

**THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY**

2004

FAIR WORK CONTRACTS BILL 2004

EXPLANATORY STATEMENT

**Circulated by authority of the
Minister for Industrial Relations
Katy Gallagher MLA**

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Notes on clauses

Part 1 Preliminary

Clause 1 – Name of the Act

This clause provides that the name of the proposed Act is the *Fair Work Contracts Act 2004*.

Clause 2 – Commencement

This clause provides that the Act will commence on 1 July 2006.

Clause 3 – Object of the Act

This clause provides that the object of the Act is to ensure fair conditions for workers under work contracts.

Clause 4 – Application outside the ACT

This clause provides that the Act will apply to contracts made outside the ACT, where the work is being carried out within the ACT, and to work carried out outside the ACT, when the contact relating to the work was made within the ACT.

Clause 5 – Dictionary

This provision explains that the dictionary at the end of the Act is part of the Act.

Clause 6 – Notes

This provision explains that notes within the Act are explanatory, and not part of the Act.

Clause 7 – Offences against the Act – application of the Criminal Code

This provision establishes that other legislation, including the Criminal Code, applies in relation to offences against the Act.

Part 2 Key concepts

Clause 8 – Work contract

This provision defines the term *work contract* for the purposes of the Act. A work contract is a contract for services for doing work in an industry. It does not include an employment contract or a contract of service.

Clause 9 – Contract worker

This provision defines the term *contract worker* for the purposes of the Act. A contract worker is a person engaged to perform work under a work contract.

Clause 10 – Principal

This provision defines the term *principal* for the purposes of the Act. A principal is a party to a work contract who is not a contract worker.

Part 3 Review of work contacts

Clause 11 – Applications for review

This clause establishes that applications may be made to the Tribunal to review work contracts, and sets out who may make an application to the Tribunal. A person who is a party to a work

contract, or an industrial organisation entitled to represent a party to a work contract (if it acts with the party's written consent) is entitled to make an application.

Clause 12 - Remuneration cap – individual contract workers

This provision establishes that contracts in which the contract worker is an individual are not reviewable by the Tribunal if the contract provides for remuneration that is equal to or more than \$200,000 (adjusted in line with the Wage Cost Index) in the 12 month period before the application was made, or if the contract has been terminated, in the 12 month period preceding the date of termination.

Clause 13 – Revenue cap – corporate contract workers

This provision establishes that contracts in which the contract worker is a corporation are not reviewable by the Tribunal if the corporation has a gross revenue, from all sources, of \$200,000 (adjusted in line with the wage cost index) or more in the 12 month period before the application for review of the contract was made, or if the contract had been terminated, in the 12 month period before the contract was terminated.

Clause 14 – Time limit for applications – terminated contracts

This provision establishes that an application for a review of a terminated work contract must be made within 12 months of the termination of the contract.

Clause 15 – Representative parties

This provision establishes that if two or more people have the same or similar work contract (whether or not it is with the same principal), a representative application may be made to the Tribunal (clause 15(2)). Clause 15(3) similarly provides that a proceeding may be continued against several people in a representative basis.

Under clause 15(4), the tribunal may appoint a party to the proceeding or another person to represent others with a similar work contract. This person must be joined as a party to the proceedings, if they are not already a party, under clause 15(5).

Clause 15(6) provides that an order made by the tribunal in representative proceedings is binding on all people who were represented in the proceedings. However, an order must not be enforced against a person who was not directly involved in the proceedings except with the leave of the Tribunal.

Under clause 15(9), the tribunal may exempt a represented person from an order under clause 15(6) if it would be unfair for the person to be bound by the order. The Tribunal may make such an order on application or on its own initiative (clause 15(10)).

Clause 16 – Review of work contract

This provision establishes that the tribunal must, on receiving an application in accordance with the Act, review a work contract and decide whether it is unfair. The provision sets out certain factors that the tribunal must consider when deciding if a contract is unfair, and also provides that the tribunal may consider other relevant matters.

Clause 17 - Unfairness under work contracts

This provision does not limit the cases in which the tribunal may find unfairness in work contracts but provides examples of circumstances in which the tribunal may find unfairness in work contracts. Clause 17(3) provides that the tribunal may decide that contract is unfair as originally made, as subsequently amended, or because of the conduct of a party.

Clause 18 – Orders to amend or set aside unfair work contract

This clause sets out the orders that the Tribunal may make if it decides that a work contract is unfair. The tribunal may vary, set aside or reinstate the contract in order to put the parties to the work contract as nearly as practicable on a footing that avoids the contract being unfair. Orders must be in writing.

