



Australian Government

Fair Work Act 2009

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 set of national industrial relations laws which have 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 1st 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

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

Bargaining for enterprise agreements

The distinction between union and non-union agreements has been removed.

There will be 3 types of enterprise agreements:

- **A single enterprise agreement**
- **A multi-enterprise agreement**
- **A Greenfields agreement**

Agreement-making: What can parties bargain about?

Parties will be free to bargain over more matters than they could under WorkChoices.

Agreements CAN include terms that relate to:

- Union training leave
- Union participation in employee inductions
- Paid time off to participate in union activities
- Union participation in consultation meetings or dispute settlement procedures
- Requiring the employer to commence renegotiations of the agreement on a certain date
- Ensuring that contractors are engaged on the same terms and conditions as regular employees

There will still be some matters that aren't allowed in agreements. An agreement that contains a non permitted term will be valid but the non-permitted term will not be enforceable and can be removed from the agreement by a court

Terms that *must* be in agreements

A flexibility clause

A consultation clause

A dispute settlement procedure

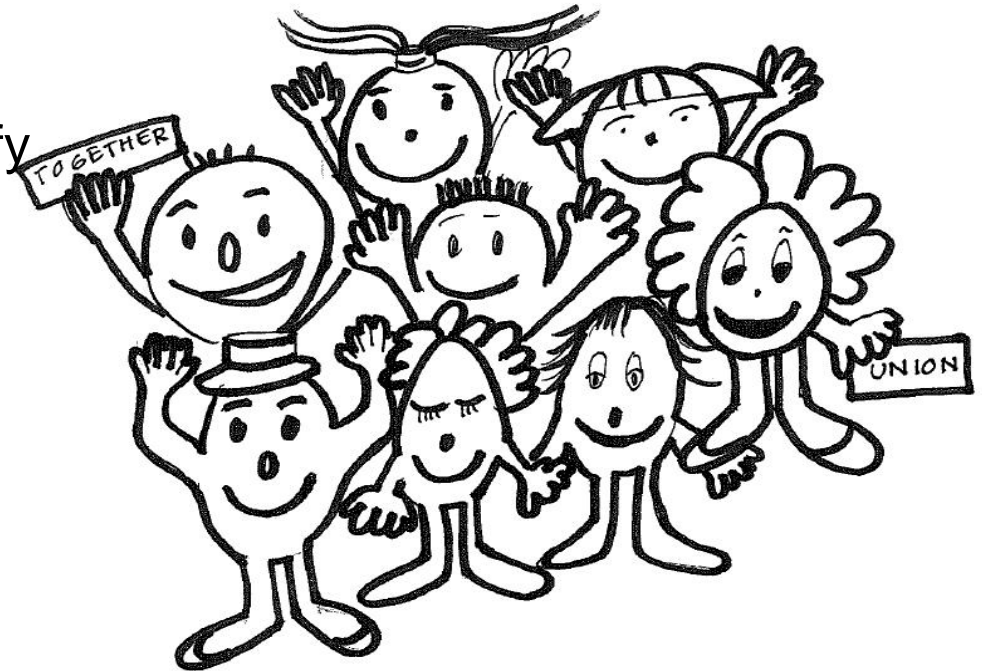
A nominal expiry date (4 years or less)

Bargaining Representatives

Unions will represent their members in bargaining (act as **bargaining reps**), unless the member indicates otherwise.

Workers who are not union members may also nominate a union to act for them.

The employer is required to notify all employees of their right to a bargaining rep at the beginning of the bargaining process



Bargaining reps (continued)

Employers **must** recognise and bargain with the union as the employees' nominated bargaining representative.

Employers and unions must bargain in good faith. This means that parties should:

- Attend and participate in meetings at reasonable times;
- Disclose relevant information in a timely manner;
- Respond to proposals made by other parties;
- Give genuine consideration to the proposals;
- Refrain from capricious or unfair conduct

If the parties don't bargain in good faith then Fair Work Australia can issue an order requiring the parties to meet the good faith bargaining requirements

The role of Fair Work Australia in bargaining

- If an employer or union does not bargain in good faith after Fair Work Australia has ordered it to then FWA can issue another order called a serious breach order
- If an employer does not agree to bargain then a union can apply for a majority support determination
- Fair Work Australia can also issue a scope order and help parties deal with bargaining disputes

BOOT – “Better Off Overall Test”

FWA will only approve an agreement if it passes the “**better off overall’ (BOOT) test**”

- An employee must be better off under the agreement than under the relevant modern award.



