



Key features of the new federal workplace relations law

Employees and their employers have a new opportunity to make employment arrangements best suited to the needs of their enterprises or workplaces.

The new federal *Workplace Relations Act 1996* (the Act) is based on principles which support more direct and productive workplace relations between employers and employees.

These principles give more choice in reaching agreements in unionised and non-unionised workplaces.

They offer a system balanced for the benefit of both employees and employers.

The Act opens the way for more flexible working arrangements suited to the changing ways Australians are working.

Employees and their employers can now move to turn these principles into reality. When they do so they will make their workplaces more competitive and improve both their living standards and the quality of their working lives.

A fair award safety net

The safety net. The federal award system will be simplified to operate as a safety net of fair and enforceable minimum wages and conditions of employment.

The provisions set out in the Act's 20 'allowable matters' include a comprehensive range of pay, leave and other key conditions. Other matters will be agreed at enterprise or workplace levels, where the needs of a business and its employees can best be taken into account.

Maintaining the safety net. The Australian Industrial Relations Commission (AIRC) will maintain the safety net, giving particular attention to the needs of the low paid. The AIRC will determine the level and form of safety net pay adjustments and other award minima.

The focus of the award system is on providing fair *minimum* wages and conditions.

AIRC arbitration above the safety net is limited to disputes where all attempts to reach an agreement have failed and the dispute threatens serious harm to the community or the economy; and to where the employees

have been customarily in the past covered by a paid rates award, and are unable to reach agreement.



Better awards. new awards will be confined by the scope of allowable matters, but the AIRC will be able to handle exceptional cases about other matters. Existing awards will be simplified, and after 18 months any award provisions outside the allowable matters will no longer be enforceable. All awards will be subject to this process.

In simplifying awards, the AIRC will review them to make them easier to understand and use. It will also ensure they are effective – for example, that they operate flexibly, do not include discriminatory provisions and provide for regular part-time work.

Paid rates awards. There will be no new paid rates awards. Over time, it is expected that existing paid rates awards will be translated into a minimum rates structure. Safeguards for overall pay entitlements apply in this process. Most workers who used to be on paid rates awards will be covered by agreements; many are already.

The safety net

The 'allowable matters' set out in the Workplace Relations Act cover:

- classifications of employees and skill-based career paths
ordinary time hours of work and the times within which they are performed, rest breaks, notice periods and variations to working hours
 - rates of pay (such as hourly rates and annual salaries), rates of pay for juniors, trainees or apprentices, and rates of pay for employees under the supported wage system
 - piece rates, tallies and bonuses
 - annual leave and leave loadings
 - long service leave
 - personal/carer's leave, including sick leave, family leave, bereavement leave, compassionate leave, cultural leave and other like forms of leave
 - parental leave, including maternity and adoption leave
 - public holidays
 - allowances
 - loadings for working overtime or for casual or shift work
- penalty rates
 - redundancy pay and notice of termination
 - stand-down provisions
 - dispute settling procedures
 - jury service
 - type of employment, such as full-time employment, casual employment, regular part-time employment and shift work
 - superannuation
 - pay and conditions for outworkers, but only when compared with those specified in a relevant award or awards for employees who perform the same kind of work at an employer's business or commercial premises
 - provisions incidental to the allowable matters and necessary for the effective operation of the award (for example, date and period of operation of the award, and facilitative provisions).

Various other matters will be governed by statute (for example, occupational health and safety).

Agreement-making to suit individual workplaces

Agreement-making will be the centre of Australia's workplace relations.

Employment agreements give workers and their employers the chance to build arrangements that best suit the needs of their business or workplace and the type of work they do.

Greater choice. Workers and employers can choose to enter into formalised agreements in the federal system, be covered by a State agreement (provided certain conditions are met), or make overaward or informal arrangements.

Formal agreements. The options for formal agreement-making in the federal system have been expanded. Collective certified agreements may be made directly between employers and employees as well as with unions, and individual agreements may be formalised through Australian workplace agreements (AWAs).

Apart from having to meet a global no disadvantage test – this is where an agreement is to be no less favourable overall to the employees concerned than the relevant award and any relevant laws — the decision on what is to go into an agreement is largely up to employees and employers.



AWAs for individual employees. AWAs make formalised individual agreements possible. They can be negotiated collectively with a group of employees, but must be signed individually. If they wish, employees or employers can appoint a bargaining agent. Employees can appoint a union as their bargaining agent.

However, there will be no uninvited union involvement in the negotiations, and no union right of intervention in the approval process.

AWAs are to be approved by the Employment Advocate. If the Employment Advocate has doubts about whether an agreement passes the no disadvantage test, it may be referred to the AIRC for resolution

New employees can opt for their own AWAs on joining a business.

