

Matter	Pre-1994	1994-1996	1996-2006	2006-2009	2009
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Matter	<i>Conciliation and Arbitration Act 1904, Industrial Relations Act 1988</i>  Pre-1994	<i>Industrial Relations Act 1988</i> <i>Industrial Relations Reform Act 1993</i>  1994-1996	<i>Workplace Relations Act 1996</i>  1996-2006	<i>Workplace Relations Amendment (Work Choices) Act 2005</i>  2006-2009	Fair Work Act 2009  2009-present
<b>National System</b>					
System coverage	<ul style="list-style-type: none"> <li>• Awards cover parties to an interstate industrial dispute, Cth public service, Territories, interstate/international shipping, aviation, coal mining.</li> </ul>	<ul style="list-style-type: none"> <li>• Award coverage as pre-1994.</li> <li>• Agreements can cover corporations and parties to an interstate dispute.</li> </ul>	<ul style="list-style-type: none"> <li>• Award coverage as pre-1994 plus Victoria.</li> <li>• Agreement coverage as before plus Victoria.</li> </ul>	<ul style="list-style-type: none"> <li>• Corporations, Territories and Victoria covered.</li> </ul>	<ul style="list-style-type: none"> <li>• Private sector covered (except WA non-corporations), some local government (Vic and Tas), and some public sector (Cth and Vic).</li> </ul>
<b>Safety Net</b>					
Minimum Wages	<ul style="list-style-type: none"> <li>• Minimum wages scale contained in industry and enterprise awards and some 'paid rates' awards.</li> <li>• Awards indexed to CPI; from 1986 awards are adjusted periodically by AIRC.</li> <li>• In 1991 additional wage increases tied to reform of awards.</li> </ul>	<ul style="list-style-type: none"> <li>• Minimum wages scale contained in industry and enterprise awards.</li> <li>• No new 'paid rates' awards allowed.</li> <li>• AIRC adjusts awards annually in accordance with its own criteria of fairness and relevance.</li> <li>• In 1995 additional wage increases tied to the adoption of enterprise bargaining.</li> </ul>	<ul style="list-style-type: none"> <li>• Minimum wages scale contained in industry and enterprise awards.</li> <li>• AIRC conducts Safety Net Adjustment Cases. No statutory criteria applied.</li> </ul>	<ul style="list-style-type: none"> <li>• AFPC sets the minimum wage, adjusts annually.</li> <li>• AFPCS minimum wage is derived from awards.</li> <li>• Award free employees receive Federal Minimum Wage only.</li> <li>• No requirement for a hearing, no submissions from stakeholders.</li> <li>• AFPC sets wage according to statutory criteria such as promoting employment and increasing competitiveness.</li> </ul>	<ul style="list-style-type: none"> <li>• FWC Minimum Wage Panel sets minimum wage through the annual National Wage Case (Part 2-6).</li> <li>• Statutory criteria include balancing economic interests with fairness, relevance, social inclusion and the needs of the low paid.</li> <li>• Modern awards contain minimum wage scales.</li> <li>• Non-award/non-agreement minimum wages set by the</li> </ul>

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Awards	<ul style="list-style-type: none"> <li>Enterprise level variations negotiated with unions and ratified by AIRC, through creation of firm-specific clauses of standalone enterprise awards.</li> <li>Informal bargaining. If agreement reached on a matter pertaining a consent award was made. If no agreement, AIRC could arbitrate.</li> <li>Awards made in settlement of industrial disputes – industrial disputes confined to ‘matters pertaining’ hence content of awards also so restricted.</li> </ul>	<ul style="list-style-type: none"> <li>Awards are the safety net of minimum wages (s 88A(b)).</li> <li>Enterprise level variations negotiated with unions under enterprise flexibility terms or through the creation of enterprise awards (s 113A).</li> <li>Enterprise flexibility clauses inserted in to awards (ss 113A &amp; 113B).</li> <li>Awards made in settlement of industrial disputes – industrial disputes confined to ‘matters pertaining’ hence content of awards also so restricted.</li> </ul>	<ul style="list-style-type: none"> <li>Enterprise level variations negotiated with unions under enterprise flexibility terms or through the creation of enterprise awards (s 113A).</li> <li>AIRC can rope in employers to awards (s 111(1)).</li> <li>20 allowable award matters (s 89A).</li> </ul>	<ul style="list-style-type: none"> <li>Enterprise flexibility terms prohibited.</li> <li>No new federal awards can be made because AIRC does not have power to arbitrate a dispute and make an award.</li> <li>AIRC can rope in employers (ss 557-561).</li> <li>15 allowable award matters (s 513).</li> <li>12 non-allowable award matters (s 515).</li> </ul>	<p>national minimum wage order.</p> <ul style="list-style-type: none"> <li>122 Modern Awards (Industry and Occupation)</li> <li>Enterprise level variations available at election of employer, or by agreement with majority of employees.</li> <li>Modern awards may contain 20 matters (including the 10 NES) (s 139).</li> </ul>
Legislated Minima	<ul style="list-style-type: none"> <li>States govern long service leave, public holidays and OHS</li> <li>1985: ACTU National Wage Case superannuation claim of</li> </ul>	<ul style="list-style-type: none"> <li>Federal superannuation legislation.</li> <li>States govern long service leave, public holidays and OHS.</li> <li>Statutory rights to</li> </ul>	<ul style="list-style-type: none"> <li>Federal superannuation legislation.</li> <li>States govern long service leave, public holidays and OHS.</li> <li>Statutory rights to equal</li> </ul>	<ul style="list-style-type: none"> <li>Federal superannuation legislation.</li> <li>States govern long service leave, public holidays and OHS.</li> </ul>	<ul style="list-style-type: none"> <li>Federal superannuation legislation.</li> <li>States govern long service leave, public holidays and OHS.</li> <li>Statutory rights to equal</li> </ul>

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	3% <ul style="list-style-type: none"> <li>1992: <i>Superannuation Guarantee (Administration) Act 1992</i></li> </ul>	minimum wages, equal pay, notice of dismissal, parental leave. Carer's leave noted (Part VIA).	pay, notice of dismissal, parental leave (Part VIA).	<ul style="list-style-type: none"> <li>Statutory rights to equal pay and notice of dismissal (Part 12, Div 3 &amp; 4).</li> <li>5 Australian Fair Pay and Conditions Standards: basic rates of pay and casual loadings; maximum ordinary hours of work; annual leave; personal leave; and parental leave (s 171).</li> </ul>	pay (s 302). <ul style="list-style-type: none"> <li>10 National Employment Standards: maximum weekly hours of work; requests for flexible working arrangements; parental leave; annual leave; personal/carer's leave and compassionate leave; community service leave; public holidays; notice of termination and redundancy pay; and a Fair Work Information Statement (s 61).</li> </ul>
<b>Collective Bargaining</b>	<ul style="list-style-type: none"> <li>1988 onwards – enterprise bargaining focus increased.</li> </ul>	<ul style="list-style-type: none"> <li>AIRC certifies agreements (s 170MC).</li> <li>Enterprise bargaining – formal collective bargaining became the focus over awards.</li> </ul>	<ul style="list-style-type: none"> <li>AIRC certifies agreements (s 170LT).</li> <li>Arbitrated award can be made by Full Bench of AIRC (ss 170MX &amp; 170MY).</li> </ul>	<ul style="list-style-type: none"> <li>Office of the Employment Advocate (OEA) certifies agreements (ss 151 &amp; 342).</li> </ul>	<ul style="list-style-type: none"> <li>FWC approves enterprise agreements (s 186).</li> </ul>
Ability to Compel Bargaining					<ul style="list-style-type: none"> <li>Majority support determinations available to compel employer to bargain (s 236).</li> </ul>
Conduct During Bargaining		<ul style="list-style-type: none"> <li>Requirement to bargain in good faith introduced (s 170PO(1)(a)(ii)).</li> </ul>	<ul style="list-style-type: none"> <li>AIRC can imply an obligation to bargain in good faith, or genuinely try to reach agreement,</li> </ul>	<ul style="list-style-type: none"> <li>Obligation to genuinely try to reach agreement implied (ss 430(2), 444 &amp; 461).</li> </ul>	<ul style="list-style-type: none"> <li>Requirement to bargain in good faith (s 228).</li> <li>Bargaining orders</li> </ul>

