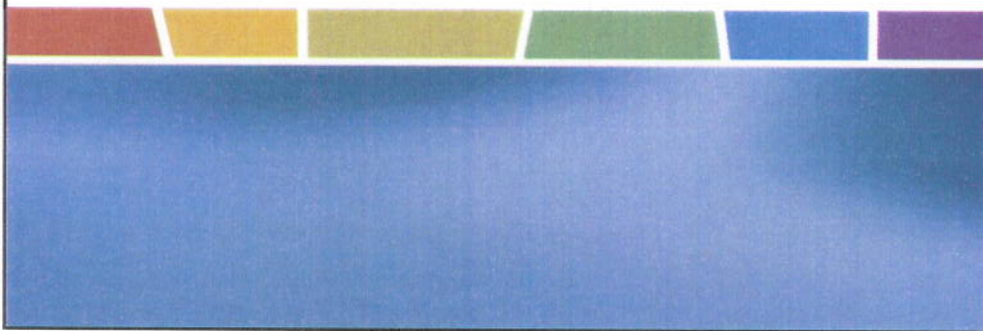




Australian Government

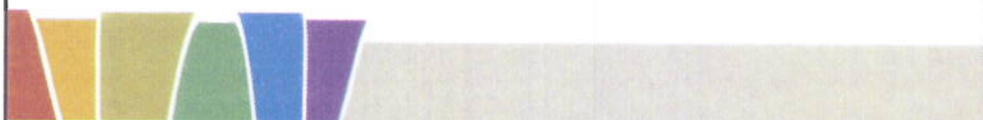
Department of Education, Employment and Workplace Relations

# Fair Work Bill



## Overview

- New legislation
- Based on Corporations power
- 6 Chapters- easily identifiable parts
- Extensive consultation undertaken



## Chapters

1. Introduction
2. Terms and conditions of employment
3. Rights and responsibilities of employees, employers, orgs. etc.
4. Compliance and enforcement
5. Administration
6. Miscellaneous

## Terms and conditions of employment

### 10 National Employment Standards for all employees from 1 January 2010:


- Maximum weekly hours of work
- Requests for flexible working arrangements
- Parental leave (and related entitlements)
- Annual leave
- Personal/carer's leave and compassionate leave
- Community service leave
- Long service leave
- Public holidays
- Notice of termination and redundancy
- Fair Work Information Statement

Bill Ref: Ch2, Part 2-2  
Page 71

## Terms and conditions of employment

### Modern awards

- NES complemented by modern awards - 10 further matters
- Content set on a national basis, transitional arrangements
- 'Catch all' award for those traditionally covered
- Those earning >\$100,000 free to agree on terms without reference to award (NES still apply)
- Awards reviewed every four years by Fair Work Australia
- Limited adjustment between four-yearly reviews
- Individual flexibility agreements can modify terms of an award




Bill Ref: Ch2,  
Parts 2-3 & 2-9  
Pages 130, 285

## Terms and conditions of employment

### Minimum wages

- Fair Work Australia Minimum Wages Panel
- Part time members with special expertise (e.g. economics)
- Minimum wage adjustments to take effect 1 July each year
  - Automatic application to all awards
  - Will over-ride any low rate in enterprise agreements
- Provisions to regulate method and frequency of payment
- Prevention of unreasonable deductions
- Equal remuneration for work of comparable value




Bill Ref: Ch2,  
Parts 2-6, 2-7, 2-9  
See pages 252, 265 & 281

## Terms and conditions of employment

### Enterprise agreements

- Two types of agreements
  - single enterprise
  - multi-enterprise
- Single enterprise agreement made when approved by majority of employees who vote.
- Fair Work Australia approves agreement if requirements met
- 'Single interest' employers may bargain for a single enterprise agreement




Bill Ref: Ch2, Part 2-4  
Divisions 2,3,4 Page 158

## Terms and conditions of employment

### Enterprise agreements

- Employees to be notified of right to be represented
- Bargaining representatives (can be union or representative appointed by employee) must be recognised by employer
- If an employer refuses to bargain, Fair Work Australia can determine if there is majority support for bargaining
- Fair Work Australia can also make scope orders during the bargaining process