Clause 19 – Orders for compensation

This provision establishes that if the orders available to the tribunal under clause 18 would be inadequate for putting the parties in the position they would have been in if the contract had been fair, the tribunal may instead order a party to the contract to pay compensation to another party. An order for compensation may also be made in addition to an order under clause 18.

Clause 20 – Orders prohibiting further unfair work contracts

This clause provides that if the tribunal is satisfied that a principal to a work contract that is found to be unfair is likely to enter into another unfair work contract either directly or as an executive officer of the same or a different corporation, the tribunal may order the person not to enter into a work contract of a stated kind.

Part 4 Tribunal proceedings

Clause 21 – Additional powers

This provision establishes that the powers of the tribunal set out in the Act are additional to those contained in the *Consumers and Trader Tribunal Act 2003*.

Clause 22 - Costs

This provision establishes that the tribunal may require a party to pay another party's costs of the proceedings under certain circumstances, if it is in the interest of justice to do so. Costs are payable at the rate of 2/3 of the costs set out in the *Supreme Courts Rules*.

Part 5 Enforcing tribunal orders

Clause 23 – Court may enforce order filed in court

This clause provides that an order made by the tribunal under this Part may be enforced in a court of competent jurisdiction as if it were a final judgement of the court, once a copy of the tribunal's order has been filed in the court. Clause 23 allows the court to make orders to prevent a contravention of the tribunal order.

Clause 24 – Enforcement in Magistrates Court

This clause provides, to remove any doubt, that the Magistrates Court has jurisdiction to enforce tribunal orders.

Clause 25 – Contravention of court enforcement order

This clause provides that it is an offence to contravene an order made by the tribunal under clause 25. The offence is subject to a maximum penalty of 50 penalty units.

Part 6 Miscellaneous

Clause 26 – No contracting out

This provision establishes that a contract is void if it tries to limit or modify the operation of the Act.

Clause 27 – Approved forms

This provision establishes that the Minister may approve forms for the Act in writing and that any such form would be a notifiable instrument.

Clause 28 – Determination of fees

This provision establishes that the Minister may, in writing, establish fees for the Act and that such a determination would be a disallowable instrument.

Clause 29 – Regulation-making power

This provision establishes that the Executive may make regulations for the Act. It specifically provides that the Executive may make regulations about the making, keeping or transfer of records that relate to work contracts. While any such regulations may prescribe offences for contraventions of the regulations with a monetary penalty the penalty is not to exceed 10 penalty units.

Part 7 Transitional and consequential provisions

Clause 30 – Application to work contracts

This provision establishes that the Act only applies to work contracts made on or after the commencement of this Act.

Clause 31 – Legislation amended – schedule 1

This provision notes that the Act amends the *Consumer and Trader Tribunal Act 2003* as set out in schedule 1.

Schedule 1 Amendments of *Consumer and Trader Tribunal Act 2003*

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

This clause modifies the objects of the *Consumer and Trader Tribunal Act 2003* to include the additional functions conferred by the *Fair Work Contracts Act 2004*.

[1.2] Section 7(2)

This clause amends section 7 to create a new division of the Consumer and Trader Tribunal called the fair work contracts division. This division will hear all matters under the *Fair Work Contracts Act 2004*.

[1.3] New section 10A

This clause inserts a new provision setting out the minimum qualifications and experience required for appointment as a deputy president of the fair work contracts division of the tribunal.

[1.4] Section 15 (b) and note

This clause makes a consequential amendment to section 15 to include reference to the *Fair Work Contracts Act 2004*.

[1.5] New section 25A

This clause inserts a new section 25A, that establishes that any proceedings arising under the *Fair Work Contracts Act 2004* must be conducted in the fair work contract division of the tribunal.

[1.6] Section 28 (1) (b)

This clause makes a consequential amendment to section 28 to specify the parties to tribunal proceedings under the *Fair Work Contracts Act 2004*.

[1.7] Section 29

This clause substitutes a new section 29, dealing with representation of parties in the Consumer and Trader Tribunal, providing that a person may only be represented by a lawyer in a proceeding before the fair work contracts division of the tribunal with the leave of the tribunal.

[1.8] Section 44 (2)

This clause makes a consequential amendment to section 44 to refer to other Acts under which applications can be made to the tribunal, including the *Fair Work Contracts Act 2004*.

Dictionary

This section defines terms used in the *Fair Work Contracts Act 2004*.