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			<p>before a party can take industrial action (s 170MW(2)).</p> <ul style="list-style-type: none"> <li>•AIRC has coercive conciliation powers, but cannot arbitrate a dispute (ss 170N &amp; 170NA).</li> </ul>	<ul style="list-style-type: none"> <li>•AIRC has conciliation powers, but cannot arbitrate a dispute.</li> </ul>	<p>available, but cannot be made more than 90 days before the expiry date of the agreement (s 229).</p> <ul style="list-style-type: none"> <li>•FWC can only arbitrate a dispute if the parties consent (s 240).</li> </ul>
Types of Agreements	<ul style="list-style-type: none"> <li>• 1988 onwards – certified agreements are made with a union</li> </ul>	<ul style="list-style-type: none"> <li>• Agreements are made with a union (ss 170MB &amp; 170MC(1)(g)).</li> <li>• There can be non-union enterprise flexibility agreements if there is no eligible union (ss 170ND(7) &amp; (8)).</li> <li>• Greenfields agreements can be made (s170MC(3)).</li> </ul>	<ul style="list-style-type: none"> <li>•Agreements can be made with a union (s 170LJ).</li> <li>•Agreements can be made directly with employees (non-union agreement) (s 170LK).</li> <li>•Greenfields agreements can be made with a union (s 170LL).</li> </ul>	<ul style="list-style-type: none"> <li>•Agreements can be made with a union (s 328).</li> <li>•Agreements can be made directly with employees (non-union agreement) (s 327).</li> <li>•Greenfields agreements can be made with a union (s 329).</li> <li>•Employer greenfields agreements (unilateral) can be made (s 330).</li> </ul>	<ul style="list-style-type: none"> <li>•Agreements are made with employees (ss 172(2)(a) &amp; 172(3)(a)).</li> <li>•Union can have agreement ‘cover’ it (s 183).</li> <li>•Greenfields agreements to be made with a union (ss 172(2)(b), 172(3)(b) &amp; 172(4)).</li> <li>•Single enterprise agreements can be made with an employer or two or more single interest employers (s 172(2)).</li> <li>•Multi-enterprise agreements can be made with two or more non-single interest employers (s 172(3)).</li> </ul>
Terms and Content of Agreements	<ul style="list-style-type: none"> <li>• Must include a term to settle further disputes between the parties.</li> <li>• Cannot include terms that could not be</li> </ul>	<ul style="list-style-type: none"> <li>• Must include a term to settle disputes (ss 170MC(1)(c) &amp; 170MH).</li> <li>• Where appropriate a consultation clause must</li> </ul>	<ul style="list-style-type: none"> <li>• Nominal expiry date, which must not be longer than 3 years (ss 170LD &amp; 170LT(10)).</li> <li>• Must include dispute</li> </ul>	<ul style="list-style-type: none"> <li>•Nominal expiry date which must not be longer than 5 years (or 12 months for an employer greenfields agreement) (s</li> </ul>	<ul style="list-style-type: none"> <li>•Nominal expiry date which must not be longer than 4 years (s 186(5)).</li> <li>•Must be about permitted matters: employer-</li> </ul>

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	included un an award.	<p>be included (s 170MC(1)(d)).</p> <ul style="list-style-type: none"> <li>• Must not include discriminatory terms (apart from junior rates) (ss 170MD(5)-(6)).</li> <li>• Must be about matters pertaining to the employer-employee relationship (s 170NC).</li> </ul>	<p>settlement procedures (s 170LT(8)).</p> <ul style="list-style-type: none"> <li>• Agreement must not contain objectionable provisions (s 170LU(2A)).</li> <li>• Objectionable provisions include provisions which require contravention of the Act or a bargaining services fee (s 298Z(5)).</li> <li>• Agreement must not contain discriminatory provisions (s 170LU(5)).</li> </ul>	<p>352).</p> <ul style="list-style-type: none"> <li>• Must include dispute settlement procedures (s 353).</li> <li>• Protected award conditions deemed to be part of agreement (s 354).</li> <li>• There must be no prohibited content (s 356).</li> <li>• Prohibited content is void (s 358).</li> <li>• OEA can remove prohibited content (s 363).</li> <li>• Prohibited content – note the Minister can add to this list (s 356 &amp; Regs 8.5- various prohibited content &amp; 8.7- matters that do not pertain to employer-employee relationship prohibited content).</li> <li>• Employer must not lodge an agreement which contains prohibited content (s 357).</li> <li>• A person must not seek prohibited content in an agreement, or be reckless about including</li> </ul>	<p>employee relationship; employer-union relationship; authorised deductions from wages; how the agreement will operate (s 172(1)).</p> <ul style="list-style-type: none"> <li>• Must include a dispute settlement clause (s 186(6)).</li> <li>• Must include a flexibility term. If term is not included, the model term from the Regulations is taken to be a term of the agreement (s 202).</li> <li>• Must include a consultation term. If term is not included, the model term from the Regulations is taken to be a term of the agreement (s 205).</li> <li>• There must be no unlawful terms (s 194).</li> <li>• There must be no discriminatory terms (s 195).</li> </ul>

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				prohibited content. Misrepresentations not allowed (ss 365 & 366).	
Voting on Agreement and Explanation of Terms	<ul style="list-style-type: none"> <li>No provisions</li> </ul>	<ul style="list-style-type: none"> <li>Explanation of terms and effects of agreement to be provided to employees (s 170MC(1)(f)).</li> </ul>	<ul style="list-style-type: none"> <li>Employees to have 14 days' access to proposed union agreement prior to vote (s 170LJ(3)).</li> <li>Employees to have 14 days' notice of employer's intention to make non-union agreement and to receive a copy of the proposed agreement(ss 170LK(1)-(3)).</li> <li>Employer to explain the terms of agreement to employees (ss 170LJ(3)(b), 170LK(7), &amp; 170LT(7)).</li> </ul>	<ul style="list-style-type: none"> <li>7 days access to proposed agreement (s 337(1)).</li> <li>No verbal explanation of terms and effect of agreement to employees. Information statement required instead (s 337(2)).</li> <li>Employees can waive right to statement (s 338).</li> <li>OEA can approve an agreement if procedural steps not complied with (s 347(2)).</li> </ul>	<ul style="list-style-type: none"> <li>7 days access to a copy of the agreement and any incorporated material (s 180(4)).</li> <li>Explanation of terms and effect of agreement to be provided to employees (s 180(5)).</li> <li>FWC cannot approve agreement if procedural requirements not met (ss 186(2) &amp; 188).</li> <li>21 day minimum from last notice of representational rights being sent to employee ballot (s 181).</li> </ul>
Time for Lodgement	<ul style="list-style-type: none"> <li>No provisions</li> </ul>	<ul style="list-style-type: none"> <li>Agreement to be lodged with AIRC within 21 days of it being made, otherwise any action taken during bargaining period is not protected action (s 170PL).</li> </ul>	<ul style="list-style-type: none"> <li>Agreement to submitted to AIRC for certification within 21 days of approval (s 170LM).</li> <li>If agreement is not lodged within 21 days any industrial action taken during bargaining period is not protected action (s 170MS).</li> </ul>	<ul style="list-style-type: none"> <li>Agreement to be lodged with OEA within 14 days of approval (no certification requirement) (s 342).</li> <li>Failure to lodge the agreement can result in civil penalty for employer (s 342(3)).</li> <li>Agreement commences operation on the day it is lodged with OEA (s 347).</li> <li>When OEA issues receipt</li> </ul>	<ul style="list-style-type: none"> <li>Agreement to be submitted to FWC within 14 days of approval. Any bargaining representative can do this (s 185).</li> <li>No penalty for failure to lodge the agreement within 14 days.</li> <li>Agreement commences 7 days after FWC approves it (s 54).</li> </ul>

