



Australian Government

WorkChoices

New protections

The right to join or not to join a trade union, free from pressure or coercion is called freedom of association.

Under WorkChoices, there are new general prohibitions supporting freedom of association which make it unlawful for any person to:

- coerce a person to join, not to join or quit a union;
- make false statements about union membership (e.g. claiming that membership is compulsory when it is not); and
- go on strike because another person is or is not a union member.

Awards and agreements under the *Workplace Relations Act 1996* must not contain clauses that permit or require any breach of the freedom of association provisions. Awards and agreements must also not contain any clause that requires the payment of a union bargaining services fee.

Under WorkChoices, these provisions are extended to ban clauses that encourage or discourage union membership or require any person to encourage or discourage another person to become a union member.

What employers must not do

Under WorkChoices, an employer must not take certain discriminatory action against an employee or an independent contractor on grounds including:

- they are or are not a member of a union; or
- they have employees who are not members of a union; or



WorkChoices and union membership

- they have not paid a fee to a union; or
- they have refused to join in industrial action; or
- they have not supported an agreement with a union; or
- they have applied for a secret ballot order, such as a secret ballot to approve the taking of protected industrial action; or
- they have participated in a secret ballot; or
- they are entitled to the benefit of an industrial instrument (like an award or a collective agreement or an AWA) or the Australian Fair Pay and Conditions Standard and this is the sole or dominant reason for the employer taking the discriminatory action; or
- they have made a complaint to a person or body who has an enforcement role under an industrial law or participated in proceedings under an industrial law; or
- they are seeking better industrial conditions as a union member; or
- they were absent from work without leave to carry out duties as a union officer in circumstances where they applied for leave beforehand and it was unreasonably withheld; or
- they have acted to further the industrial interests of a union (provided that what they have done is lawful and has been authorised by the union); or
- they have not paid or will not pay a bargaining services fee.

These are civil remedy provisions (see Civil remedies below).

What employees must not do

An employee must not stop work for certain reasons, including that their employer has made a complaint under an industrial law or has participated in proceedings under an industrial law.

For more information about the legislative provisions relating to industrial action, see the 'WorkChoices and industrial action' fact sheet.

What unions must not do

A union must not take industrial action against an employer:

- because the employer is an officer or member of an industrial association; or
- to force the employer to join, or stay in, or not to join, or resign from, an industrial association; or
- to force the employer to pay a fee to an industrial association.

A union must not advise, encourage or force an employer to take action against an employee for any of the reasons described above. A union must not force an employer to discriminate against a union member because the member has refused or failed to comply with a direction given by the union.

An industrial association must not coerce a person in their employment to participate in industrial action or to stop the person applying for a secret ballot.

An industrial association must not harm a person in their employment or prospective employment or encourage anyone else to do so because the person:

- has not paid a bargaining services fee; or

- is (or is not) a member of an association; or
- has not paid a fee to an industrial association; or
- has refused to join in industrial action; or has made a complaint under an industrial law or an industrial instrument.

A union must not force an employer to discriminate against an employee for any of the above reasons.

An industrial association must not demand payment of a bargaining services fee from any person and must not attempt to force any person to pay a bargaining services fee. The Workplace Relations Act prohibits any person from making false or misleading statements about bargaining services fees.

These are civil remedy provisions (see Civil remedies below).

Independent contractors

A union must not discriminate against an independent contractor or take industrial action against an independent contractor because the independent contractor (or any person they employ or engage):

- is or is not a member of a industrial association; or
- has refused to comply with a direction given by the union; or
- has not paid a fee to a union; or
- has made a complaint under an industrial law.

A union must not encourage anyone or take industrial action to force anyone to discriminate against an independent contractor for any of these reasons.

Discrimination includes refusing to make use of services or to supply goods or services.

The Workplace Relations Act also prohibits any person from making false statements about bargaining services fees.

These are civil remedy provisions (see Civil remedies below).

Discrimination against employer


A person must not discriminate against an employer because its employees are covered or not covered by a particular kind of industrial instrument or an industrial instrument made with a particular person. This prohibition relates to the type of industrial instrument entered into not the content of the instrument.

Civil remedies

If any of the freedom of association provisions identified as civil remedies are breached, a court may impose a fine, require the payment of compensation or make any another order it considers necessary. The maximum fine for a breach of a civil remedy provision is \$33,000 for an incorporated body or \$6,600 for an individual.

WorkChoices is a new system of workplace relations legislation that covers up to 85 per cent of Australian employees. This series of fact sheets is available to assist workers and employers to understand their rights and obligations under the legislation.

For more information call the **WorkChoices Infoline** on **1300 363 264** or visit the **WorkChoices** website **www.workchoices.gov.au**



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