



Australian Government

WorkChoices

Employees and employers covered by the new federal system

The new WorkChoices legislation draws on a combination of constitutional powers to cover the majority of employees and employers in Australia, including:

- trading, financial and foreign corporations (constitutional corporations) and their employees;
- employees and employers in the Australian Capital Territory, the Northern Territory and Christmas and Cocos (Keeling) Islands;
- the Commonwealth, including its authorities, and its employees;
- employers in respect of waterside, maritime and flight crew employees employed in connection with interstate, overseas, inter-territory or state-territory trade and commerce; and
- most employees and employers in Victoria.

Many employees and employers who were covered by the federal system prior to WorkChoices will be able to receive the same entitlements and conditions that they are currently receiving.

There will be a separate transitional system for employers and employees who are not a constitutional corporation in the federal system prior to commencement of WorkChoices. This transitional system will operate for up to five years to provide employers that are unincorporated businesses a chance to decide whether they want to incorporate and join the new federal system. At the end of the transitional period, employers and employees that have not moved into the new federal system will move into the state system.

Constitutional corporations and other employers who are not currently part of the federal system, but who are covered by



WorkChoices and who is covered

WorkChoices, will move into the new federal system.

Employees who are not eligible to be covered by WorkChoices including employees of unincorporated businesses, some state government employers, sole traders and partnerships (apart from those in Victoria and the territories), will be covered by relevant state laws.

For further information about the provisions available for employers and employees who will be moving between federal and state systems, see the fact sheet on 'WorkChoices and transitional arrangements'.

The main category: constitutional corporations

WorkChoices will be largely based on the corporations power in the Constitution.

The corporations power in the Constitution allows laws to be made that regulate foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth.

To be considered a trading or financial corporation an employer must meet two tests:

- an employer must be incorporated; and
- the employer's trading or financial activities must be 'significant' or 'substantial'.

Trading or financial corporations will usually be incorporated bodies carrying out commercial activities to earn revenue.

Some incorporated bodies, such as local government bodies, charitable organisations, clubs, medical and health institutions and education institutions may need clarification on whether they are engaged in sufficient financial or trading activities to be considered constitutional corporations. In these instances,

previous cases heard by the courts are able to provide some guidance. The High Court's interpretation of financial or trading activities has been fairly broad. For example, football clubs, a state superannuation society, the Red Cross and a public hospital have been found to be financial or trading corporations. In disputed cases, the courts are able to determine whether a corporation is a constitutional corporation.

Foreign corporations are those incorporated outside Australia, regardless of whether they engage in trading of financial activities.

Sole traders and partnerships are not corporations, and therefore cannot be considered constitutional corporations. A sole trader is someone who trades by him or herself without the use of company structure or partners, and bears the full responsibility for the actions of the business. A partnership is an arrangement between two or more people who join forces to operate a business and share in the profits.

If an employer is unsure whether they are a constitutional corporation they should seek independent legal advice.

Other categories

In addition to the corporations power, the federal system will also draw on:

- the territories power (providing coverage for the Australian Capital Territory and Northern Territory);
- the referral power (for Victoria);
- the interstate and overseas trade and commerce power and the territories power (for waterside, maritime and flight crew employers in respect of those employees);

- the external affairs power (to support existing arrangements such as unlawful termination); and
- the Commonwealth power regarding its own employees.

Employers and employees in the ACT, NT, Christmas and Cocos (Keeling) Islands

Employers (including sole traders, partnerships and unincorporated clubs) within certain territories of Australia will continue to be covered by the federal system.

This covers employees in the Australian Capital Territory, the Northern Territory, the Territory of Christmas Island and the Territory of Cocos (Keeling) Islands.

The Commonwealth

The federal system will continue to cover Commonwealth, and Commonwealth authority, employers. A Commonwealth authority is defined as both:

- a body corporate established under the law of the Commonwealth for a public purpose; and
- a body corporate which is incorporated under the law of the Commonwealth, state or territory and in which the Commonwealth has a controlling interest.

Employers who employ waterside, maritime and flight crew employees (and their employees)

Employers who employ waterside, maritime and flight crew employees in connection with interstate, overseas, inter-territory or state-territory trade and commerce will also be covered by the federal system (although most of these employers will be constitutional

corporations and will be covered by WorkChoices anyway).

Maritime workers are the masters, seamen or pilots of a ship. Temporary employees of a ship in port are not maritime workers.

Flight crew officers are those who perform duties as a pilot, navigator or flight engineer of an aircraft, including those being trained in these duties. A pilot includes a pilot in command, co-pilot or pilot of any description of an aircraft.

Waterside workers include those who unload and load ships and complete various maintenance jobs while ships are in port.

Victoria

Victoria referred its workplace relations powers to the Commonwealth in 1996. This means most employees and employers in Victoria covered by the referral will be covered by the federal WorkChoices system regardless of whether the employer is a constitutional corporation or not.

Further advice

Please contact the WorkChoices Infoline on 1300 363 264.

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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