



Australian Government

# Fair Work Act 2009

A brief introduction  
The Safety Net  
Right of Entry

# FAIRWORK ACT 2009

After four years of campaigning, and months of debate in Federal Parliament, a new set of fairer IR laws was signed into law on April 7, 2009.

The Fair Work Act is the new national Workplace Relations Act which has replaced WorkChoices on July 1 2009.

# Fair Work Australia

Fair Work Australia (FWA) is a newly created “one stop shop” which will take over the responsibilities and powers of bodies like:

- **Australian Industrial Relations Commission**
- **Australian Fair Pay Commission**
- **Workplace Authority**
- **Workplace Ombudsman**

# **The Safety Net: National Employment Standards (NES) and Modern Awards**

The new safety net consists of ten legislated National Employment Standards (NES) and a new set of modern awards.

- This safety net comes into effect on 1 January 2010.
- Minimum wage orders will provide a wages and casual loading safety net for award free employees.
- Annual Wage Reviews will be conducted by Fair Work Australia's Minimum Wage Panel and will come into effect 1<sup>st</sup> July each year.

# National Employment Standards (NES)

## The National Employment Standards are:

1. A standard 38 hour working week for full time employees and the right to refuse unreasonable overtime
2. Up to 24 months unpaid parental leave
3. A right for parents to request flexible working arrangements
4. 4 weeks paid annual leave each year, plus an additional week for shift workers
5. 10 days paid personal / carer's leave each year, 2 days paid compassionate leave and 2 days unpaid emergency leave
6. Unpaid community service leave
7. All national and state public holidays
8. Long service leave
9. Notice of termination and, if employed in a business with 15 or more employees, redundancy pay.
10. A requirement that all employers provide new employees with information about their rights (a Fair Work Information Statement).

**NES is a minimum standard. Awards and enterprise agreements cannot contain terms that go below the NES, but can contain terms that go above NES.**

# Modern awards

The AIRC is currently modernising and consolidating all existing awards, updating basic conditions and entitlements for all industries.

This process will be completed by late 2009.

An award will not apply to an employee where there is an **enterprise agreement** that applies to the employee

## Modern Awards cont'd

- Modern awards may contain the NES;
- Modern awards **MUST** contain:
  - Terms on ordinary hours of work;
  - A flexibility clause
  - A dispute settlement procedure

## Modern Awards cont'd

- Modern awards will be reviewed every 4 years;
- Wages can only be adjusted during these reviews for work value reasons;



## Modern Awards cont'd

- A modern award will not apply to an employee where:
  - There is an enterprise agreement that applies to the employee; or
  - The employee is a high income employee

## On 1 January 2010...

- National Employment Standards come into effect
- Modern awards commence
- Better Off Overall Test (BOOT) commences and tests new agreements against modern awards

# Right of Entry

Officials can enter premises during working hours for three purposes:

1. Entry to hold discussions
2. Entry for investigating breaches of Act/Awards/Agreements
3. Exercising rights under state or territory OHS laws

# Entry Notice Requirements

The notice must specify:

- The premises
- Day of entry
- The organisation of the permit holder

The notice must be at least 24 hours in advance but not greater than 14 days before the entry

# Right of Entry for discussions

A permit holder may enter premises to hold discussions with one or more employees:

1. who **perform work** on the premises; and
2. whose industrial interests the permit holder's organisation is **entitled to represent**; and
3. **who wish to participate** in those discussions

# In the case of suspected contravention

An official may enter at any time of the working day and may:

- Inspect work
- Interview people
- Inspect and copy records
- Be entitled to later access if required due to documents not being immediately available

# Pre-requisites in the case of suspected contravention

Suspected contravention **must** :

- relate to or affect a member and
- the member performs work on the premises and
- the organisation is entitled to represent the member's industrial interests

**There must be a reasonable suspicion that a contravention occurred.**

# State or Territory O.H.S. rights

Requires 24 hour notification for inspection



# General Prohibitions

## *Permit Holder must not:*

- hinder or obstruct
- use or disclose employee records without authorisation
- misrepresent what is authorised by permit

## *Employer must not:*

- Refuse or delay entry
- Hinder or obstruct permit holder

# An unreasonable request?

A request by the employer is unreasonable if:

- Room or area is not fit for purpose; or
- Request is made with the intention of:
  - Intimidating persons who might want to participate
  - Discouraging participation
  - Making participation difficult whether because of access or other reason

# Role of FWA in Right of Entry

- Issue permits to “fit & proper” persons
- FWA can deal with a dispute concerning operation of right of entry provisions including arbitration
- Cannot confer additional rights
- Can suspend or revoke entry permits