



WHEN A PICTURE REALLY IS WORTH 1000 WORDS – THE “COMIC CONTRACT” MOVEMENT

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In an age when the most popular form of communication is limited to 280 characters, it is unsurprising that the public’s tolerance for dense, overly complex legal contracts is in decline. It now appears that the process of simplification that began with the “plain English drafting” ethos is about to take the next step, with the rise of the visual narrative contract, or “comic contract”.

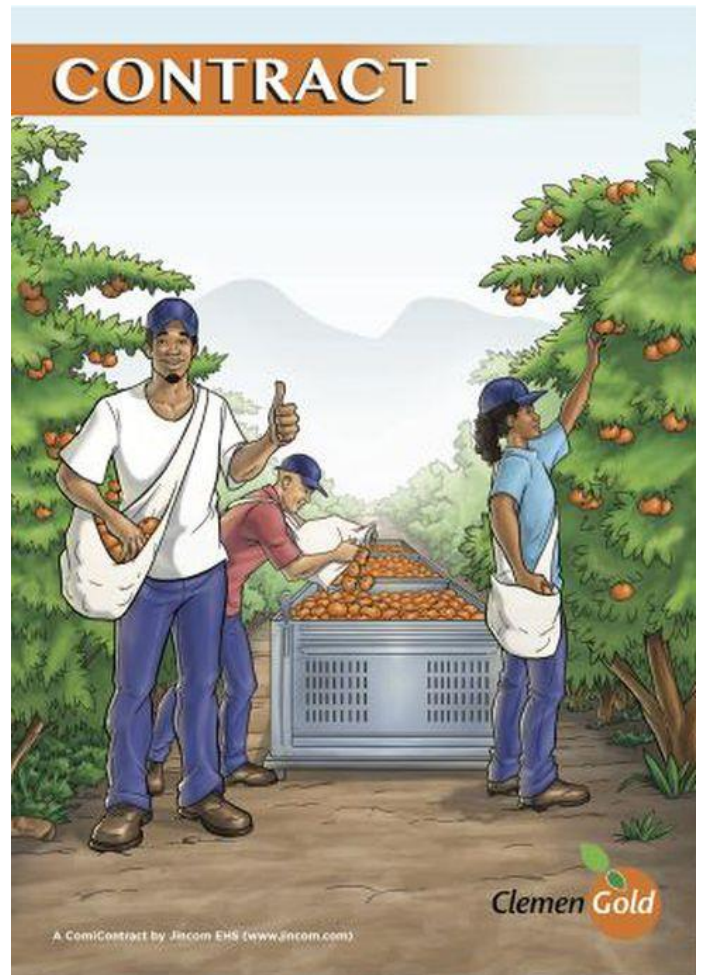
Large multinational employers like Aurecon have already embraced the concept. But what is a comic contract and is it suitable for use with your workforce?

GENESIS OF THE COMIC CONTRACT

The first widely circulated version of a comic contract for employees was created in 2016 for a commercial farming operation in South Africa for issue to its fruit pickers. The employer found that as many of its fruit pickers were illiterate, a conventional employment contract was all but meaningless for them.