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				for lodgement of agreement, the employer has 21 days to provide the receipt to employees and/or union (s 345).	
Enterprise Agreement Test	<ul style="list-style-type: none"> <li>• AIRC has to be satisfied that the agreement is in the interests of the parties concerned and not contrary to the public interest (s.115).</li> <li>• From July 1992 a 'no disadvantage test' applied to enterprise agreements (s 134).</li> </ul>	<ul style="list-style-type: none"> <li>• AIRC required to ensure that certified agreement does not put employees at a net disadvantage when compared to the award (s 170MC(2)).</li> <li>• Undertakings from employer available to remedy concerns about certified agreement (s 170MF).</li> <li>• AIRC must approve agreement when wages and conditions are regulated by one or more awards; there is no disadvantage to employees; it provides for consultation (where relevant); employees were consulted during negotiations; the parties include a union; and the agreement specifies a period of operation (s 170MC).</li> </ul>	<ul style="list-style-type: none"> <li>• Agreement must pass the No Disadvantage Test (NDT) (s 170LT(2)).</li> <li>• NDT ensures employees no worse off overall (on a certified agreement or AWA) than if they were on the award (and any relevant State/Territory law) (ss 170 LT(2) &amp; 170XA).</li> <li>• Undertakings available (s 170LV).</li> <li>• Multiple business agreements available and subject to a 'public interest' test (ss 170LC(2)-(4)).</li> </ul>	<ul style="list-style-type: none"> <li>• No test applied initially.</li> <li>• AWAs and agreements subject to 'Fairness Test' from May 2007 (s 346E). Workplace Authority administers test.</li> <li>• AWA is approved if signed, witnessed and dated (s 340(1)).</li> <li>• Collective agreement is approved if persons covered by agreement have had a reasonable opportunity to decide if they want to be covered by it and a majority vote, or majority decide, that they want to approve the agreement (s 340(2)).</li> <li>• Multiple business agreements can be made subject to a 'public interest' test (ss 331 &amp; 332).</li> </ul>	<ul style="list-style-type: none"> <li>• Agreement must pass the Better Off Overall Test (BOOT) (s 193).</li> <li>• Greenfields agreements subject to a public interest test (s 187(5)).</li> </ul>
Individual Agreement	<ul style="list-style-type: none"> <li>• Many award clauses specifically allow</li> </ul>	<ul style="list-style-type: none"> <li>• Many award clauses specifically allow</li> </ul>	<ul style="list-style-type: none"> <li>• As before, plus the following:</li> </ul>	<ul style="list-style-type: none"> <li>• An employer and an employee may make an</li> </ul>	<ul style="list-style-type: none"> <li>• Many award clauses specifically allow</li> </ul>

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s	<p>employer and an individual employee, or group of employees, to agree to vary the operation of specific award terms, within limits.</p>	<p>employer and an individual employee, or group of employees, to agree to vary the operation of specific award terms, within limits (s 113A).</p>	<ul style="list-style-type: none"> <li>•An employer and an employee may make an AWA (s 170VF).</li> <li>•AWA may be made before employment commences (s 170VF(2)).</li> <li>•AWA can be a condition of employment (s 170VJ).</li> <li>•AWA must not prohibit or restrict the disclosure of the details of the AWA (s 170VG(2)).</li> <li>•Nominal expiry date of no longer than 3 years (s 170VH(3)).</li> <li>•A person can appoint a bargaining agent for an AWA (s 170VK).</li> <li>•AWA filed with OEA (s 170VN).</li> <li>• OEA approves AWA and can refer them to the AIRC if it is concerned they do not meet the NDT (s 170VPB).</li> <li>• AWA must pass no disadvantage test (s 170VPB(1)).</li> <li>• AWA operates to the exclusion of any awards (s 170VQ (1)).</li> <li>• An existing certified agreement (or one</li> </ul>	<p>AWA (s 326(1)).</p> <ul style="list-style-type: none"> <li>•AWA can be made before employment commences (s 326(2)).</li> <li>•AWA can be a condition of employment (s 326(2)).</li> <li>•A person can appoint a bargaining agent for an AWA (s 334).</li> <li>•Nominal expiry date of no longer than 5 years (s 352).</li> <li>•AWA overrides any collective agreement or award in place (ss 384(2) &amp; 349).</li> <li>•AWA displaces commonwealth laws prescribed by the Regs to the extent of any inconsistency (s 350).</li> </ul> <p>•<i>Workplace Relations Amendment (Transition to Forward with Fairness) Act 2008</i>: from March 2008 no more AWAs could be made. IFAs replace AWAs. ITEAs available only where an employer had at least one employee on an</p>	<p>employer and an individual employee, or group of employees, to agree to vary the operation of specific award terms, within limits.</p> <ul style="list-style-type: none"> <li>•No individual statutory agreements can be made. Collective bargaining is given primacy (s 3).</li> <li>•Individual Flexibility Arrangements (IFAs) can be made under awards or enterprise agreements to vary the terms of the instrument to meet the genuine needs of the employee and employer (ss 144 &amp; 202).</li> <li>•IFAs cannot be a condition of employment.</li> <li>•IFA must pass the BOOT. However, FWC does not assess the BOOT (s 203(4)).</li> </ul>



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			<p>which comes into existence after the nominal expiry date of an AWA) prevails over an AWA to the extent of any inconsistency (s 170VQ(6)).</p> <ul style="list-style-type: none"> <li>• A person cannot hinder AWA negotiations through threats or intimidation (s 170WF).</li> <li>• A person cannot disclose the identity of another party to an AWA (s 170WHB).</li> <li>• AWA hearings to be private (s 170WHD).</li> <li>• NDT introduced in 1997. Comparison against awards (s 170XA).</li> </ul>	<p>AWA as at 1 December 2007, employed at least one employee engaged on an AWA, a preserved individual State agreement, or a Victorian employment agreement. ITEAs had to pass the NDT against any collective agreement, award or NAPSA (ss 326, 346D &amp; 346E).</p>	
Transmission of Business	<ul style="list-style-type: none"> <li>• Awards bind any successor, assignee, transferee to the business in respect of all employees (s 61(d)).</li> </ul>	<ul style="list-style-type: none"> <li>• Awards and agreements bind any successor to the business in respect of all employees (ss 149 &amp; 170LB).</li> </ul>	<ul style="list-style-type: none"> <li>• Awards bind any successor to the business in respect of all employees (s 149).</li> <li>• Successor employers bound by certified agreement if the new employer is a successor, transferee or assignee (whether immediate or not) for whole or part of the business (s 170MB).</li> <li>• AWA binds employer's</li> </ul>	<ul style="list-style-type: none"> <li>• Agreement, award or AWA can transfer (ss 583, 585 &amp; 595).</li> <li>• Terms and conditions only transfer to purchasing employer if at least one 'transferring employee' is hired. The terms and conditions only apply to the transferring employee (s 585).</li> <li>• Employee must cease to</li> </ul>	<ul style="list-style-type: none"> <li>• Agreement, workplace determination or named employer award (modern award or modern enterprise award that covers one or more employers) can transfer (s 312).</li> <li>• Applies to the State public sector (Part 6-3A).</li> <li>• Terms and conditions apply when there is a transfer of business. A</li> </ul>

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			<p>successors (s 170VS).</p> <ul style="list-style-type: none"> <li>• In 2000 HCA rules that a 'successor' is an employer that operates the same kind of business as the old employer – so most outsourcing cases are not covered (<i>PP Consultants Pty Ltd v FSU</i> (2000) 201 CLR 648).</li> <li>• From 2004 AIRC can order that an agreement or an award not bind a successor (ss 149(1) &amp; 170MBA(2)).</li> </ul>	<p>be employed by the old and within 2 months become employed by the new employer (s 581).</p> <ul style="list-style-type: none"> <li>• Case law provided that the new employer must operate the same kind of business as the old employer – <i>PP Consultants and Minister for Employment and Workplace Relations v Gribbles Radiology Pty Ltd</i> (2005) 222 CLR 194 remain good law.</li> <li>• The terms and conditions only apply for a period of 12 months (transmission period) or until instrument is terminated, there cease to be any transferring employees etc. (ss 580(4), 585(2) &amp; 595(2)).</li> <li>• AIRC can order that an agreement or an award not bind a successor (ss 590 &amp; 595(5)).</li> </ul>	<p>transfer of business occurs when the employment of an employee of the old employer has terminated; within 3 months the employee becomes employed by the new employer; the work the employee performs for the new employee is the same/substantially the same; there is a connection between the old and new employers (s 311).</p> <ul style="list-style-type: none"> <li>• A transfer can be transfer of assets, insourcing, outsourcing, or then new and old employers are associated entities (ss 311(3)-(6)).</li> <li>• In some cases new employees can be covered by the transferring instrument (s 314).</li> <li>• There is no sunset period of application of the transferring instrument.</li> </ul>