Low Paid Bargaining stream

This is a new stream of bargaining which is aimed at helping low paid workers negotiate a collective agreement (often for the first time).

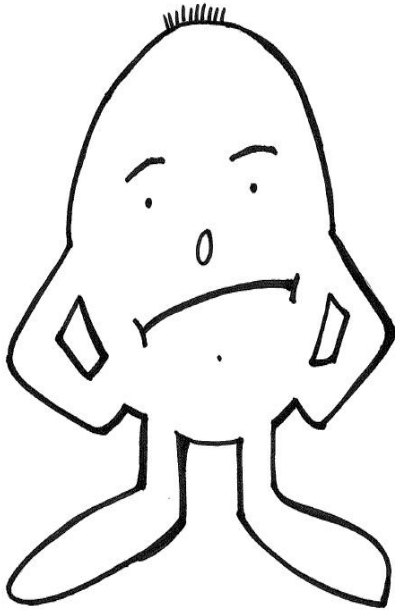
Groups of employers can bargain together with the union for an agreement to apply to many work places (multi-enterprise bargaining)

FWA may intervene to facilitate low-paid bargaining, make a workplace determination if required and enforce the 'good faith' requirements

Unfair Dismissal

- **All employees** are protected from unfair dismissal, provided they have served a qualifying period
 - 12 months for small business and
 - 6 for everyone else
 - Systematic casuals are also covered
- Exemption from unfair dismissal when sackings occur for “operational reasons” has gone
- 3 million more workers are now covered by unfair dismissal protections.

Industrial Action



Mister Industrial Action

Industrial Action will be “protected action” when:

- “protected” means that the action is permitted and is legal under the Act
- It is taken during bargaining (but after the expiry of the agreement).
- A protected action ballot has been won
- The employer has been given 3 days notice

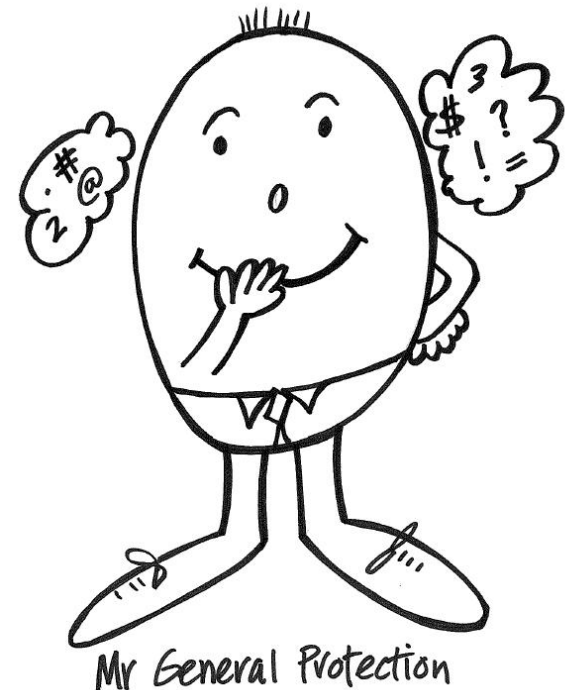
Pay for worker’s during protected industrial action has changed.

The employer can:

- Accept partial work for partial pay
- Pay full pay for partial work if they choose
- Dock pay only for the duration of the action (i.e. removes 4 hour minimum pay deduction)

General Protections

- **An employer must not take adverse action against an employee because they possess or exercise a ‘workplace right’.**
- **Protections against discrimination**
- **No coercion, undue influence or pressure**



What is a workplace right?

A workplace right is an employee's:

- Employment entitlements;
- Roles or responsibilities (eg union delegate or OHS rep);
- Right to initiate or participate in processes or proceedings under workplace laws or instruments;
- Right to make complaint regarding employment;

Useful websites for your information

- www.fwa.gov.au
- www.actu.asn.au

Or contact your union