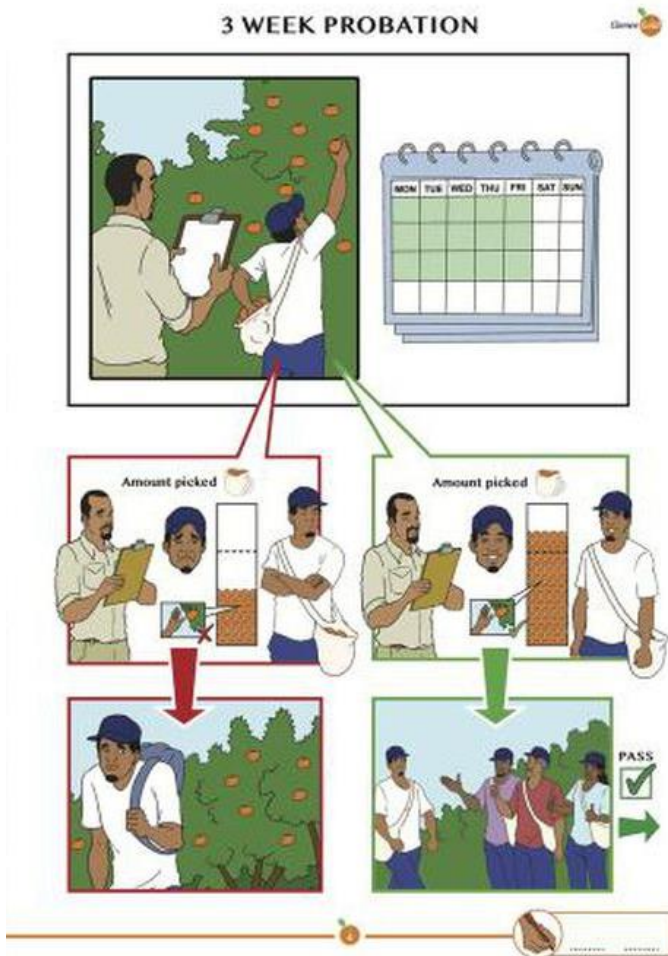
The employer engaged a law firm to draft a simplified version of their employment contract that replaced the majority of the text with graphics, explaining the effect of each clause, in an effort to address this issue.

By way of example, the following graphic from the comic contract explains the effect of a three (3) week probationary period:



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Credit: Fruit Picker contract pages by Jincom

The employer received significant positive feedback from the employees to whom the new comic contract was issued, with managers reporting a much easier process when explaining the terms of the contracts to the employees.

The use of comic contracts has not just been restricted to unskilled workers with reading or language difficulties. Aurecon, a multinational engineering consulting firm with offices in 25 countries, has begun issuing comic contracts to its employees around the world, including in Australia. Aurecon reports that the comic contracts have reduced the number of words contained in the employment contract by more than two thirds¹.

BENEFITS OF A COMIC CONTRACT

The benefits of issuing comic contracts to certain demographics of employees are apparent. Young

¹ Marin-Guzman, David. "Aurecon backs simple 'visual contracts' as future of work". *Financial Review*, 3 May 2018, page 3.

workers, employees with literacy difficulties or whose first language is not English may all benefit from the use of graphics to explain the effect of otherwise potentially impenetrable clauses.

Employers who have adopted comic contracts have also reported a greater level of engagement from employees. Replacing or augmenting clauses with graphics has also encouraged these employers to eliminate extraneous or inessential terms from their contracts.

RISKS ARISING FROM COMIC CONTRACTS

There have been no recorded instances of a court or tribunal considering the enforceability of a comic contract in any jurisdiction around the world to date. Whilst respected commentators such as former Chief Justice of the High Court of Australia, Mr Robert French AC, have expressed confidence in the enforceability of a comic contract under Australian law, how these contracts may be interpreted and enforced will be interesting to follow. There should be a good degree of confidence in the context of unfair dismissal claims, where the comprehension of correct workplace rules and procedures can be relevant to a dispute. For other disputes where textual precision is important, there is likely to be much wider debate.

A key consideration impacting the enforceability of a comic contract is to ensure there is sufficient certainty in respect of the meaning of any terms recorded in graphic or comic format. Clauses dealing with concepts such as probationary periods, duties and responsibilities and reporting lines can be sufficiently clear to understand in graphic form. However, complex concepts more likely to be subject to controversy, such as confidentiality, intellectual property and post-employment restraints, require more careful consideration as to whether they should be expressed in a graphic format.

Other than certainty, issues to consider when drafting a comic contract include:

- Ensuring graphics are consistent with, and compliment, any corresponding text;
- Translating defined terms used in the contract into graphics as necessary;
- Ensuring consistency of interpretation within management and human resources staff for any graphic clauses included in the contract when responding to queries from employees;
- Managing the interaction between the terms of a comic contract and any applicable policies and procedures of the employer, or applicable awards or enterprise agreements, to ensure there are no ambiguities regarding any rights or obligations

imposed on the employee under multiple documents;

- Ensuring any graphics included in the contract that feature human characters are not depicted in a patronising, unlawful or discriminatory manner.

TIPS FOR IMPLEMENTING COMIC CONTRACTS

Businesses considering implementing comic contracts within their workforce should undertake the following exercise in order to increase the prospects of the contract being enforceable under Australian law:



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