



## Workplace laws go national

### Australia's new workplace relations system

From 1 July 2009, most Australian workplaces are governed by a new system created by the *Fair Work Act 2009*.

The Fair Work Ombudsman helps employees, employers, contractors and the community to understand and comply with the new system. We provide education, information and advice, investigate workplace complaints, and enforce relevant Commonwealth workplace laws.

From 1 January 2010, most employers and employees who were previously covered by state workplace relations laws are now under the national workplace relations system.

The following states have referred certain workplace relations matters for all private sector employers and employees to the Commonwealth:

- New South Wales
- Queensland
- South Australia
- Tasmania

Private sector employers in these states, such as those operating as sole traders, partnerships, or unincorporated entities, join the following employers in forming the national workplace relations system:

- those operating as constitutional corporations (these are corporations that are trading or financial, usually Pty Ltd or Ltd companies)
- those operating in Victoria, Northern Territory or the Australian Capital Territory or a body corporate incorporated in Northern Territory or the Australian Capital Territory
- the Commonwealth or a Commonwealth authority
- those employers employing a waterside employee, maritime employee or flight crew officer employed in connection with interstate or overseas trade or commerce.

This means that, from 1 January 2010, most employers and employees in Australia are covered by one set of Commonwealth workplace laws.

### Who will be affected by these changes?

Most employers in Australia are covered by one set of Commonwealth workplace laws, regardless of whether they operate as a sole trader, partnership, unincorporated entity, or an incorporated entity. However, many State government public sector entities, and some local government entities, will remain covered by their respective state workplace relations laws.

Western Australia has not referred its workplace relations power to the Commonwealth. As such, employers and employees in Western Australia (other than those employers who are currently covered by the national workplace relations system) will also continue to remain covered by their state workplace relations laws.

### How will these changes affect employers and employees in the referring states?

From 1 January 2010, most employers and employees in the referring states form part of the national workplace relations system, and are covered by the *Fair Work Act 2009*. This means that there may be some changes to employee and employer rights and obligations.

The *Fair Work Act 2009* establishes a safety net of employee entitlements with the National Employment Standards (NES) and modern awards. In some cases, an employee's entitlements change to meet the minimum entitlements under the NES, which prevail over any instrument (including former State awards and State agreements) that is less beneficial than the entitlements under the

NES. This means that if an employee is covered by an award, agreement, former State award or State agreement or contract of employment, it cannot provide less than the NES entitlements. For more information on the NES, please see the Fair Work Ombudsman fact sheet *Introduction to the National Employment Standards*, and fact sheets on each individual NES entitlement.

Rules relating to other employment matters governed by the *Fair Work Act 2009* also apply to those employers and employees new to the national system from 1 January 2010. This includes (but is not limited to):

- termination of employment
- enterprise bargaining
- industrial action
- right of entry
- general protections
- record-keeping requirements.

All employers in referring states are required to comply with these new obligations.

For example, small businesses new to the national workplace relations system need to understand the Small Business Fair Dismissal Code to ensure they are not contravening unfair dismissal obligations. More information on the Small Business Fair Dismissal Code can be found at:

[www.fairwork.gov.au/Info/small-business-fair-dismissal-code](http://www.fairwork.gov.au/Info/small-business-fair-dismissal-code)

## What protections does the *Fair Work Act 2009* provide?

The *Fair Work Act 2009* provides certain workplace rights and the right to engage in certain industrial activities. These protections ensure that a person is free from adverse action, coercion and misrepresentations in relation to those rights. For more information please see the Fair Work Ombudsman fact sheet *General Workplace Protections*.

An employee, or prospective employee, is also protected from adverse action based on discriminatory grounds. For more information on unlawful discrimination, including how to make a complaint, please see the Fair Work Ombudsman fact sheet *Unlawful workplace discrimination*.

## Are there any transitional arrangements?

From 1 January 2010, employers entering the national workplace relations system must comply with the *Fair Work Act 2009* and the NES. However, there are some transitional arrangements regarding industrial instruments (i.e. awards and agreements) which will provide assistance.

