



Fact Sheet 1

The Fair Work Act 2009 – an overview

On 1 July 2009, Australia's workplace relations system changed. There are now new workplace relations laws in place, which have been designed to balance the needs of employees, the unions and employers.

The *Fair Work Act 2009* (the Act) creates a new legislative framework for workplace relations.

This fact sheet provides an overview of key elements of the new system.

Fair Work Australia

The Australian Government has established an independent umpire, Fair Work Australia, to oversee the new workplace relations system.

Fair Work Australia is a modern accessible body. Its focus is on providing fast and effective assistance for employers and employees. It has the power to vary awards, make minimum wage orders, approve agreements, determine unfair dismissal claims and make orders on such matters as good faith bargaining and industrial action, to help employees and employers resolve disputes at the workplace.

There is also an inspectorate headed by the Fair Work Ombudsman. Specialist Fair Work Divisions are being created in the Federal Court and Federal Magistrates Court to hear matters which arise under the new workplace relations laws.

A fair and comprehensive safety net of minimum employment conditions

The new workplace relations system will provide a strong safety net for employees that includes 10 legislated minimum standards. The safety net comprises two parts—the 10 National Employment Standards and new modern awards. The safety net will apply to all employees in the federal system from 1 January 2010. Fair Work Australia, the new industrial umpire, will also set minimum wages for award and agreement-free employees through a national minimum wage order.

The National Employment Standards comprise 10 legislated employment conditions covering essential conditions such as maximum weekly hours of work, leave, public holidays, notice of termination and redundancy pay and the right to request flexible working arrangements.

Award modernisation will create new simple modern industry or occupation-based awards that will streamline and simplify thousands of awards.

Fair Work Australia will review each modern award every four years to maintain a relevant and fair minimum safety net and to make sure it continues to meet the needs of the community. Minimum wages in awards will be reviewed annually.

Good faith collective bargaining at the enterprise level

Collective bargaining at the enterprise level is at the heart of the Government's new workplace relations system.

Generally, an enterprise agreement will be made between an employer and some or all of their employees. There is no need for formal notification to commence bargaining—in most cases parties can simply agree to negotiations and successfully bargain with one another to create an enterprise agreement.

Where an employer refuses to bargain and there is either no existing agreement in place, or it is within 90 days of the nominal expiry date of an existing agreement, an employee bargaining representative can ask Fair Work Australia to determine if there is majority employee support for negotiating an enterprise agreement. If Fair Work Australia determines there is majority support, the employer must bargain collectively with the relevant employees in good faith.

There is no distinction between union and non union agreements under the new system. Employees can nominate who will represent them in bargaining and their employer must respect their choice. Employers are required to notify their employees of their right to representation. Employees who are union members will automatically be represented by their union, unless they elect to appoint another person as their representative or revoke the union's status as their representative.

Greenfields agreements

The new workplace relations system includes provisions for making greenfields agreements. However, before a greenfields agreement is approved, Fair Work Australia must be satisfied that the employee organisation(s) that will be covered by the agreement are entitled to represent the industrial interests of a majority of the prospective employees for that agreement. Fair Work Australia must also be satisfied that it is in the public interest that the agreement be approved.

Bargaining assistance for the low-paid

A new feature of the workplace relations system is a special low-paid bargaining stream.

This new stream is intended to help workers who have missed out on the benefits of bargaining in the past. These include workers in areas like child care, aged care, community services, security and cleaning, who are often paid the basic award rate.

In the special low-paid stream, Fair Work Australia will facilitate the making of agreements and will play a hands-on role to get the parties bargaining.

Clear tough rules on industrial action

An important feature of the new workplace relations system is clear tough rules for industrial action.

Employees can take protected industrial action to support or advance claims during collective bargaining. Industrial action initiated by or on behalf of employees will only be 'protected' if it

has been authorised by a mandatory secret ballot and meets all other requirements contained in the Act.

Industrial action by employers or employees in response to industrial action by the other party is also protected, provided it is taken in accordance with the requirements of the Act.

