

**SENATE EMPLOYMENT, WORKPLACE RELATIONS AND EDUCATION
LEGISLATION COMMITTEE**

**2006-2007 BUDGET SENATE ESTIMATES HEARING
29TH AND 30TH MAY 2006
EMPLOYMENT AND WORKPLACE RELATIONS PORTFOLIO**

QUESTIONS ON NOTICE

Outcome 2: Higher productivity, higher pay workplace

Output Group 2.2: Workplace relations implementation

Output 2.2.3: Workplace relations services

Question Number: W100-07

Question:

Senator Wong asked at *Hansard* page 101:

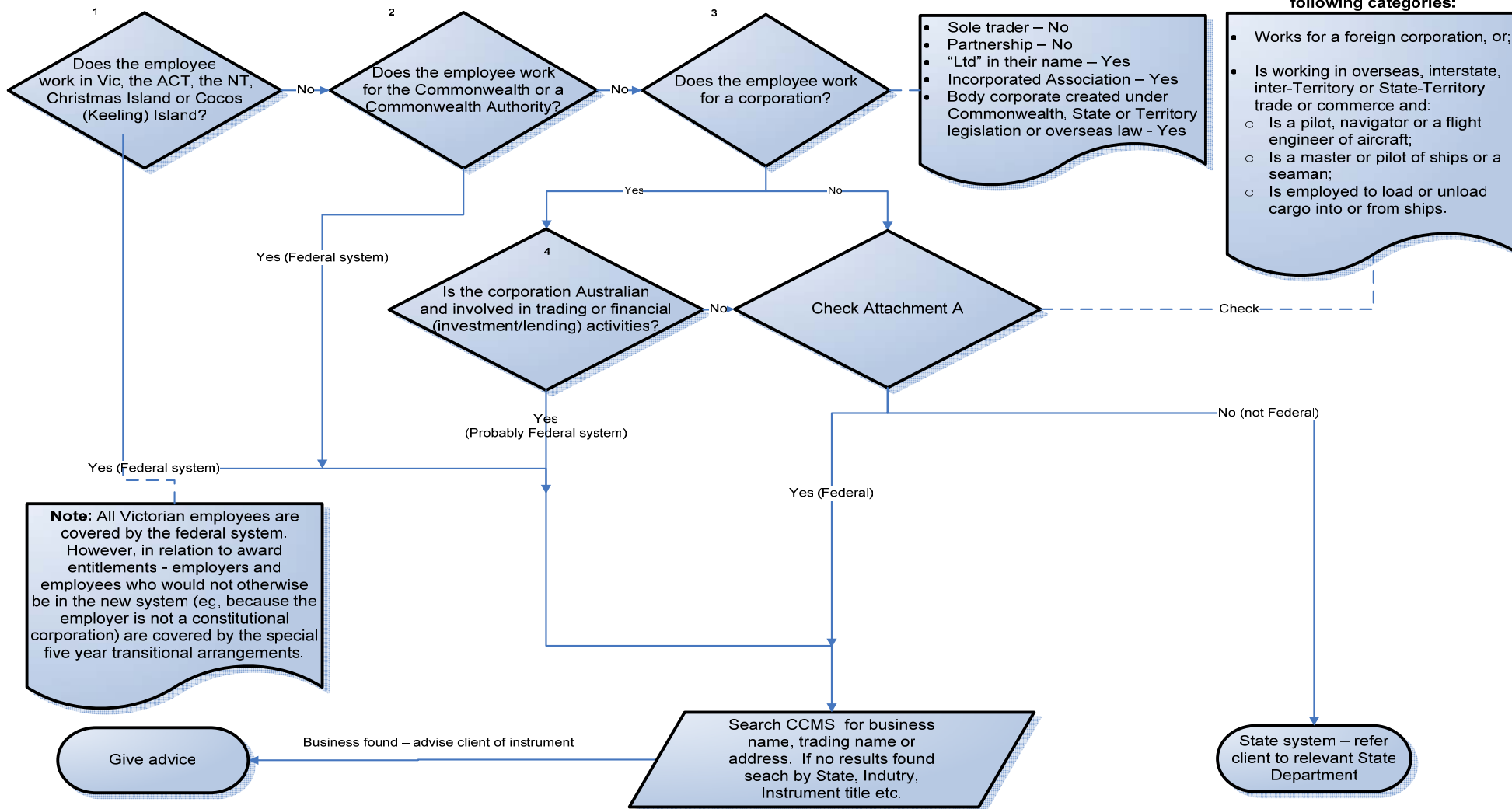
Can the Department provide a copy of the questions used to determine jurisdiction?

