



The new federal workplace relations law — summary

Workers and employers can now make workplace arrangements which suit them best. They can make their workplaces more competitive and improve both their living standards and the quality of their working lives.

Focus of the Act

The focus is on providing a framework for cooperative workplace relations which promote the economic prosperity and welfare of the people of Australia. The Act opens the way for this to be achieved by employees and employers in Australian enterprises and workplaces.

A fair award safety net

The federal award system will be simplified to operate as a safety net of fair and enforceable minimum standards including pay, leave and other key conditions (called 'allowable award matters' — there are 20 of these).

Other employment matters will be settled at enterprise or workplace levels, through agreements, whether informal or formal.

The Australian Industrial Relations Commission (AIRC) will maintain the safety net, determine adjustments and work with the parties to simplify their awards and make them easier to understand and apply.

There will be no new paid rates awards. Over time, it is expected that existing paid rates awards will be translated into minimum rates, and overall pay entitlements will be safeguarded in this process. Most employees who used to be on paid rates will be covered by agreements; many are already.

Agreement-making to suit individual workplaces

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

Employees 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 continue with or make overaward or informal employment arrangements.

Agreements can be individual or collective and union or non-union. Collective certified agreements (CAs) can now be made directly between employers and employees (as well as with unions), and individual agreements may be formalised through Australian workplace agreements (AWAs).

The decision on what is to go into an agreement is up to employees and employers.

All formal agreements must meet a global no-disadvantage test, related to the relevant award and any relevant law.

CAs are certified by the AIRC. The AIRC must be satisfied that employees have had the agreement explained to them, and that the agreement has been genuinely endorsed by a majority of those employees to whom it will apply.

AWAs are to be filed, checked and approved by the Employment Advocate, and referred to the AIRC should there be doubts about the application of the no-disadvantage test.

Once an agreement is approved it legally binds the employers and workers who signed it for the period it is to apply. There is no right to strike or lock out during the term of an agreement.

Agreements apply for an upper limit of three years.

AWAs can be terminated at any time by written agreement.

CAs can be terminated at any time, with the approval of the majority of employees to whom the agreement applies (and, if a union is party, union employers agree).

Agreements must specify a nominal expiry date (NED). After the NED they can be terminated, on application, in the public interest. Agreements can provide for alternative expiry arrangements after the NED.

The Employment Advocate

The Employment Advocate has been created under the new law to provide advice and assistance to workers and employers, especially small businesses, on their rights and obligations under the new Act, particularly on AWAs and freedom of association issues

Freedom of association and organisations

Membership of all organisations will be voluntary, and compulsory unionism and preference clauses prohibited.

It will be easier to register new unions and the Act encourages enterprise unions. The minimum number of members for registration has been lowered from 100 to 50.

There is a limited right of entry for unions — by permit — to investigate suspected award breaches and to hold discussions with employees.

Discrimination against or victimisation of individuals, including independent contractors, based on membership or non-membership of a union or employer association is prohibited.

Compliance and industrial action

Industrial action will be protected while negotiating AWAs and single-business CAs. Such action will not be protected during the period of an agreement's operation.

The AIRC has greater powers to direct that industrial action stop or not occur — with such directions enforceable by injunctions from the Federal Court.

It will be unlawful to pay or accept strike pay or to take action to force its payment. Such action includes bans and limitations.

Secondary boycotts provisions have been restored to the Trade Practices Act.

Higher penalties apply to non-compliance with awards and agreements.

Unfair dismissal

The new federal unfair dismissal system will be fair to employers and employees.

It will give employees access to a fair and simple process of appeal against dismissals, based on the principle of a 'fair go all round'.

The new system will cover

- federal award employees employed by corporations (the Commonwealth is seeking complementary State legislation to cover other employees covered by federal awards or agreements, but not within the scope of the relevant powers of the federal Constitution);
- Federal Government employees;
- employees in Victoria and the Territories; and
- federal award employees employed in relation to interstate or overseas trade or commerce as a waterside worker, maritime employee or flight crew officer.

Employees not falling into these categories will be able to access State unfair dismissal laws.

In handling cases, a simple question will be answered by the AIRC — was the termination harsh, unjust or unreasonable?

All applications are to be dealt with in the first instance by conciliation by the AIRC.

Should arbitration be needed, in considering remedies, the AIRC must have regard for all relevant circumstances — including the viability of an employer's business.

Frivolous and malicious claims will be discouraged. A \$50 filing fee will apply.

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

For unlawful termination, the following provisions apply nationally — requirement to provide minimum notice or pay in lieu; dismissal on grounds which are discriminatory will not be allowed; and the requirement to notify the CES of any decision to terminate the employment of 15 or more employees on redundancy grounds.

Flexibility and balance

Workers can have improved access to part-time work, with reasonably predictable hours of work and pro rata conditions.

The Act will help workers to balance their work and family responsibilities effectively.

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

For young people, there are new industrial arrangements for apprentices and trainees.

Junior wages are exempted from the anti age discrimination provisions of the Act for a further three years from June 1997.