Certified agreements (CAs). The new arrangements which allow CAs to be made directly with employees makes them more widely available. The emphasis will be on single business agreements, but multi-business agreements can be made subject to specified conditions.

Where CAs are made directly with employees, unions can only take part in negotiations and choose to become

parties to any agreement if a union member so requests that they be represented by their union.

Prior to certification, the AIRC must check that an agreement meets the legal requirements.

This includes being satisfied that a majority of affected workers have genuinely endorsed the agreement.

AWAs and CAs legally binding. Once an agreement is approved it legally binds the employers and workers who signed it for the period it is to apply. CAs prevail over awards to the extent of any inconsistency. AWAs completely displace awards which would otherwise apply. There is no right to strike or lock out during the term of an agreement. Agreements continue to apply after expiry, until terminated.

The no disadvantage test

- Applies to both AWAs and CAs.
- Takes as the benchmark the relevant award or an award designated by the approving body – the Employment Advocate for AWAs, the AIRC for CAs – as appropriate for the employees concerned in the agreement, plus any other law considered to be relevant by the approving body.
- Operates as a global rather than a line-by-line test.
- Special cases in application of the test – the Supported Wage System and for employees undertaking an approved apprenticeship or traineeship.
- An agreement passes the no disadvantage test if it would not, on balance, result in the reduction in the overall terms and conditions of employment of employees against the benchmark.
- The AIRC has the additional power to approve an agreement that results in a reduction in overall terms and conditions of employment, if it considers that approval is not contrary to the public interest.

Terminating an agreement

AWAs

- An employer and employee may, at any time, make a written agreement to terminate an AWA.

CAs

- A CA can be terminated at any time by agreement between the parties to it, provided that a majority of employees agree to the termination.

Both AWAs and CAs

- After its expiry date, a CA or AWA continues in force;
 - unless terminated in a way specified in the agreement itself; *or*
 - unless it is;
 - replaced by a new agreement; *or*
 - terminated by agreement between the parties to it; *or*
 - on the application of one of the parties, terminated by the AIRC where it is satisfied this is not against the public interest.

The Employment Advocate

The Employment Advocate has been created under the new law to:

- provide advice and assistance to employees and employers, especially small businesses, on their rights and obligations under the new Act, particularly on AWAs and freedom of association issues
- file and approve AWAs, checking them before they come into force to make sure they meet the legal requirements (not through formal hearings)
- handle alleged breaches of AWAs and the freedom of association provisions
- assist workers to prosecute breaches where appropriate
- provide aggregated statistics on AWAs.

The Advocate will promote better work and management practices through AWAs and assist workers to balance their work and family responsibilities.

The Advocate must pay particular regard to:

- the needs of workers in a disadvantaged bargaining position (for example, women, people from a non-English speaking background, young people, apprentices, trainees and outworkers).

Freedom of association

Freedom of association is about the choice to join or not to join industrial associations, and the choice of which organisation.

Membership of unions and associations. Membership of all organisations will be voluntary, and compulsory unionism and preference clauses prohibited. Discrimination against or victimisation of individuals (including independent contractors) based on membership or non-membership of a union or employer association is prohibited.

Choice of union. It will be easier to register new unions and the Act provides for enterprise unions. The ‘conveniently belong’ provision will be replaced with new provisions which will make it easier for new organisations to be registered. Any existing organisations objecting to



this would have to show that an applicant’s members could more conveniently be the objecting union’s members and would be more effectively represented by the objecting unions.

It will not be possible to object to enterprise unions on these grounds.

Disamalgamation. Provision is made for the disamalgamations of federally registered unions, by ballot.

Union right of entry. There is a statutory right of entry for unions – via permits issued by an Industrial Registrar – to investigate suspected breaches of the Act or of awards or agreements they are bound by (in workplaces where they have members) and hold discussions with relevant employees (where they have award coverage).

Industrial action

Protected industrial action. There will be a limited right to strike for workers and for employers to lock out while negotiating AWAs and single-business CAs.

Prohibited industrial action. Industrial action is prohibited during the term of an agreement.

Strengthening of AIRC’s powers to curtail industrial action. The AIRC has greater powers to direct that industrial action stop or not occur – with such directions enforceable by injunctions from the Federal Court. Non-compliance may lead to fines or, in serious cases, deregistration. This does not apply to the protected right to strike and lock out.



Strike pay prohibited. It will be unlawful to pay or accept strike pay or to take action to force its payment.

Secondary boycotts. Secondary boycotts provisions are restored to the Trade Practices Act. Boycotts affecting overseas trade and commerce involving movement of goods are prohibited. Secondary boycotts which are conducted for the purpose of, and which would have the effect of, causing substantial damage to the business of the ‘target’ are prohibited

Environmental and consumer boycotts are exempted, except where industrial action is involved. Industrial action over pay and conditions of the employees taking the action is exempted.

