



Changes to State Laws Under Independent Contractors Legislation

The Australian Government's independent contractors legislation overrides some state and territory laws which 'deem' workers in certain industries to be employees, even if they are independent contractors. The independent contracting legislation also overrides state and territory unfair contracts laws and replaces them with a single national unfair contracts system.

The *Independent Contractors Act 2006* (IC Act) allows independent contractors to make their own commercial arrangements, free from the constraints of industrial and employment law.

The IC Act creates a national, uniform system to resolve unfair contract claims and overrides state and territory laws dealing with unfair contracts.

The IC Act also overrides existing state and territory laws that deem certain persons to be employees, regardless of their working relationships.

Please see below to find out which laws have changed in your state.

NEW SOUTH WALES

The new national system overrides section 106 of the New South Wales *Industrial Relations Act 1996* (NSW IR Act), which gives the NSW Industrial Relations Commission the power to set aside or change unfair contracts.

The IC Act overrides the NSW IR Act's deeming provisions, which regard independent contractors as employees if they are engaged in various building and construction trades, including carpenters, joiners, bricklayers, painters, timber suppliers, plumbers, drainers, plasterers, blinds fitters, readymixed concrete drivers or RTA lorry drivers. Whether these people are independent contractors or employees is now determined by the common law test. See the 'Am I an Independent Contractor?' fact sheet.

The IC Act does not apply to owner-drivers who are covered by the NSW IR Act.

VICTORIA

No changes affecting the building and construction industry.

The IC Act does not apply to owner-drivers who are covered by the *Victorian Owner Drivers and Forestry Contractors Act 2005*.

QUEENSLAND

The new national scheme overrides section 276 of the Queensland *Industrial Relations Act 1999* (Qld IR Act), which gives the Queensland IRC the power to set aside or change unfair contracts.

The IC Act overrides the Qld IR Act's deeming provisions, which regard people working as apprentices or trainees, as well as people employed on piece rates, as employees. A 'piece rate' system is where a person is paid a predetermined amount per item produced – such as a bricklayer who is paid according to the number of bricks laid. Under the new national scheme, whether a person is an employee or an independent contractor will depend on the common law test. See the 'Am I an Independent Contractor?' fact sheet.

WESTERN AUSTRALIA

The *Industrial Relations Act 1979* (WA) defines people who work for hire or reward as employees. Under the national system, the common law test will apply to these people.

SOUTH AUSTRALIA

No changes affecting the building and construction industry.

TASMANIA

The IC Act overrides the *Industrial Relations Act 1984* (Tas) deeming provisions, which regard people working as apprentices or trainees as employees.

AUSTRALIAN CAPITAL TERRITORY

No changes affecting the building and construction industry.

NORTHERN TERRITORY

No changes affecting the building and construction industry.

STATE OR TERRITORY LAWS PRESERVED

The IC Act does not override state and territory laws with respect to non-workplace relations matters such as workers compensation, superannuation, occupational health and safety, child labour and taxation.

TRANSITIONAL PROVISIONS

There are detailed transitional provisions. If you are affected by a state or territory law that is overridden by the IC Act, you should obtain independent legal advice relevant to your particular circumstances.

FURTHER INFORMATION

Department of Education, Employment and Workplace Relations

- Independent Contractors Hotline: 1300 667 850
- Website: www.workplace.gov.au

The Office of the Australian Building and Construction Commissioner

- Hotline: 1800 003 338
- Website: www.abcc.gov.au

Please note: The Australian Government has proposed changes to the building industry legislation. The contents of this fact sheet will apply until the BCII Act is amended.



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