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					<ul style="list-style-type: none"> <li>FWC can order that the agreement does not transfer, or can vary its terms (ss 318-320).</li> </ul>
<b>Freedom of Association (Industrial Action, Discrimination, Representation)</b>	<ul style="list-style-type: none"> <li>Recognition that Parties do take industrial action, but little infrastructure to deal with it (aside from bans clauses in awards, strike pay and ordering public sector industrial action to stop, and general power to recommend or direct).</li> <li>Freedom of Association provisions are Offences.</li> </ul>	<ul style="list-style-type: none"> <li>Legal right to strike introduced. International obligations recognised (s 170PA).</li> <li>Protected action can be organised or engaged in to support or advance bargaining claims (s 170PG).</li> <li>Parties must negotiate ('try to reach agreement') before industrial action or lockout is available (s 170PI).</li> <li>If industrial action is taken over matters dealt with in an agreement or enterprise flexibility agreement the AIRC may release the employer (on application) from the agreement (ss 170MM(6) &amp; (7), ss 170NN(6 &amp; (7)).</li> </ul>	<ul style="list-style-type: none"> <li>Industrial action cannot be taken during the life of an award (s 170MN).</li> <li>Industrial action cannot be taken during the life of an agreement about matters contained in the agreement (s 170MN) and <i>Emwest - AIG v AMWU</i> (2003) 130 FCR 524.</li> <li>Negotiation must precede any industrial action – requirement to genuinely try to reach agreement (s 170MP).</li> <li>If industrial action is taken over matters dealt with in an agreement the AIRC may release the employer from the agreement.</li> <li>Industrial action available to compel or induce an employee or employer to make an AWA (s 170WB).</li> </ul>	<ul style="list-style-type: none"> <li>Industrial action must not be taken until after the nominal expiry date of a workplace agreement or workplace determination (s 440).</li> <li>Employer cannot take industrial action unless it has been genuinely trying to reach agreement (s 444).</li> <li>A secret ballot must be held before employee industrial action (not response) is protected (ss 445&amp; 449(2)).</li> </ul>	<ul style="list-style-type: none"> <li>Protected industrial action cannot be taken during the life of an agreement (s 413).</li> <li>Protected industrial action cannot be organised or engaged in until after the expiry of an agreement (s 417).</li> <li>The bargaining representative or employee must be genuinely trying to reach agreement before industrial action is protected (s 413).</li> </ul>

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Lockouts	<ul style="list-style-type: none"> <li>• Not provided for.</li> <li>• AIRC power to recommend or direct Industrial Action to stop where it was hindering settlement of a dispute (s.111)</li> </ul>	<ul style="list-style-type: none"> <li>• Lockouts available to support employer's claims or in response to employee industrial action (s 170PG(3)).</li> </ul>	<ul style="list-style-type: none"> <li>• Lockouts available to support employer's claims or in response to employee industrial action (s 170ML(3)).</li> </ul>	<ul style="list-style-type: none"> <li>• Lockouts available to support employer's claims or in response to employee industrial action (s 435(3)(a)).</li> </ul>	<ul style="list-style-type: none"> <li>• Lockouts only available in response to employee action (s 411).</li> </ul>
Immunity	<ul style="list-style-type: none"> <li>• Not provided for.</li> </ul>	<ul style="list-style-type: none"> <li>• Immunity provided (unless industrial action involves, or is likely to involve, personal injury, wilful or reckless destruction of or damage to property, or unlawful taking or keeping of property. However, no immunity against defamation (s 170PM).</li> </ul>	<ul style="list-style-type: none"> <li>• Immunity provided (unless industrial action involves, or is likely to involve, personal injury, wilful or reckless destruction of or damage to property, or unlawful taking or keeping of property. However, no immunity against defamation (ss 170MC, 170MT &amp; 170MU).</li> </ul>	<ul style="list-style-type: none"> <li>• Immunity provided (unless industrial action involves, or is likely to involve, personal injury, wilful or reckless destruction of or damage to property, or unlawful taking or keeping of property. However, no immunity against defamation (s 447).</li> </ul>	<ul style="list-style-type: none"> <li>• Immunity provided (unless industrial action involves, or is likely to involve, personal injury, wilful or reckless destruction of or damage to property, or unlawful taking or keeping of property. However, no immunity against defamation (s 415).</li> </ul>
Unprotected Industrial Action	<ul style="list-style-type: none"> <li>• Largely unregulated (i.e. falls to common law).</li> <li>• AIRC power to recommend or direct Industrial Action to stop where it was hindering settlement of a dispute (s.111)</li> <li>• AIRC power to order public sector industrial action to stop.</li> </ul>	<ul style="list-style-type: none"> <li>• Largely unregulated (i.e. falls to common law).</li> <li>• AIRC power to recommend or direct Industrial Action to stop where it was hindering settlement of a dispute (s.111)</li> <li>• AIRC power to order public sector industrial action to stop became a wider power to order industrial action to stop.</li> </ul>		<ul style="list-style-type: none"> <li>• Industrial action taken during the life of an agreement, AWA or workplace determination is not protected (ss 440, 494 &amp; 495).</li> <li>• Industrial action is not protected if it is to support or advance the inclusion of prohibited content or pattern bargaining (ss 436, 439 &amp; 497).</li> </ul>	<ul style="list-style-type: none"> <li>• Industrial action is not protected if it is in support of unlawful terms or pattern bargaining (ss 409, 412).</li> <li>• Pattern bargaining does not occur when the bargaining representative is genuinely trying to reach agreement (s 412).</li> <li>• The bargaining representative or</li> </ul>

Matter	Pre-1994	1994-1996	1996-2006	2006-2009	2009
				<ul style="list-style-type: none"> <li>• Employee on AWA cannot strike and employer cannot lock out employees during term of AWA (s 495).</li> <li>• Employee industrial action (not response) is not protected unless a secret ballot has been held (s 445).</li> <li>• AIRC can order that unprotected action cease, not occur or not be organised (s 496).</li> <li>• A court may grant an injunction (ss 496(12) &amp; 497).</li> </ul>	employee must be genuinely trying to reach agreement before industrial action is protected (ss 413 & 443).
Suspendin g or Terminatin g Industrial Action	<ul style="list-style-type: none"> <li>• AIRC may order industrial action in the public sector to stop.</li> </ul>	<ul style="list-style-type: none"> <li>• AIRC may order a suspension or termination of bargaining period if the party who organised or is taking the action is not genuinely trying to reach agreement or has failed to comply with an order to negotiate in good faith, the action threatens the life, safety or health of the population or part of it, or causing significant damage to Australian</li> </ul>	<ul style="list-style-type: none"> <li>• AIRC <u>may</u> make orders to stop or prevent industrial action (s 127).</li> <li>• Bargaining period <u>may</u> be suspended or terminated if a bargaining party did not (or is not) genuinely try to reach agreement with the other parties before taking industrial action, or has failed to comply with any directions or recommendations of the AIRC about the proposed agreement or a matter</li> </ul>	<ul style="list-style-type: none"> <li>• Minister can declare a bargaining period over where the action is adversely affecting the employer or employees, threatens life, personal safety or health, or welfare, of the population or part of it, or could cause significant damage to the economy or an important part of it (s 498).</li> <li>• AIRC <u>must</u> terminate or suspend a bargaining period if a bargaining</li> </ul>	<ul style="list-style-type: none"> <li>• FWC <u>may</u> suspend or terminate protected industrial action if it is causing significant economic harm to the employer or employees. The industrial action must be protracted (s 423).</li> <li>• FWC <u>must</u> suspend or terminate industrial action if it threatens life, personal safety or health, or welfare, of the population or part of it, or could cause significant</li> </ul>