Bill Ref: Ch2, Part 2-4  
Divisions 2,3,4 Page 158

## Terms and conditions of employment

### Good faith bargaining

- All bargaining representatives must comply with good faith bargaining requirements
- Fair Work Australia can make orders to ensure integrity and fairness of the bargaining process
- Good faith bargaining does not mean parties have to make an agreement when they do not agree to its terms




Bill Ref: Ch2, Part 2-4  
Division 8  
Page 207

## Terms and conditions of employment

### Multi-employer bargaining

- Fair Work Australia will be able to facilitate multiple-employer bargaining for the low paid
- There is also voluntary multi-employer bargaining, which is not subject to a public interest test
- Prohibition on pattern bargaining
- Fair Work Australia must be satisfied that each employer genuinely agreed to the agreement and that employers were not coerced to make a multi-employer agreement
- Industrial action, good faith bargaining orders, scope orders and majority support determination not available for multi-employer bargaining (low paid can still access GFB orders)



Bill Ref: Ch2, Part 2-4  
Divisions 9 & 10  
Page 219

Type of enterprise agreement	Protected industrial action	Bargaining orders/ Serious breach declaration	Majority support determination	Scope orders
Single-enterprise agreement with a single employer or two or more employers that are related bodies corporate, or engaged in a joint venture or common enterprise	✓	✓	✓	✓
Single-enterprise agreement with two or more employers that are specified in a single interest employer authorisation	✓	✓	✓	✗
Multi-enterprise agreement with two or more employers specified in a low-paid authorisation	✗	✓	✗	✗
Multi-enterprise agreement with two or more employers that are <i>not</i> specified in a low-paid authorisation	✗	✗	✗	✗

## Terms and conditions of employment

### Agreement content and approval

- Matters pertaining to the relationship between the employer and the employees and the union and the employer
- Deductions from wages for any purpose authorised by an employee will now be permitted
- Fair Work Australia will not approve agreements that contain unlawful terms such as bargaining fees
- Fair Work Australia won't scrutinise for 'non-allowable' content, but will have power to refer concerns
- Enterprise agreement must include: a dispute settlement clause; consultation clause for major workplace change; flexibility clause
- Agreement must leave employees "better off overall"

Bill Ref: Ch2, Part 2-4  
Divisions 2 & 5  
See pages 161, 188, 181

## Terms and conditions of employment

### Workplace determinations

- Low-paid bargaining stream (under certain conditions)
- Industrial action causing (or threatening to cause) significant economic harm to both bargaining participants (exception- responsive lockouts)
- Industrial action threatening to endanger life, personal safety or health, or the welfare of the population, or part of it OR significant damage to the economy, or an important part of it
- Serious and sustained breaches of good faith bargaining orders- expect to be used very rarely

Bill Ref: Ch2, Part 2-5  
and Ch3, Part 3-3  
pages 231 & 351

## Terms and conditions of employment

### Transfer of Business

- New simple test
- Applies also to in-sourcing and out-sourcing arrangements
- Protections for employees' accrued NES entitlements
- Role for Fair Work Australia in determining application of agreements

Bill Ref: Ch2, Part 2-8  
Page 267

## Rights and responsibilities

### General protections

- Act brings together in one simplified part- a wide range of protections
  - Protections for exercising a right under the Act (e.g. taking industrial action, making a complaint)
  - Freedom of association
  - Protection from coercion
  - Protection from discrimination
- Court will be able to issue injunctions on these matters and make necessary orders
- Protections for workers in some situations will be more comprehensive than is currently the case (e.g. anti-discrimination will cover all forms of adverse action, not just dismissal)

Bill Ref: Ch3, Part 3-1  
page 290

## Rights and responsibilities

### Unfair dismissal

- Now covers all employees (including those earning >100K if covered by a modern award)
- Qualifying periods – 6months and 12months
- 'Operational reasons' not a defence but genuine redundancy OK
- Process less adversarial, more inquisitorial

Bill Ref: Ch3, Part 3-2  
page 318



## Rights and responsibilities

### A Fair Dismissal Code for Small Business

- New Fair Dismissal Code for small businesses with fewer than 15 employees
- Dismissal will be fair if small business complies with Fair Dismissal Code
  - There must be a valid reason based on employees' conduct or capacity to do the job
  - Must be at least one warning
- Count of employees for small business includes full time, part time and regular and systematic casuals