### Awards

From 1 January 2010, State awards covering employers and employees in a referring state as at 31 December 2009 became a federal instrument (known as a 'Division 2B State award'). These State awards will generally continue to operate according to their original terms and (except for State enterprise awards) apply to relevant employees for a 12 month period. However, the NES and the national minimum wage order will apply to all employees in the national system.

Any entitlements in a State award which are less beneficial to an employee when compared to the NES will not apply. Also, an employee is entitled to a base rate of pay which is at least equal to the national minimum wage order. At the end of the 12 month transition period, the employer and their employees will be covered by the relevant modern award and the State award will terminate.

If, after the 12 month transition period, an employee or outworker suffers a reduction in their take home pay due to a modern award starting to apply to them, the employee or outworker can apply to Fair Work Australia for a 'take home pay order' to remedy the situation.

### Agreements

From 1 January 2010, state employment agreements covering employers and employees in a referring State as at 31 December 2009 also became a federal instrument (known as a 'Division 2B State employment agreement'). Any entitlements in a State employment agreement which are less beneficial to an employee when compared to the NES will not apply.

An employee who is employed under a Division 2B State employment agreement is entitled to a rate of pay which is at least equal to the base rate of pay in the relevant Division 2B state award, or if none such exists, a relevant modern award.

If the employee is not covered by an operational Division 2B State award or modern award, the employee's base rate of pay under the agreement must be at least equal to the national minimum wage order.

A Division 2B state agreement continues to apply until terminated or replaced. A party can make an application to Fair Work Australia to have the agreement varied (in limited circumstances) or terminated.

### Transfer of business

Generally speaking, if a transfer of business occurs between two national system employers (including those from referring states) the transfer of business rules and obligations under the Fair Work Act 2009 apply. Division 2B State awards and Division 2B State employment agreements will be transferable instruments (i.e. they can apply to the new employer) for the purpose of a transfer of business under the *Fair Work Act 2009*.

## Will any State workplace relations laws continue to apply?

Some state workplace relations laws will continue to apply to employees in certain circumstances, including those relating to:

- anti-discrimination legislation
- long service leave
- worker's compensation
- superannuation
- leave for victims of crime
- training arrangements
- declaration, prescription or substitution of public holidays
- attendance for service on a jury or for emergency service duties
- business trading hours
- OH&S
- workplace surveillance
- child labour.

## What obligations do I need to be aware of?

Employees and employers should make themselves aware of their rights and obligations under the *Fair Work Act 2009*.

The Fair Work Ombudsman has published a range of fact sheets covering key topics, which can be found at [www.fwo.gov.au](http://www.fwo.gov.au)

## Where can I get more help?

The Fair Work Ombudsman provides employers and employees with education and advice on their workplace rights and obligations, and investigates alleged contraventions of Commonwealth workplace laws. Where appropriate, the Fair Work Ombudsman may also commence proceedings for contraventions of these laws.

For information or advice on these changes, contact the Fair Work Infoline on **13 13 94**, or visit [www.fairwork.gov.au](http://www.fairwork.gov.au)

Fair Work Australia is an independent body with the power to carry out a range of functions relating to the safety net of minimum wages and employment conditions, enterprise bargaining, industrial action, dispute resolution, termination of employment, and other workplace matters.

For information or advice regarding these matters, contact Fair Work Australia on **1300 799 675** or visit [www.fairwork.gov.au](http://www.fairwork.gov.au)

### Contact us

Fair Work Online: [www.fairwork.gov.au](http://www.fairwork.gov.au)

Fair Work Infoline: **13 13 94**

Monday to Friday, between 8.00am–6.00pm

Fair Work Australia website: [www.fwa.gov.au](http://www.fwa.gov.au)

FWA Help Line: **1300 799 675**

Monday to Friday, between 9.00am–5.00pm

### Need language help?

Contact the Translating and Interpreting Service (TIS) on 13 14 50

### Hearing & speech assistance

Call through the National Relay Service (NRS):

- For TTY: 13 36 77. Ask for the Fair Work Infoline 13 13 94
- Speak & Listen: 1300 555 727. Ask for the Fair Work Infoline 13 13 94