

EXPLANATORY STATEMENT

Select Legislative Instrument 2011 No. 155

Issued by the authority of the Minister for Small Business

Independent Contractors Act 2006

Independent Contractors Amendment Regulations 2011 (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 43 of the IC Act provides that the Governor-General may make regulations prescribing matters required or permitted by the IC 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 rights or entitlements (deeming-like laws).

Section 35 of the IC Act ensures that parties to service contracts entered into before, or continuing from, 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 IC Act's transition period on 1 September 2011, whichever comes first. Alternatively, parties can under section 33 of the IC Act, at any time, agree in writing that deeming or deeming-like laws do not apply to their service contracts (reform opt-in agreement).

Schedule 1 of the *Independent Contractors Amendment Regulations 2011 (No. 1)* (the Regulations) modifies paragraph 35(4)(b) of the IC Act.

Visiting medical officers (VMOs) are medical practitioners that provide medical services to public hospital patients on an honorary, sessionally paid, or fee for service basis. The extension preserves existing arrangements, for the delivery of services by VMOs engaged as independent contractors, while national health reforms under the Council of Australian Governments are implemented.

As a result, the IC Act's transition period is extended for VMOs until 1 September 2014.

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.