

Industrial Relations System

In Western Australia there is a two-tiered industrial relations system – the state system and federal system, also known as the national system. This is not the case in all Australian states. The reason this occurs is, in short, due to the limits the Commonwealth Constitution places on the federal parliament's ability to enact industrial relations laws. As public sector employees, employed by the PTA, you fall under the state system.

The National System:

Given the hierarchy of federal and state legislation, it is easiest to explain the operation of the two-tiered framework by discussing the national system first.

You may have heard the terms “WorkChoices” or “Australian Workplace Agreements” (AWAs), which were synonymous with the national system in the early-to-mid-2000s.

The *Workplace Relations Act 1996* (Cth), which later included the WorkChoices amendments introduced into that on Act 27 March 2006¹ remained in force until it was replaced by the Labor government through enactment of the *Fair Work Act 2009* (Cth). The *Fair Work Act 2009* remains in force, and has been subject to several amendments.

Given this, the scope of *Fair Work Act 2009* predominantly applies to entities that are constitutional corporations. The *Fair Work Act 2009* s 12 aptly defines “**constitutional corporation**” to mean a corporation to which paragraph 51(xx) of the Constitution applies.

In turn, s 14 of the *Fair Work Act 2009* defines “national system employer”. Whilst there are numerous categories of “national system employers”, most relevantly such employers include at s 14(a) “a constitutional corporation, so far as it employs, or usually employs, an individual.” Similarly, a “national system employee” is defined at s 13 to mean an individual employed by a national system employer.

Generally speaking, the federal industrial relations system will apply to national-system employers, there are though some provisions of the *Fair Work Act 2009* that can apply to non-national system employers. Whilst the Western Australian public sector is not, for the most part, covered by the national system, there are some aspects of the *Fair Work Act 2009* that do apply.

When does the Fair Work Act 2009 apply to non-national system employers?

As a general rule, the WA public sector is not covered by the *Fair Work Act 2009*.

There are however other provisions of the *Fair Work Act 2009* that will apply even to non-national system employers such as the Public Transport Authority.

The four provisions of the *Fair Work Act 2009* that apply are as follows:

1. Parental leave – s 743
2. Notice of termination and payment in lieu of notice – s 758 and 759
3. Unlawful termination – s 771
4. Notification and consultation re. termination in certain circumstances – s 784

The State System:

The power of the State government to enact industrial relations laws is considered to be a “residual power”. This is because those powers which are not contained in s 51 of the Commonwealth Constitution (or in another part of the Constitution) are considered to be residual powers, which remain the domain of the states.

States may enact legislation regarding matters covered in section 51 of the Commonwealth Constitution, however that state legislation will be rendered invalid, or partially invalid, by virtue of s 109 of the Constitution, which states:

When a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid.

The state system is governed by a number of industrial instruments:

- *Industrial Relations Act 1979* (WA);
- *Minimum Conditions of Employment Act 1993* (WA);
- *Long Service Leave Act 1959* (WA);
- *Termination, Change and Redundancy General Order*, and other general orders;
- Industrial agreements, and awards;
- Policies and circulars (internal and external).

As stated above, the state system of industrial relations relies on the residual powers of the state to enact laws in areas not covered by the Commonwealth Constitution. Therefore, any employer that does not fall within the definition of national system employer lies in the state system by default.

IN UNITY!