Bill Ref: Ch3, Part 3-2  
page 324

## Rights and responsibilities

### Industrial action

- Mandatory secret ballots for protected industrial action
- No protected industrial action unless it is about matters permitted to be included in an agreement
- No protected action for multi-employer bargaining, low-paid stream, in pursuit of pattern bargaining or bargaining fees
- Employers will be able to seek injunctions from the Federal Court to have industrial action in pursuit of pattern bargaining stopped
- Protected employer industrial action limited to responsive lockouts
- Pay deductions for actual period of protected industrial action, OR employer can pay full wages or issue 'partial work notice' in the event of partial work bans
- But, four hour rule stays for all types of unprotected industrial action

Bill Ref: Ch3, Part 3-3  
page 334

## Rights and responsibilities

### Right of entry

- Unions will only be able to enter workplaces to hold discussions or investigate contraventions of the Act where they are entitled to represent the interests of employees who work on the premises
- Unions must comply with strict conditions of entry:
  - Valid right of entry permit, fit and proper person
  - 24 hours notice for entry and only during work hours
  - Permit holder must set out the basis on which he or she has entry rights
- Access to employee records only in specific circumstances and with strong penalties for misuse

Bill Ref: Ch3, Part 3-4  
page 390

## Compliance and enforcement

### Specialist Fair Work Divisions in the Federal Court and Federal Magistrates Court

- Flexible remedies- courts will be able to make any orders considered appropriate to remedy a contravention, not just penalties
- State and Territory courts will retain existing jurisdiction and powers
- Enforcement of basic safety net entitlements
- Existing small claims mechanism will be extended

Bill Ref: Ch4,  
Parts 4-1 & 4-2  
See pages 427, 453

# Administration

## Fair Work Australia & the Office of the Fair Work Ombudsman

Will bring together 7 existing agencies

- Australian Industrial Relations Commission
- Australian Industrial Registry
- Australian Fair Pay Commission
- Australian Fair Pay Commission Secretariat
- Workplace Authority
- Workplace Ombudsman
- Australian Building and Construction Commission (from 1 February 2010)



Bill Ref: Ch5, Part 5-1, 5-2  
See pages 458 & 523

Fair Work Australia		Fair Work Ombudsman	Fair Work Divisions of the Federal Court and Federal Magistrates Court
<b>President of FWA</b> Statutory office holder with tenure to age 65		<b>Director</b> Statutory office holder Will promote compliance with legislation, including through education, information and assistance Will appoint Fair Work Inspectors	New specialist Fair Work Divisions will be created in Federal Court and Federal Magistrates Court Will deal with all matters arising under new workplace legislation Will deal with entitlements under a contract of employment about matters in the NES (e.g. leave) or modern awards (e.g. wages) Small claims procedure will be extended to the Federal Magistrates Court
<b>Tribunal functions</b>	<b>Non-Tribunal functions</b>	<b>Fair Work Inspectors</b> Powers include: Entry to premises to monitor compliance with legislation or instruments made under legislation (e.g. NES, awards, agreements) Bring court proceedings to enforce rights and obligations Investigate and enforce common law entitlements that relate to the NES or modern awards	State and Territory Courts State and Territory Courts will retain existing jurisdiction and powers
<b>FWA Members</b> Statutory office holders with tenure to age 65 Functions/powers, include: • Approval of enterprise agreements • Awards review and variation • Good faith bargaining orders • Unfair dismissal • Industrial action orders • Mediation and dispute resolution FWA will have broad powers to conduct matters and inform itself as it considers appropriate in an informal and non-adversarial way (e.g. compulsory conferences)	<b>General Manager and staff</b> Statutory office holder Will provide assistance to President and FWA members Exercise powers under delegation of President Will manage FWA staff, who will assist FWA members to discharge functions (e.g. provide registry functions, gather information for matters before FWA) Provide information about role and functions of FWA		
<b>Minimum wages panel (MWP)</b> Will set and adjust wages in its annual wage review  Will be headed by the President with other part-time specialist appointments for up to 5 years.			

## Coverage of the New Act

- Aim: a uniform national workplace relations system for the private sector through referrals of power or other forms of cooperation and harmonisation (e.g. mirror legislation)
- States retain subjects such as long service leave, declaration of public holidays, outworkers, child labour etc

## Further questions and discussion



Australian Government

Department of Education, Employment and Workplace Relations

