



ENews

NEW WORKCHOICES OBLIGATIONS FOR EMPLOYERS

All employers covered by the federal industrial relations system now have another obligation to fulfil. From 20 July, all new employees must be provided with a copy of the Workplace Relations Fact Sheet within 7 days of commencing employment. Employers have 3 months (until 20 October 2007) to provide all existing employees with a copy of the fact sheet. Penalties may apply if you fail to provide the fact sheet.

The fact sheet can be distributed to your team by e-mail or by hand, or a link created to your intranet (as long as your team are e-mailed a direct link to the fact sheet).

The fact sheet covers the Australian Fair Pay and Conditions Standard, protected award conditions, the role of the Workplace Authority and the Workplace Ombudsman and the Fairness Test. The fact sheet is only currently available in English but other languages will be made available soon

The new requirement was included as part of the Workplace Relations Amendment (A Stronger Safety Net) Act 2007. Primarily, this amendment to the Act introduced the Fairness Test for workplace agreements lodged on, or after, 7 May 2007.

Who is covered under the Federal System?

The Act applies to all employers who are "constitutional corporations" which means all trading, financial and foreign corporations within the meaning of the Australian Constitution. The reasons for such a definition are based on the limitation of the Federal Government's law making power with respect to corporations in the Australian Constitution.

A foreign corporation is a corporation that is incorporated outside of the Commonwealth of Australia.

As interpreted by the High Court, a "trading or financial corporation" is any company, incorporated association or other corporation that engages in significant trading activities. Many not-for-profit corporations have been found to be trading corporations, including local councils, public universities, hospitals, benevolent or charitable organisations, and emergency services providers. Notably, even not-for-profit associations incorporated under State or Territory incorporated associations legislation (usually indicated by "Inc" at the end of the organisation's name) may be defined as trading corporations.

As to what is actually "trading", this term has been deemed to mean any activity that

involves some notion of buying or selling and that generates revenue. Corporations have been found to be trading corporations in circumstances where:

- ▶ the corporation has as its primary or dominant activity a non-trading activity;
- ▶ the corporation does not trade for profit;
- ▶ the trading activities are not motivated by private gain but purely to earn revenue; and
- ▶ the corporation is a sporting, religious or governmental body.

Unfortunately, there is no definitive answer as to whether a corporation's trading activities are sufficiently "significant" as to make it a trading or financial corporation, it is all a matter of degrees.

It is also important to note that in addition to covering constitutional corporations, the Act covers all employers in Victoria, the Northern Territory and the Australian Capital Territory. This is because Victoria referred its industrial relations powers to the Federal Government several years ago and there are specific powers in the Australian Constitution with respect to Territories.

Who is not covered by the Federal System?

Employers not covered by the Act are those operating outside Victoria and the Territories that are unincorporated, such as:

- ▶ sole traders;
- ▶ partnerships;
- ▶ non-corporate trustees; or
- ▶ State government departments.

Also excluded (outside Victoria and the Territories) are incorporated entities that do not have sufficient trading or financial activities to be characterised as a constitutional corporation.

While in most instances it will be fairly clear as to where an employer sits with respect to the Act, there will be some corporate and non-corporate entities where it will be necessary to take a closer look at the situation.

If you are uncertain about your position, contact us to discuss how you can go about safe guarding your position and any exposure to you business today or the Workplace Info line on 1300 363 264. Copies of the Workplace relations Fact Sheet are available from [Workplace Authority website](#).