



# Give Workers the Right to Challenge Unfair Contractual Terms

These amendments implement a Jobs and Skills Summit outcome to give workers the right to challenge unfair contractual terms.

## What has changed?

This measure will amend the *Fair Work Act 2009* to establish a new low cost, flexible and informal jurisdiction in the Fair Work Commission (the Commission) for resolving disputes between independent contractors (below a high income threshold) and principals about unfair contract terms in services contracts.

## What do these changes mean?

The changes will mean that independent contractors (who earn below the threshold) will be able to apply to the Commission for dispute resolution in relation to unfair terms in a services contract to which they are a party. The dispute must be about a term in the contract that, if the relationship were an employment relationship, would be a workplace relations matter.

When considering if a contract term is unfair, the Commission will be able to consider:

- the relative bargaining power of the parties to the services contract
- whether the services contract as a whole displays a significant imbalance between the rights and obligations of the parties
- whether the contract term under consideration is reasonably necessary to protect the legitimate interests of a party to the contract
- whether the contract term under consideration imposes a harsh, unjust or unreasonable requirement on a party to the contract
- whether the services contract as a whole provides for total remuneration for performing work that is less than that of comparable employees or independent contractors
- any other matters the Fair Work Commission considers relevant.

If the Commission finds that a contract term is unfair, it will be able to:

- change the terms of the contract
- 'set aside' (make ineffective), all or part of the contract.

The new unfair contracts jurisdiction will only be available to independent contractors that earn below a contractor high income threshold. The amount of the contractor high income threshold will be set by regulation. There will be a consultation process on the development of the regulation.

Independent contractors who earn above the contractor high income threshold will continue to have access to remedies for unfair or harsh contract terms under the *Independent Contractors Act 2006*.

## **When will these changes come into effect?**

The measure will commence on 26 August 2024, or earlier by proclamation.

For more information on the Closing Loopholes legislation, visit: <https://www.dewr.gov.au/workplace-relations>