Matter	Pre-1994	1994-1996	1996-2006	2006-2009	2009
		<p>economy. Consequence of suspension or termination of bargaining period is that action is not protected (s 170PO).</p>	<p>which arose during negotiations, the action threatens the life, safety or health of the population or part of it, or causing significant damage to Australian economy, action is being taken to support or advance the claims of people who are non-members/ineligible to become members. Consequence of suspension of bargaining period is that action is not protected (s 170MW).</p> <ul style="list-style-type: none"> <li>• Common law claims in torts (but not injury, destruction of property, taking property etc.) could not be brought unless notice was given to the AIRC and the AIRC is given the opportunity to stop the action. AIRC effectively has 72 hours to stop the action (s 166A).</li> </ul>	<p>party did not (or is not) genuinely try to reach agreement with the other parties before taking industrial action, or has failed to comply with any orders or directions of the AIRC about the proposed agreement or a matter which arose during negotiations, the action threatens the life, safety or health of the population or part of it, or causing significant damage to Australian economy, action is being taken to support or advance the claims of people who are non-members/ineligible to become members, a demarcation dispute (s 430).</p> <ul style="list-style-type: none"> <li>• AIRC <u>must</u> suspend or terminate a bargaining period if a negotiating party is engaged in pattern bargaining (s 431).</li> <li>• Bargaining period <u>must</u> be suspended for cooling</li> </ul>	<p>damage to the economy or an important part of it (s 424).</p> <ul style="list-style-type: none"> <li>• FWC <u>must</u> suspend protected industrial action for cooling off period if it is satisfied, inter alia, that the suspension would be beneficial to the bargaining representatives (s 425).</li> <li>• FWC <u>must</u> suspend protected industrial action if the action is adversely affecting the employer or employees and is threatening to cause significant harm to a third party (s 426).</li> <li>• Injunction available from Federal Court or Federal Circuit Court to in relation to employee claim action if employee bargaining representative is engaging in pattern bargaining (s 422).</li> <li>• FWC <u>must</u> terminate unprotected industrial action, or order that it</li> </ul>

Matter	Pre-1994	1994-1996	1996-2006	2006-2009	2009
				<p>off period, or for significant harm to a third party (ss 432 &amp; 433).</p> <ul style="list-style-type: none"> <li>• If parties take unprotected industrial action the AIRC <u>must</u> stop the action. A person affected or a union can also seek an order (s 496).</li> <li>• The Minister may terminate a bargaining period if industrial action is adversely affecting the employer or employees; is threatening to endanger the life, personal safety or health, or the welfare of the population (or part of it) or is causing significant damage to the economy (or an important part of it) (s 498).</li> </ul>	<p>not occur (s 418).</p> <ul style="list-style-type: none"> <li>• Minister can terminate industrial action where the action threatens life, personal safety or health, or welfare, of the population or part of it, or could cause significant damage to the economy or an important part of it (s 431).</li> </ul>
Workplace Determinations	<ul style="list-style-type: none"> <li>• Not provided for, as the system was still largely award centric.</li> </ul>		<ul style="list-style-type: none"> <li>• Agreements may be arbitrated as Awards (s.170MX) where bargaining periods had been terminated.</li> </ul>	<ul style="list-style-type: none"> <li>• If a bargaining period is terminated by the AIRC under s 430(3) or by Ministerial declaration the dispute is referred to AIRC full bench to settle the matters at issue by a</li> </ul>	<ul style="list-style-type: none"> <li>• If protected industrial action has been terminated and at the end of the post-industrial action negotiating period the matters that were at</li> </ul>

Matter	Pre-1994	1994-1996	1996-2006	2006-2009	2009
				<p>workplace determination (s 502).</p> <ul style="list-style-type: none"> <li>• If a new agreement is entered into during the life of the workplace determination, it will override the determination (s 506(4)).</li> </ul>	<p>issue have not be settled FWC may make an industrial action related workplace determination (s 266).</p> <ul style="list-style-type: none"> <li>• Where a serious breach (good faith bargaining) declaration has been made and negotiations during the post-declaration negotiation period have not settled all the matters in issue, FWC must make a bargaining related workplace determination (s269).</li> <li>• Low paid workplace determinations available (s 260).</li> <li>• Workplace determinations are treated as if they were an enterprise agreements (with some exceptions) (s279).</li> </ul>
Bargaining Periods	Not provided for	<ul style="list-style-type: none"> <li>• Bargaining period may be initiated by employer or union in order to negotiate an agreement (s 170PD).</li> <li>• Protected industrial action can only be taken</li> </ul>	<ul style="list-style-type: none"> <li>• Bargaining period can be initiated by an employer, union or employee (s 170MI).</li> <li>• Protected industrial action (employee action and employer lock out)</li> </ul>	<ul style="list-style-type: none"> <li>• Bargaining period can be initiated by an employer, union or employee (s 423).</li> <li>• Bargaining period ends when a collective agreement is made,</li> </ul>	<ul style="list-style-type: none"> <li>• No requirement for a bargaining period.</li> </ul>



Matter	Pre-1994	1994-1996	1996-2006	2006-2009	2009
		during bargaining period (s 170PG).	can only be taken during a bargaining period (s 170ML).	notice is given by initiating party that they no longer seek to reach an agreement, or it is terminated (s 428). <ul style="list-style-type: none"> <li>Protected industrial action (employee action and employer lock out) can only be taken during a bargaining period (s 435).</li> </ul>	
Ballots	<ul style="list-style-type: none"> <li>AIRC may order a ballot of union members prior to industrial action being taken to ascertain their attitudes (s 135).</li> </ul>	<ul style="list-style-type: none"> <li>Ballot may be ordered by AIRC to ascertain the attitudes of members (ss 135(2), 136 &amp; 170PJ).</li> </ul>	<ul style="list-style-type: none"> <li>A ballot may be ordered, but not obligatory (ss 135 &amp; 170MQ).</li> </ul>	<ul style="list-style-type: none"> <li>Secret ballot required prior to protected industrial action (ss 449 &amp; 451).</li> <li>Applicant for ballot order must pay 20% costs of holding the ballot. Agent can be AEC or other agent (ss 482 &amp; 483).</li> <li>An order for a ballot can only be made after the expiry of agreement(s) (s 451(2)).</li> <li>An order for a ballot cannot be made if the proposed agreement contains prohibited content (s 453(4)).</li> <li>Method of voting is to be postal ballot, unless order specifies another voting method which is</li> </ul>	<ul style="list-style-type: none"> <li>Secret ballot required prior to protected industrial action (ss 409 &amp; 437).</li> <li>The Commonwealth pays for the full cost of holding the ballot if the AEC is the ballot agent (s 464).</li> <li>Application for ballot cannot be made more than 30 days before expiry date of agreement (s 438).</li> <li>At least 50% of people on the roll of voters must vote, and more than 50% of valid votes required for action to be authorised (s 459(1)).</li> <li>Action must start within the 30 day period</li> </ul>

Matter	Pre-1994	1994-1996	1996-2006	2006-2009	2009
				<p>more efficient and expeditious than postal ballot (s 463(3)).</p> <ul style="list-style-type: none"> <li>• At least 50% of people on the roll of voters must vote, and more than 50% of valid votes required for action to be authorised (s 478).</li> <li>• Action must start within 30 days of the declaration of the ballot results (s 478(2)).</li> </ul>	<p>starting on the date the results of the ballot are declared (s 459(1)(d)).</p> <ul style="list-style-type: none"> <li>• The bargaining representative or employee must be genuinely trying to reach agreement before FWC can make a ballot order (s 443).</li> </ul>
Eligibility to Vote in a Ballot	<ul style="list-style-type: none"> <li>• Membership of the union.</li> </ul>			<ul style="list-style-type: none"> <li>• If a union applies for a secret ballot, only employees who were union members at the time the ballot order is made who would be covered by the proposed agreement will be eligible to be included on the roll of voters (s 467).</li> <li>• People on unexpired AWAs not eligible to be included on the roll of voters (s 467(2)).</li> <li>• An employee can only vote if their name is on the roll of voters (s 475).</li> </ul>	<ul style="list-style-type: none"> <li>• If a union applies for a secret ballot, only employees who are represented by the union, or if they are a bargaining representative for themselves and also a union member, will be eligible to be included on the roll of voters (s 453).</li> <li>• An employee can only vote if their name is on the roll of voters (s 456).</li> </ul>
Bargaining Representation	Not provided for.	<ul style="list-style-type: none"> <li>• The employer or union can initiate a bargaining period (s 170PD).</li> </ul>	<ul style="list-style-type: none"> <li>• Employer, employee or union can initiate a bargaining period (s</li> </ul>	<ul style="list-style-type: none"> <li>• Bargaining agent can initiate a bargaining period (s 424).</li> </ul>	<ul style="list-style-type: none"> <li>• Bargaining representatives can be a wide range of people (s</li> </ul>

