

Independent Contractors Act 2006 comes into force

The new independent contractor laws came into effect on 1 March 2007 via the Independent Contractors Act 2006.

In combination with the current WorkChoices legislation, the new contractors' legislation is a further step towards establishing a single national workplace relations system and has significant implications for the use of independent contractor arrangements. The key changes are as follows:

- > Removal of protections for certain independent contractors who are deemed employees under State legislation, and
- > Introduction of a single national scheme for the review of independent contractor arrangements on grounds of "unfairness" which will provide a forum for contractors to challenge the terms of their engagement, including termination entitlements
- > Penalties for parties who enter into "sham" independent contractor arrangements ie, engaging a person as a contractor when legally they should be characterised as an employee.

If the contractor arrangements facilitated by the new legislation are properly utilised and implemented, there is considerable potential for businesses to reap the rewards of this further deregulation of the labour market.

The stated purpose of the Act is to recognise and protect the unique position of independent contractors in the Australian labour market. The Act's principal objects are:

- > To protect the freedom of independent contractors to enter into services contracts
- > To recognise independent contracting as a legitimate form of work arrangement that is primarily commercial, and
- > To prevent interference with the terms of genuine independent contracting arrangements.

The Government's policy rationale is that genuine independent contractor arrangements should be governed by principles of commercial and contract law, not by industrial and employment law. The Act seeks to achieve this outcome by overriding various State employment and industrial laws that currently impact upon independent contractor arrangements by deeming certain independent contractors to still be considered employees at law. The new Act overrides these State "deeming provisions."

It is imperative however that you seek legal advice before you implement any contractor agreements as massive potential penalties apply for what the legislation considers to be "sham contracting arrangements."

About the Author

[David Natenzon](#) has gained extensive experience in different aspects of commercial, corporate, and litigation matters and manages Rosendorff's employment law division. He has developed an extensive knowledge of the WorkChoices legislation and is an Associate Member of the Law Institute of Victoria. David has written numerous resource papers on different aspects of corporate law. For more details, visit: www.rosendorff.com.au

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