

EXPLANATORY STATEMENT

Select Legislative Instrument 2009 No. 333

Issued by the authority of the Minister for Small Business, Independent Contractors
and the Service Economy

Independent Contractors Act 2006

Independent Contractors Amendment Regulations 2009 (No. 1)

The *Independent Contractors Act 2006* (the IC Act) protects the freedom of independent contractors to enter into contracting arrangements and ensures that these arrangements are regulated by commercial, not workplace relations, law.

Section s.43 of the IC Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary and convenient to be prescribed for carrying out, or giving effect to the IC Act. Subsection 42(1) of the IC Act allows for the making of regulations relating to transitional matters. Subsection 42(2) provides that such regulations may prescribe modifications of Division 1 of Part 5 of the IC Act (Transitional Provisions).

To the extent that it is constitutionally possible, section 7 of the IC Act excludes State and Territory laws that require independent contractors to be treated as employees (deeming laws) or provide employment-like entitlements (deeming-like laws).

Parties to service contracts signed before the IC Act's commencement, and who are affected by deeming and deeming like laws, will be subject to those laws until the date when those contracts expire; or the end of the transition period, whichever comes first. Alternatively, parties can, at any time, agree in writing that deeming or deeming-like laws do not apply to their service contracts. This is defined under section 33 of the IC Act as a reform opt-in agreement.

The Department of Innovation, Industry, Science and Research (the Department) anticipates that the extended application of the Transitional Provisions will minimise the number of service contracts directly affected by the end of the transition period.

Schedule 1 of the *Independent Contractors Amendment Regulations 2009* (the Regulations) modifies paragraph 35 (4) (b) of the IC Act. As a result the IC Act's three year transition period is extended to 4 years and 6 months in total, ending on 1 September 2011. This allows parties to service contracts, currently covered by deeming or deeming like laws, more time to arrange their business affairs and familiarise themselves with independent contracting requirements before the relevant State and Territory laws cease to apply.

In developing the Regulations the Department has not conducted public consultation. This is consistent with section 18 of the *Legislative Instruments Act 2003* as the extension of the IC Act's transition period is minor or machinery in nature and does not substantially alter the law.

The Office of Best Practice Regulation agrees with the Department's assessment that there are low or no compliance costs resulting from the regulatory change. As a result the proposal does not require a Regulation Impact Statement.

The IC Act does not specify conditions that need to be satisfied before the power to make regulations is satisfied.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulations commence on the day after they are registered on the Federal Register of Legislative Instruments.