Matter	Pre-1994	1994-1996	1996-2006	2006-2009	2009
		<ul style="list-style-type: none"> <li>• Union official can be employee's bargaining representative, however employee must inform employer that they wish to be represented by the official (s 170RB).</li> <li>• An employer must not refuse to negotiate with an employee's representative (s 170RB(3)).</li> </ul>	<ul style="list-style-type: none"> <li>• 170MI).</li> <li>• Employer required to make employees aware they are entitled to representation (s 170LK(4)).</li> <li>• The union must be given time to meet and confer with employees (s 170LK(5)).</li> </ul>	<ul style="list-style-type: none"> <li>• Employers not required to inform employees that they have a right to union representation during bargaining. Employees only entitled to request representation (s 355).</li> <li>• An employee may appoint an agent to initiate a bargaining period (s 424).</li> </ul>	<ul style="list-style-type: none"> <li>• 176).</li> <li>• Notice of Representational Rights to be sent to all employees notifying them that their union is their default bargaining representative (ss 173 – 174).</li> </ul>
Notice of Industrial Action	Not provided for	<ul style="list-style-type: none"> <li>• 72 hours' notice must be given to be protected. Both employees and employer, in the case of a lockout, must give required notice(s 170PH).</li> </ul>	<ul style="list-style-type: none"> <li>• Notice of industrial action must be given to be protected (s 170MO).</li> <li>• 3 working days' notice required, unless the action is in response to employee action or a lockout (ss 170MO(2) &amp;(3)).</li> </ul>	<ul style="list-style-type: none"> <li>• Notice of industrial action must be given to be protected (s 441).</li> <li>• 3 days' notice required, unless the action is in response to employee action or a lockout (ss 441(2), (3) &amp; (4)).</li> <li>• A ballot order can require that more than 3 days' notice be given (s 441(3)(b)).</li> </ul>	<ul style="list-style-type: none"> <li>• Notice of industrial action must be given to be protected (s 414).</li> <li>• 3 working days' notice minimum, but can be increased in order (s 414).</li> </ul>
Payments for Periods of Industrial Action	<ul style="list-style-type: none"> <li>• AIRC not empowered to deal with a claim for payment for a period of industrial action (s 124).</li> </ul>	<ul style="list-style-type: none"> <li>• If lockout occurs, employer is entitled to refuse to pay remuneration to employees for the period of the lockout (s 170PG(5)).</li> </ul>	<ul style="list-style-type: none"> <li>• If lockout occurs, employer is entitled to refuse to pay remuneration to employees for the period of the lockout (s 170ML(5)).</li> </ul>	<ul style="list-style-type: none"> <li>• Payments to employees for periods of industrial action prohibited. 4 hour rule for both protected and unprotected (s 507).</li> <li>• Employees cannot accept payment for</li> </ul>	<ul style="list-style-type: none"> <li>• Payments to employees for periods of industrial action prohibited, except for partial work bans (s 470).</li> <li>• 4 hour rule only applies to unprotected action (s</li> </ul>

Matter	Pre-1994	1994-1996	1996-2006	2006-2009	2009
		<ul style="list-style-type: none"> <li>• AIRC cannot deal with claims for payment for periods of industrial action (apart from action taken over reasonable concerns about health and safety (s 124)).</li> </ul>	<ul style="list-style-type: none"> <li>• Employer not to pay employees engaged in any form of industrial action and employees cannot accept payment. A contravention is not an offence (s 187AA).</li> </ul>	<ul style="list-style-type: none"> <li>period of industrial action (s 507).</li> <li>• Unions cannot claim or take action for payments (s 508).</li> </ul>	<ul style="list-style-type: none"> <li>474).</li> <li>• Employees cannot accept or seek payment for period of industrial action (ss 473 &amp; 475).</li> </ul>
Secondary Boycott	<ul style="list-style-type: none"> <li>• First enacted in 1977 by Fraser Government in Trade Practices Act.</li> </ul>	<ul style="list-style-type: none"> <li>• Secondary boycott provisions from the Trade Practices Act moved into the IR Act (ss 156-167).</li> </ul>	<ul style="list-style-type: none"> <li>• Secondary boycott provisions remain in Act (s 170MM).</li> </ul>	<ul style="list-style-type: none"> <li>• Secondary boycott provisions moved back into Trade Practices Act.</li> </ul>	<ul style="list-style-type: none"> <li>• Secondary boycott provisions remain in the Competition and Consumer Act (formerly Trade Practices Act).</li> </ul>
Discrimination	<ul style="list-style-type: none"> <li>• Unlawful to dismiss employees because of union or industrial activity.</li> </ul>	<ul style="list-style-type: none"> <li>• Employer not to discriminate between union and non-union employees when negotiating a certified agreement (s 170RA). However, awards and agreements could contain preference provisions whereby union members get preference in: engagement, promotion, regrading, transfer, retention, taking annual leave, overtime, and training (ss 122 &amp; 170RA(2)).</li> </ul>	<ul style="list-style-type: none"> <li>• Employer not to discriminate between union and non-union employees when negotiating a certified agreement (s 170NB).</li> <li>• No dismissal, injury, discrimination etc of members of industrial association (s 298K(1)).</li> <li>• Independent contractors also covered (s 298K(2)).</li> <li>• Prohibited reasons for dismissal related to industrial association and action etc. (s298L).</li> <li>• Employees and independent contractors not to stop work if the employer or principal undertakes industrial</li> </ul>	<ul style="list-style-type: none"> <li>• A person cannot discriminate against an employer because of the type of industrial instrument the employer uses to employ employees (s 804).</li> <li>• To ensure that employers, employees, and independent contractors: are free to become, or not become, members of industrial associations; are not discriminated against or victimised because they are or are not members of industrial association (s 778).</li> <li>• A persons must not coerce a person to</li> </ul>	<ul style="list-style-type: none"> <li>• A person must not take adverse action against another person because the other person: is/is not an officer or member of an industrial association; engages in industrial activity; does not engage in industrial activity (s 346).</li> <li>• Industrial activity includes: establishing an industrial association; organise or promote lawful activity; engage or participate in lawful activity; represent or advance the views, claims or interests of an industrial association; pay a fee to an industrial</li> </ul>

Matter	Pre-1994	1994-1996	1996-2006	2006-2009	2009
			activities etc. (s 298N).	<p>become, not become, or cease being a union member of officer (s 789).</p> <ul style="list-style-type: none"> <li>• A person must not make a false or misleading statement about union obligations (s 790).</li> <li>• A person must not organise or take industrial action against someone who does or does not join a union (s 791).</li> <li>• An employer must not prejudice, or threaten to prejudice, dismiss, injure in employment etc. a person for a prohibited reason (s 792).</li> <li>• Prohibited reasons set out (s 793).</li> <li>• Employees and independent contractors not to stop work if the employer or principal undertakes industrial activities etc. (s 795).</li> <li>• Industrial associations must not act against employers, employees, members or independent contractors</li> </ul>	<p>association; seek to be represented by an industrial association (s 347).</p> <ul style="list-style-type: none"> <li>• Coercion prohibited (s 348).</li> <li>• Misrepresentations about industrial activity or whether or not a person is/is not a member of an industrial association, or is/is not engaging in industrial activity prohibited (s 349).</li> <li>• An employer must not induce an employee to become or not become, remain or cease to be, an officer or member of an industrial association (s 350).</li> <li>• Employees must be able to be represented by a union, or other representative of their choice in disputes procedures and consultation (ss 186(6)(b) &amp; 205(1)(b)).</li> </ul>