Answer:

A flow chart to assist Advisors identify industrial jurisdiction is at Annexure 1.

Also attached are questions to determine type of Workplace Agreement (Annexure 2) which assists WorkChoices Infoline Advisors ascertain what type of agreement the client may be covered by, and in what jurisdiction.

Identification of Industrial Jurisdiction



Is an employee covered by the Federal workplace relations system?

1. Does the employee work in Victoria, the ACT, the NT, Christmas Island or Cocos (Keeling) Island?

If yes – the employee is covered

If no – move to question 2

2. Does the employee work for the Commonwealth or a Commonwealth authority?

If yes – the employee is covered

If no – move to question 3

3. Does the employee work for a corporation?

- **Sole trader – no**
- **Partnership – no**
- **'Ltd' in their name – yes**
- **Incorporated association – yes**
- **Body corporate created under Commonwealth, State or Territory legislation or overseas law - yes**

If yes – move to question 4

If no – move to question 6

If not sure – employee to ask employer for more information

4. Is the corporation Australian and involved in trading or financial (investment, lending) activities?

If yes – the employee is probably covered. If the employer is an Australian company with 'Ltd' in its name, it is very likely that the employee is covered.

If no – move to question 5

If not sure – employee to ask employer for its view

5. Is the corporation a foreign corporation (i.e. an entity separate from its members formed overseas)?

If yes – employee is likely to be covered (some foreign corporations are exempted from the Work Relations Act in respect of employee working on certain ships in Australian waters).

If no – move to question 6

If not sure – employee to ask employer for its view

6. Is the employee

- **a pilot, navigator or flight engineer of aircraft;**
 - **a master or pilot of a ship or a seaman;**
 - **employed to load or unload cargo into or from ships;**
- working in overseas, interstate, inter-Territory or State-Territory trade or commerce?**

If yes – employee is covered

If no – employee is probably not covered

If not sure – employee to ask employer for its view

Disclaimers

- These questions are applicable only to employees working in Australia, Christmas Island and Cocos (Keeling) Island and the coastal sea (3 nautical miles from the shore). The Act may not cover employees who are working in Australian waters beyond the coastal sea or on the high seas or in a foreign country.
- This information is intended as a general guide for OWS staff only and does not constitute legal advice. Independent legal advice should be sought before relying on the contents of this guide.



Australian Government
**Department of Employment and
Workplace Relations**

Questions to determine type of Workplace Agreements

Workplace Agreements:

There are different types of agreements containing employees' wages and conditions of employment.

- If the client is covered by a CA (Certified Agreement made under federal legislation before WorkChoices or a Collective Agreement made under WorkChoices) look for the agreement on WageNet.
- If the client is covered by an AWA refer him/her to the Office of the Employment Advocate (OEA) if enquiring about entitlements under the AWA.
- If the client has a written common law contract, determine the industrial instrument that covers his/her employment (i.e. the federal award, CA, AWA, NAPSA or PSA) – WorkChoices Infoline (WIL) can advise on the content of federal industrial instruments and the Office of Workplace Services (OWS) can enforce federal industrial instruments. WIL does not advise on the content of common law contracts and OWS cannot enforce common law contracts.

Suggested questions to assist in determining what type of agreement covers client:

Do you know if there are any agreements in place at your workplace?

(If collective search on WageNet to find CA, if State collective agreement refer client to employer and/or State industrial relations commission)

Have you signed any kind of agreement that contains your wages, leave and other conditions?

(If **yes**, need to determine the type of individual agreement i.e. an AWA, a State individual agreement or a common law contract.)

Do you know if it was sent to/registered with any government department?

(If **yes**, indicates may have signed AWA, therefore ask questions below)

Do you know the name of the government department?

(If client responds with "OEA" this indicates have signed an AWA – refer to OEA; if client responds with a State government body, this indicates that they may have signed an agreement under State legislation.)

Did you receive a letter from the Office of the Employment Advocate?

(If **yes**, likely to be AWA in place – refer to OEA.)