The Act establishes proportional and sensible options for responding to industrial action.

- It is unlawful under the Act for an employer to pay strike pay, or for an employee to demand or request it.
- Where unprotected industrial action is taken it is mandatory for an employer to withhold at least four hours pay.
- Where protected industrial action is taken, pay will be withheld for the duration of the period of industrial action only.
- In the event of protected partial work bans, an employer will have the option of issuing a 'partial work notice' and deducting an employee's wages, proportional to the duties the employee has refused to perform.

Right of entry

The Government has also maintained existing right of entry rules which ensure that only fit and proper persons are permitted to enter workplaces on behalf of unions, and that permit holders understand that their rights come with significant responsibilities.

The right of entry provisions in the Act largely replicate the provisions in the Workplace Relations Act. The key difference is that right of entry will now be linked to a union's right to represent the industrial interests of the relevant employees, rather than coverage by an instrument such as an award or enterprise agreement. Fair Work Australia will be able to advise employers as to the eligibility of a union to represent their employees.

Unions must comply with very strict conditions of entry: they must hold a valid permit; give at least 24 hours' notice; and comply with strict requirements for conduct on site. Sanctions will apply to a permit holder who misuses entry rights or acts inappropriately.

Protections from unfair dismissal for all employees

Under the new workplace relations system there are new laws regarding unfair dismissal that are fair to small business owners and their employees.

Employees of a small business are not able to make a claim for unfair dismissal until after they have served a minimum employment period of 12 months, while for larger businesses, the minimum employment period is six months.

'Operational reasons' are no longer a defence to a claim of unfair dismissal. However, a dismissal is not unfair if it is because of genuine redundancy.

The new system also provides for the declaration of a simple Small Business Fair Dismissal Code which will make it easier for small business employers to follow and comply with unfair dismissal laws.

A balance between work and family life

There are a number of provisions within the Act that will assist to promote a balance between work and family life. Modern awards and enterprise agreements must include provision for

the making of individual flexibility arrangements, which will allow for flexibility (e.g. family friendly working hours) for employees and employers, while ensuring protections for employees.

The National Employment Standards increase the amount of unpaid parental leave available to parents and provide a new right to request an extension of unpaid parental leave. The extension may be for a period of up to 12 months (subject to any leave taken by the parent's partner). A request may only be refused on reasonable business grounds. The Standards also provide the right to request flexible working arrangements, which an employer can only refuse on reasonable business grounds.

There are also additional protections in the Act to ensure protection from all aspects of workplace discrimination, including new protections for employees who are also carers.

The right to be represented in the workplace

Under the new workplace relations system, employees will remain free to choose to be, or not to be, a union member. They will also have the choice of whether or not they wish to participate in collective activities such as bargaining for an enterprise agreement or taking protected industrial action. The Act protects employees' freedom to choose whether to be represented by a legitimate workplace representative or union delegate.

More information

Further fact sheets on the following topics are available from the Aged and Community Services Australia and the Aged Care Association Australia web sites.

www.agedcare.org.au

www.agedcareassociation.com.au

- Fact Sheet 2 The new workplace relations system
- Fact Sheet 3 Work Australia institutions
- Fact Sheet 4 National employment standards and modern awards
- Fact Sheet 5 Minimum wages
- Fact Sheet 6 General protections for freedom of association and other workplace rights
- Fact Sheet 7 Bargaining in good faith
- Fact Sheet 8 Assisting low paid employees and those without access to collective bargaining
- Fact Sheet 9 Enterprise agreements, their content and approval
- Fact Sheet 10 A simple, fair dismissal system for small business
- Fact Sheet 11 Clear, tough rules for industrial action
- Fact Sheet 12 Transfer of business
- Fact Sheet 13 Union right of entry
- Fact Sheet 14 A smooth transition to the new workplace relations system

More detailed information and advice on all aspects of the new workplace relations system can also be obtained by contacting the Fair Work infoline on 13 13 94 or by visiting

www.fairwork.gov.au