 relevant.
- 5 (5) Costs under this section are payable at $\frac{2}{3}$ of the scale of costs
6 prescribed by the rules applying to a civil proceeding in the
7 Supreme Court.

1 **Part 5 Enforcing tribunal orders**

2 **23 Court may enforce order filed in court**

3 (1) This section applies if a party to a proceeding under part 3 (Review
4 of work contracts)—

5 (a) applies to a court of competent jurisdiction to enforce a
6 tribunal order made in the proceeding; and

7 (b) files a copy of the order, certified in writing by the tribunal
8 registrar, in the court.

9 (2) If the court is satisfied that a person (the *respondent*) against whom
10 the order is made has contravened, is contravening or is likely to
11 contravene the order, it may—

12 (a) make an order restraining the respondent from contravening
13 the tribunal order (including an order requiring the respondent
14 to do something); or

15 (b) make any other order the court considers appropriate to enforce
16 the tribunal order; or

17 (c) enforce the tribunal order as if it were a final judgment of the
18 court.

19 **24 Enforcement in Magistrates Court**

20 (1) To remove any doubt, the Magistrates Court has jurisdiction to act
21 under this part to enforce a tribunal order.

22 (2) However, this section does not affect any limit on the Magistrates
23 Court's jurisdiction under the *Magistrates Court Act 1930*, part 4.2
24 (Civil jurisdiction).

1 **25 Contravention of court enforcement order**

2 A person must not contravene an order of a court under section 23.

3 Maximum penalty: 50 penalty units.

1 **Part 6 Miscellaneous**

2 **26 No contracting out**

3 A provision of a contract or agreement is void if it limits or
4 modifies, or purports to limit or modify, the operation of this Act
5 (including this section), or an order under this Act, in relation to a
6 work contract.

7 **27 Approved forms**

- 8 (1) The Minister may, in writing, approve forms for this Act.
- 9 (2) If the Minister approves a form for a particular purpose, the
10 approved form must be used for that purpose.

11 *Note* For other provisions about forms, see the Legislation Act, s 255.

- 12 (3) An approved form is a notifiable instrument.

13 *Note* A notifiable instrument must be notified under the Legislation Act.

14 **28 Determination of fees**

- 15 (1) The Minister may, in writing, determine fees for this Act.

16 *Note* The Legislation Act contains provisions about the making of
17 determinations and regulations relating to fees (see pt 6.3).

- 18 (2) A determination is a disallowable instrument.

19 *Note* A disallowable instrument must be notified, and presented to the
20 Legislative Assembly, under the Legislation Act.

1 **29 Regulation-making power**

2 (1) The Executive may make regulations for this Act.

3 *Note* A regulation must be notified, and presented to the Legislative
4 Assembly, under the Legislation Act.

5 (2) A regulation may make provision in relation to the making, keeping
6 or transfer of records relating to work contracts.

7 (3) A regulation may create offences and prescribe maximum penalties
8 of not more than 10 penalty units for the offences.

- 1 **Part 7** **Transitional and consequential**
2 **provisions**
- 3 **30** **Application to work contracts**
- 4 (1) This Act applies in relation to conditions under a work contract only
5 if the contract was made on or after the commencement of this Act.
- 6 (2) This section expires on 1 July 2008.
- 7 **31** **Legislation amended—sch 1**
- 8 This Act amends the *Consumer and Trader Tribunal Act 2003* in
9 schedule 1.

Schedule 1 Consumer and Trader Tribunal Act 2003—consequential amendments

(see s 31)

[1.1] New section 6 (a) (iii)

insert

- (iii) exercise other functions given to the tribunal under other Acts; and

[1.2] Section 7 (2)

substitute

- (2) The tribunal has—
 - (a) a general division; and
 - (b) a fair work contracts division.

[1.3] New section 10A

insert

10A Deputy president—fair work contracts division

A person may be appointed under section 10 as the deputy president for the fair work contracts division only if—

- (a) the person—
 - (i) is a lawyer, and has been a lawyer for not less than 5 years; or
 - (ii) has had experience at a high level in industry, commerce, government or industrial relations; or

- 1 (iii) has, at least 5 years previously, obtained qualifications
2 from a university or other tertiary educational institution
3 in the field of law, economics, industrial relations or
4 some other field of study considered by the Executive to
5 be substantially relevant to the functions of the deputy
6 president; and
- 7 (b) the Executive is satisfied the person is suitable for appointment
8 because of the person's expertise and experience in the field of
9 industrial relations.

10 **[1.4] Section 15 (b) and note**

11 *substitute*

12 (b) for disciplinary action to be taken against a person under the
13 Act; or

14 (c) for the exercise of a function given to the tribunal under
15 another Act.

16 *Note* The following Acts provide for applications to be made to the tribunal:

- 17 • *Agents Act 2003*
18 • *Security Industry Act 2003*
19 • *Fair Work Contracts Act 2004*.

20 **[1.5] New section 25A**

21 *in division 4.2, insert*

22 **25A Conduct of proceedings—tribunal divisions**

- 23 (1) A proceeding arising under the *Fair Work Contracts Act 2004* must
24 be conducted in the fair work contracts division of the tribunal.
- 25 (2) Any other proceeding must be conducted in—
- 26 (a) the general division of the tribunal; or
- 27 (b) if directed by the president, a division created by regulation
28 under section 7 (Establishment of tribunal).

[1.6] Section 28 (1) (b)*substitute*

(b) for an application in relation to a disciplinary action—the commissioner and the person to whom the application relates; or

(c) for a proceeding arising from an application to review a work contract under the *Fair Work Contracts Act 2004*—each party to the contract.

[1.7] Section 29*substitute***29 Representation**

(1) A person may be represented in a proceeding by a lawyer or someone else.

(2) However, in a proceeding before the tribunal arising under the *Fair Work Contracts Act 2004*, an interested person may be represented by a lawyer only with leave of the tribunal.

(3) In this section:

interested person—see the *Fair Work Contracts Act 2004*, section 11 (3).

[1.8] Section 44 (2)*substitute*

(2) The tribunal may take any other action it considers appropriate that is consistent with this Act and the Act under which the application to which the proceeding before the tribunal applies was made.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

Dictionary

(see s 5)

Note 1 The Legislation Act contains definitions and other provisions relevant to this Act.

Note 2 For example, the Legislation Act, dict, pt 1, defines the following terms:

- chief executive (see s 163)
- consumer and trader tribunal
- contravene
- lawyer.

contract worker—see section 9.

industrial organisation means an organisation registered under the *Workplace Relations Act 1996* (Cwlth), schedule 1B (Registration and Accountability of Organisations).

industry includes—

- (a) any profession, trade, manufacture, business, project or occupation in which people work; and
- (b) a part of an industry or of a number of industries.

interested person, for part 3 (Review of work contracts)—see section 11 (3).

order means an order by the tribunal under this Act.

principal—see section 10.

remuneration includes non-financial remuneration.

termination, of a work contract, means the termination or other ending of the contract.

tribunal means the consumer and trader tribunal.

unfair includes harsh and unconscionable.

1 **WCI** means the Wage Cost Index (Canberra) issued by the
2 Australian Statistician.

3 *Note* In June 2004, this was series 6345.0.

4 **WCI indexed**, for an amount, means the amount as adjusted in line
5 with any adjustment in the WCI since the commencement of the
6 provision in which the amount appears.

7 **work contract**—see section 8.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 2004.

2 Notification

Notified under the Legislation Act on 2004.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.
