

*Your responses suggest that you are a national system employee. You may want to confirm this with your employer.*

### **13 Meaning of *national system employee***

A ***national system employee*** is an individual so far as he or she is employed, or usually employed, as described in the definition of ***national system employer*** in section 14, by a national system employer, except on a vocational placement.

Note: Sections 30C and 30M extend the meaning of ***national system employee*** in relation to a referring State.

### **14 Meaning of *national system employer***

(1) A ***national system employer*** is:

- (a) a constitutional corporation, so far as it employs, or usually employs, an individual; or
- (b) the Commonwealth, so far as it employs, or usually employs, an individual; or
- (c) a Commonwealth authority, so far as it employs, or usually employs, an individual; or
- (d) a person so far as the person, in connection with constitutional trade or commerce, employs, or usually employs, an individual as:
  - (i) a flight crew officer; or
  - (ii) a maritime employee; or
  - (iii) a waterside worker; or
- (e) a body corporate incorporated in a Territory, so far as the body employs, or usually employs, an individual; or
- (f) a person who carries on an activity (whether of a commercial, governmental or other nature) in a Territory in Australia, so far as the person employs, or usually employs, an individual in connection with the activity carried on in the Territory.

Note 1: In this context, ***Australia*** includes Norfolk Island, the Territory of Christmas Island and the Territory of Cocos (Keeling) Islands (see the definition of ***Australia*** in section 12).

Note 2: Sections 30D and 30N extend the meaning of ***national system employer*** in relation to a referring State.

### **35 Meanings of *Australian employer* and *Australian-based employee***

(1) An ***Australian employer*** is an employer that:

- (a) is a trading corporation formed within the limits of the Commonwealth (within the meaning of paragraph 51(xx) of the Constitution); or
- (b) is a financial corporation formed within the limits of the Commonwealth (within the meaning of paragraph 51(xx) of the Constitution); or
- (c) is the Commonwealth; or
- (d) is a Commonwealth authority; or
- (e) is a body corporate incorporated in a Territory; or
- (f) carries on in Australia, in the exclusive economic zone or in the waters above the continental shelf an activity (whether of a

- commercial, governmental or other nature), and whose central management and control is in Australia; or
- (g) is prescribed by the regulations.

(Fair Work Act 2009)

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### 14 Meaning of *national system employer*

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Note 1: In this context, *Australia* includes Norfolk Island, the Territory of Christmas Island and the Territory of Cocos (Keeling) Islands (see the definition of *Australia* in section 12).

Note 2: Sections 30D and 30N extend the meaning of *national system employer* in relation to a referring State.

#### *Particular employers declared not to be national system employers*

- (2) Despite subsection (1) and sections 30D and 30N, a particular employer is not a national system employer if:
- (a) that employer:
    - (i) is a body established for a public purpose by or under a law of a State or Territory, by the Governor of a State, by the Administrator of a Territory or by a Minister of a State or Territory; or
    - (ii) is a body established for a local government purpose by or under a law of a State or Territory; or
    - (iii) is a wholly-owned subsidiary (within the meaning of the *Corporations Act 2001*) of, or is wholly controlled by, an employer to which subparagraph (ii) applies; and

- (b) that employer is specifically declared, by or under a law of the State or Territory, not to be a national system employer for the purposes of this Act; and
  - (c) an endorsement by the Minister under paragraph (4)(a) is in force in relation to the employer.
- (3) Paragraph (2)(b) does not apply to an employer that is covered by a declaration by or under such a law only because it is included in a specified class or kind of employer.

*Endorsement of declarations*

- (4) The Minister may, in writing:
- (a) endorse, in relation to an employer, a declaration referred to in paragraph (2)(b); or
  - (b) revoke or amend such an endorsement.
- (5) An endorsement, revocation or amendment under subsection (4) is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to the endorsement, revocation or amendment.

Note: Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* does not apply to the endorsement, revocation or amendment (see regulations made for the purposes of paragraph 54(2)(b) of that Act).

*Employers that cannot be declared*

- (6) Subsection (2) does not apply to an employer that:
- (a) generates, supplies or distributes electricity; or
  - (b) supplies or distributes gas; or
  - (c) provides services for the supply, distribution or release of water; or
  - (d) operates a rail service or a port;
- unless the employer is a body established for a local government purpose by or under a law of a State or Territory, or is a wholly-owned subsidiary (within the meaning of the *Corporations Act 2001*) of, or is wholly controlled by, such a body.
- (7) Subsection (2) does not apply to an employer if the employer is an Australian university (within the meaning of the *Higher Education Support Act 2003*) that is established by or under a law of a State or Territory.

(Fair Work Act 2009)

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  - (b) is a financial corporation formed within the limits of the Commonwealth (within the meaning of paragraph 51(xx) of the Constitution); or
  - (c) is the Commonwealth; or
  - (d) is a Commonwealth authority; or
  - (e) is a body corporate incorporated in a Territory; or

- (f) carries on in Australia, in the exclusive economic zone or in the waters above the continental shelf an activity (whether of a commercial, governmental or other nature), and whose central management and control is in Australia; or
- (g) is prescribed by the regulations.

(2) An ***Australian-based employee*** is an employee:

- (a) whose primary place of work is in Australia; or
- (b) who is employed by an Australian employer (whether the employee is located in Australia or elsewhere); or
- (c) who is prescribed by the regulations.

(3) However, paragraph (2)(b) does not apply to an employee who is engaged outside Australia and the external Territories to perform duties outside Australia and the external Territories.

(Fair Work Regulations 2009)

### **1.15C Meanings of *Australian employer* and *Australian-based employee***

For paragraph 35(1)(g) of the Act, the employer of a person who is a member of the crew performing duties on a majority Australian-crewed ship is prescribed as an Australian employer.