Matter	Pre-1994	1994-1996	1996-2006	2006-2009	2009
				(ss 796, 797, 798 & 799).	
<b>Right of Entry</b>	<ul style="list-style-type: none"> <li>From 1974 statutory right of entry for officials to investigate breaches. Awards could provide additional rights.</li> </ul>	<ul style="list-style-type: none"> <li>Right of entry for officials to investigate breaches. Awards could provide additional rights.</li> </ul>	<ul style="list-style-type: none"> <li>Right of entry permits issued by Registrar (no requirement to be a 'fit and proper person') (s 285A).</li> <li>Permit can be revoked where Registrar is satisfied that a person has intentionally hindered or obstructed any employer or employee or otherwise acted in an inappropriate manner (s 285A(3)).</li> <li>Right of entry can be exercised to investigate a suspected breach of the Act, award or agreement (s 285B).</li> <li>Right of entry can be exercised to hold discussions with employees who are members or eligible to become members. Discussions to be held in breaks only (s 285C).</li> <li>Conscientious objection certificate available. No more than 20</li> </ul>	<ul style="list-style-type: none"> <li>Right of entry permits issued only to 'fit and proper' persons (ss 736(b) &amp; 742).</li> <li>Consideration of a number of matters to ascertain if a person is fit and proper (s 742(2)).</li> <li>Right of entry can be exercised to investigate a suspected breach of the Act, AWA, award or agreement, if the permit holder suspects the breach on reasonable grounds. Burden of proving reasonable grounds lies with permit holder (ss 747 &amp; 754).</li> <li>No right to investigate a breach of an AWA unless the employee makes a written request to union (s 757(2)).</li> <li>Right of entry to hold discussions with employees who are members or eligible to become members. Union must be bound by the award or agreement</li> </ul>	<ul style="list-style-type: none"> <li>Right of entry permits issued only to 'fit and proper' persons (s 512).</li> <li>Consideration of a number of matters to ascertain if a person is fit and proper (s 513).</li> <li>Right of entry can be exercised to investigate a suspected contravention of the Act, modern award, enterprise agreement, workplace determination, or FWC order, if the permit holder reasonably suspects the contravention. The burden of proving reasonable grounds lies with permit holder (s 481).</li> <li>Right of entry to hold discussions with employees whose interests the union is entitled to represent. No requirement that union be bound an industrial instrument which covers the work (s 484).</li> </ul>

Matter	Pre-1994	1994-1996	1996-2006	2006-2009	2009
			<p>employees and none of the employees are members (s 285C(3)).</p> <ul style="list-style-type: none"> <li>• 24 hours' notice required (s 285D(2)).</li> <li>• Locations of interviews are not entirely at the employer's prerogative (S 285B) and <i>ANZ v FSU</i> PR951766.</li> </ul>	<p>which covers the work (s 760).</p> <ul style="list-style-type: none"> <li>• Discussions held in breaks only (s 761).</li> <li>• Conscientious objection certificate available. No more than 20 employees and none of the employees are members (s 762).</li> <li>• Entry to investigate OHS breaches must be in compliance with WR Act regardless of whether the person also holds a State permit (s 756).</li> <li>• At least 24 hours' and not more than 14 days' notice to be given for suspected breach and discussion entry (ss 749, 763).</li> <li>• Notice exemption for suspected breach entry may be granted if there are reasonable grounds for believing that the destruction, concealment or alteration of evidence may occur (s 750(2)).</li> <li>• At least 24 hours' notice must be given for OHS</li> </ul>	<ul style="list-style-type: none"> <li>• Discussions held in breaks only (s 490).</li> <li>• No conscientious objection certificate available.</li> <li>• Entry to investigate OHS if the right is given by a State or Territory OHS law (s 494).</li> <li>• At least 24 hours' and not more than 14 days' notice to be given for suspected breach and discussion entry (s 487(3)).</li> <li>• Notice exemption for suspected contravention entry may be granted if there are reasonable grounds for believing that the destruction, concealment or alteration of evidence may occur (s 519).</li> <li>• At least 24 hours' notice must be given for OHS right of entry (s 495).</li> <li>• If disagreement about which room to use, the lunch room becomes the default room (s 492).</li> <li>• Employer can require a permit holder to take a</li> </ul>

Matter	Pre-1994	1994-1996	1996-2006	2006-2009	2009
				<p>right of entry (s 757(2)).</p> <ul style="list-style-type: none"> <li>• Employer can require permit holder to hold discussions in a particular room and/or take a particular route, so long as the request is reasonable (ss 755 &amp; 765).</li> </ul>	<p>particular route to the room so long as the route is reasonable (s 492A).</p> <ul style="list-style-type: none"> <li>• FWC can deal with disputes about frequency of entry to hold discussions (s 505A).</li> <li>• Accommodation and transport arrangements may be made for remote work locations (ss 521C &amp; 521D).</li> </ul>
<b>Protection from Termination of Employment</b>					
Unfair Dismissal	<ul style="list-style-type: none"> <li>• Dealt with in Awards.</li> </ul>	<ul style="list-style-type: none"> <li>• Employees earning over a specified rate and who are not employed under award conditions are excluded (s 170CD).</li> <li>• A reason for dismissal is not valid, if having regard to all the circumstances of the case, including the employee's capacity or conduct or operational reasons, the termination is harsh,</li> </ul>	<ul style="list-style-type: none"> <li>• Employees earning over a specified rate and who are not employed under award-derived conditions are excluded (ss 170CBA(1)(f), 17056) &amp; 170(6)).</li> <li>• Unfair dismissal is subject a 'fair go all round test'. Circumstances of employer and employee to be considered (s 170CA(2)).</li> </ul>	<ul style="list-style-type: none"> <li>• Employees earning over a specified rate and who are not employed under award-derived conditions are excluded (ss 638(1)(f), 638(6) &amp; 638(7)).</li> <li>• Unfair dismissal is subject a 'fair go all round test'. Circumstances of employer and employee to be considered (s 635(2)).</li> </ul>	<ul style="list-style-type: none"> <li>• Employees covered by a modern award, enterprise agreement, and/or who earn less than the high income threshold are covered (s 282).</li> <li>• Unfair dismissal is subject a 'fair go all round test'. Circumstances of employer and employee to be considered (s 381(2)).</li> </ul>



Matter	Pre-1994	1994-1996	1996-2006	2006-2009	2009
		<p>unjust or unreasonable (s170DE(2)).</p> <ul style="list-style-type: none"> <li>• An employee or a union can apply for relief (s 170EA).</li> <li>• Casual employed on a regular and systematic basis for 6 months with reasonable expectation of continuing employment covered (Reg 30B(3)).</li> <li>• Qualifying or probation period to be set in advance in employment contract (Reg 30B).</li> <li>• From July 1994 compensation is capped at 6 months' pay (s 170EE(3)). Prior to this an order for compensation (at large) could be made.</li> <li>• AIRC conciliates, consent arbitration available, court arbitrates (ss 170EA, 170EC &amp; 170ED).</li> </ul>	<ul style="list-style-type: none"> <li>• Qualifying period is 3 months, or a shorter period (or no period), or a longer period (as set by employment contract (s 170CE(5B))).</li> <li>• An employee (or union or inspector) can apply for relief on the grounds that the termination was harsh, unjust or unreasonable (s 170CE(1)(a)).</li> <li>• Casual employed on a regular and systematic basis for 12 months with reasonable expectation of continuing employment covered (s 170CBA(3)).</li> <li>• Compensation is capped at 6 months' pay (s 170CH(8)).</li> <li>• AIRC conciliates and arbitrates (ss 170CF &amp; 170CG).</li> </ul>	<ul style="list-style-type: none"> <li>• Probation (qualifying period) is 3 months, or less, or a longer period (as long as the period is determined in advance (s 638(1)(c))).</li> <li>• Qualifying period is 6 months, or a shorter period (or no period), or a longer period (as set by employment contract (s 643(7))).</li> <li>• No claim for unfair dismissal if employment was terminated for genuine operational reasons (ss 643(8) &amp; (9)).</li> <li>• An employee (or union) can apply for relief on the grounds that the termination was harsh, unjust or unreasonable (ss 643(1), (3) &amp; (4)).</li> <li>• Access only available if employer employs more than 100 employees (s 643(10)).</li> <li>• Casual employed on a regular and systematic basis for 12 months with reasonable expectation of continuing employment covered (s</li> </ul>	<ul style="list-style-type: none"> <li>• Qualifying period is 12 months for small business employees (employer employs fewer than 15 employees) and 6 months for other employees (s 383).</li> <li>• Qualifying periods cannot be altered..</li> <li>• Small Business Fair Dismissal Code can validate some dismissals which would otherwise be unfair (s 388).</li> <li>• A genuine redundancy is not an unfair dismissal (s 389).</li> <li>• An employee who has been dismissed can apply for relief from FWC (s 394).</li> <li>• A casual employed on a regular and systematic basis with a reasonable expectation of continuing employment is covered if they have met the relevant qualifying period (s 384(2)).</li> <li>• Compensation is capped at 6 months' pay (ss</li> </ul>