‘Fair go all round’ unfair dismissal

The new federal unfair dismissal system will be fair to employers and employees. It will limit the federal scheme to employees covered by federal awards and agreements, and it will be handled by the AIRC in a less legalistic way and with the emphasis on conciliation.

A fair and simple process. In handling cases, a simple question will be answered by the AIRC – was the termination harsh, unjust or unreasonable?

Frivolous and malicious claims will be discouraged. Potential applicants will be made aware at the outset of the potential for costs orders before their applications are filed.



Remedies. Should arbitration be needed, in considering remedies, the AIRC must have regard for all relevant circumstances – including the viability of an employer’s business. The AIRC may require the employer to reinstate the workers or pay compensation of up to six months pay or, for non-award employees, up to \$32 000 (indexed).

For all employees. The prohibition on termination without the required notice or pay in lieu will remain. Dismissal on grounds which are discriminatory will not be allowed.

Role of the AIRC

The AIRC's role will be different in several important respects as workers and employers increasingly take direct responsibility for their own industrial relations and agreement-making, and awards become a safety net of minimum wages and conditions.

The AIRC will:

- deal with all unfair dismissal applications
- have a particular role in:
 - maintaining the award system and determining safety net adjustments, taking into account the needs of the low paid
 - encouraging the making of certified agreements and overseeing the conduct of workplace bargaining for them
 - ensuring compliance by parties with their industrial responsibilities and obligations
 - resolving disputes in awards and under agreements

- perform its arbitration role only where appropriate, and within specified limits.

It will:

- establish principles for simplifying awards and help parties undertaking simplification
- ratify CAs
- assess proposed AWAs referred from the EA where there are doubts about whether the agreement meets the no disadvantage test
- handle registration of organisations and manage the competition between unions where this harms business, by determining representation rights
- continue making orders for equal remuneration for men and women workers for work of equal value without sex-based discrimination.

Operating an effective system

Federal/State harmonisation

To maximise the benefits available from the Act, labour market reform must address the interaction of the federal and State systems. This is to be done, with the agreement of the States, through a combination of legislative changes (such as in relation to the effective operation of the unfair dismissal provisions), changes in institutional and administrative arrangements (such as seeking complementary arrangements with state tribunals) and cooperative service delivery.

Flexibility for changing work patterns

Regular part-time work. The Act is to encourage the spread of, and improve access to, regular part-time work, involving reasonably predictable hours of work and pro rata conditions, and allowing a clear distinction from casual employment.

Work and family. The Act places priority in its objects on helping workers to balance their work and family responsibilities effectively and highlights the importance of preventing discrimination, including on the grounds of family responsibilities.

Provisions that can make this a reality include better access to regular part-time work, the opportunities to include family friendly practices in agreements and the

Employment Advocate's role in helping workers to balance their work and family responsibilities.

Striking a fair balance

The Workplace Relations Act enables workplace change with greater choices balanced by protections and safeguards. Some examples follow.

Junior rates. Junior wages are exempted from the anti age discrimination provisions of the Act for a further three years from June 1997. The AIRC may extend this exemption for any award or certified agreement, case-by-case. The AIRC will report to the Commonwealth Parliament on the feasibility of replacing junior rates with non-discriminatory alternatives.

Discrimination at work. The Act contains a range of provisions designed to prevent and eliminate discrimination in the workplace, complementing other existing law.

Provisions in awards and agreements are not to be discriminatory – on the grounds of race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin is protected against.

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A person must not be dismissed on discriminatory grounds. Individuals must not be discriminated against because of their membership or non-membership of a union or employer association.

Equal remuneration. Existing minimum entitlements to equal remuneration are retained and pay discrimination on the basis of sex will not be allowed either in awards or agreements.

The Employment Advocate. The EA is to have particular regard for the needs of workers in a disadvantaged bargaining position (for example, women, young people, trainees, apprentices and people from a non-English speaking background).

Other changes

Trade Union Training Authority (TUTA). TUTA is abolished. Trade union training will now be a matter for the union movement.

Industrial Relations Court of Australia. The court's jurisdiction will be transferred to the Federal Court of Australia.

up date

From 23 December 1996 call 1900 937 450 for legislation information sheets via faxback.

From 23 December you can call 1300 363 471 to order an information booklet on the new Workplace Relations Act.

If you need to talk to an operator, call 1300 363 472.

Visit the
Department of Industrial Relations
on the Internet at
<http://www.nla.gov.au/dir/>

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After 23 December 1996, for award summary information on selected federal awards, available via faxback, call 1900 937 450.

For new unfair dismissal cases after the unfair dismissal provisions of the Act come into operation, contact the Australian Industrial Relations Commission – see your telephone book for the contact number.