Matter	Pre-1994	1994-1996	1996-2006	2006-2009	2009
				638(4)). • Compensation is capped at 6 months' pay (s654(11)). • AIRC conciliates and arbitrates (ss 650 & 652).	392(5) & (6)). • AIRC conciliates and arbitrates (ss 398 & 399).
Unlawful Dismissal & General Protections	• No specific protections, however, in 1960s and 1970s, the AIRC ended direct wage discrimination against women and Aboriginal people in the award system.	• Unlawful dismissal prohibited, reference to Termination of Employment Convention (s 170CA). • Prohibited grounds set out (s 170DF). • AIRC has jurisdiction to rectify unequal pay due to gender (ss 170BA-170BI).	• Unlawful dismissal prohibited, reference to Termination of Employment Convention (s 170CD(2)). • Prohibited grounds set out (s 170CK). • AIRC has equal pay jurisdiction (Part VIA Div 2).	• Unlawful dismissal prohibited. International conventions noted (s 659(1)). • Prohibited grounds set out (s 659(2)). • AIRC has equal pay jurisdiction (ss 623 & 624).	• General protections provisions apply to Federal system employees. Termination of employment and adverse action on protected grounds prohibited (Part 3-1). • Unlawful dismissal prohibited. Applies to non-Federal system employees who do not have access to the general protections provisions. International conventions noted (ss 771 & 772). • FWC has equal pay jurisdiction which allows for inter-industry comparisons (s 302).
Notice of Termination and Redundancy	• Dealt with in Awards.	• Notice of termination required. Scale of 1-4 weeks, plus extra week if over 45 years of age and at least 2 years' of continuous service (s	• Notice of termination required. Scale of 1-4 weeks, plus extra week if over 45 years of age and at least 2 years' continuous service (s	• Notice of termination required. Scale of 1-4 weeks, plus extra week if over 45 years of age and at least 2 years' continuous service (s	• Notice of termination required. Scale of 1-4 weeks, plus extra week if over 45 years of age and at least 2 years' continuous service (s

Matter	Pre-1994	1994-1996	1996-2006	2006-2009	2009
		170DBJ). <ul style="list-style-type: none"> <li>• If employer retrenches 15 or more employees for economic, technical, structural or similar reasons, the CES must be notified (s 170DD).</li> </ul>	170CM). <ul style="list-style-type: none"> <li>• Employer to notify CES if 15 or more employees are terminated for reasons of economic, technological, structural or similar nature (S 170 CL).</li> </ul>	661). <ul style="list-style-type: none"> <li>• Employer to notify CES if 15 or more employees are terminated for reasons of economic, technological, structural or similar nature (s 660).</li> </ul>	117). <ul style="list-style-type: none"> <li>• Redundancy pay is part of the legislated minimum. Scale of 4-16 weeks, back to 12 weeks if 10 years' service (s 119).</li> <li>• Small business employers (fewer than 15 employees) do not have to pay redundancy pay (s 121).</li> </ul>
<b>Dispute Resolution Overseen by an Independent Umpire</b>	<ul style="list-style-type: none"> <li>• Any party can submit a dispute to the AIRC for compulsory conciliation.</li> <li>• AIRC can arbitrate and make an enterprise award or enterprise-specific award variation.</li> </ul>	<ul style="list-style-type: none"> <li>• Industrial dispute: extends beyond the limits of any one State and pertains to the employer-employee relationship. Includes demarcation dispute (s 4).</li> <li>• Any party can submit a dispute to the AIRC for conciliation or arbitration (s 100).</li> <li>• Conciliation is encouraged (s 102(1)).</li> <li>• When conciliation has been completed but the industrial dispute has not been fully settled, the AIRC shall arbitrate the dispute (s 104).</li> </ul>	<ul style="list-style-type: none"> <li>• Industrial dispute: extends beyond the limits of any one State and pertains to the employer-employee relationship. Includes demarcation dispute (s 4).</li> <li>• Scope of industrial disputes are normally limited to allowable award matters (s 89A(1)).</li> <li>• Any party can submit a dispute to the AIRC for conciliation. Conciliation is first step and arbitration is last resort (ss 89 &amp; 100).</li> <li>• AIRC to encourage parties to a dispute to</li> </ul>	<ul style="list-style-type: none"> <li>• The model dispute resolution process applies to AFPCS, terms of agreement (where the agreement includes the model process), awards etc. (s 694).</li> <li>• Where a dispute cannot be resolved at the workplace level, a party may refer it to alternative dispute resolution. This is voluntary (s 696).</li> <li>• Alternative dispute resolution includes: conferencing, mediation, assisted negotiations, neutral evaluation, case appraisal, conciliation, mediation, arbitration,</li> </ul>	<ul style="list-style-type: none"> <li>• No definition of industrial dispute.</li> <li>• Disputes are dealt with by compulsory conciliation and FWC cannot arbitrate unless the parties agree (s 240).</li> </ul>

Matter	Pre-1994	1994-1996	1996-2006	2006-2009	2009
			<p>agree on procedures to prevent and settle disputes (s 91).</p> <ul style="list-style-type: none"> <li>Disputes can be heard by the Full Bench where the matter is of important public interest (s 107). Industrial disputes is about matters pertaining to the employer-employee relationship (s 3).</li> </ul>	<p>or other determination of rights (s 698).</p> <ul style="list-style-type: none"> <li>AIRC can arrange conferences where the AIRC is present, or is not present. AIRC does not have power to compel a person to do anything, arbitrate, make a determination, make an award, make an order or appoint a board of reference (no power even if parties agree AIRC should have power) (s 701).</li> <li>The process must take place in private (s 702).</li> </ul>	
Awards	<ul style="list-style-type: none"> <li>AIRC can arbitrate and make enterprise award or enterprise-specific variation.</li> </ul>	<ul style="list-style-type: none"> <li>Full bench of AIRC can make an award about making/altering: standard hours of work in an industry; rates of wages; minimum wages; annual leave with pay; and long service leave with pay (s 106).</li> <li>AIRC can arbitrate and make enterprise award or enterprise-specific variation.</li> </ul>	<ul style="list-style-type: none"> <li>AIRC can arbitrate and make enterprise award or enterprise-specific variation where conciliation does not resolve a dispute. Arbitration is a last resort (ss 89 &amp; 104).</li> </ul>	<ul style="list-style-type: none"> <li>Model dispute procedure provided for in awards (s 694).</li> </ul>	<ul style="list-style-type: none"> <li>A modern award must include a term that provides a procedure for settling disputes about any matters arising under the award and in relation to the NES (s 146).</li> </ul>
Agreements	<ul style="list-style-type: none"> <li>Disputes over unregistered</li> </ul>	<ul style="list-style-type: none"> <li>AIRC can make a certified agreement to</li> </ul>	<ul style="list-style-type: none"> <li>All agreements must include procedure to</li> </ul>	<ul style="list-style-type: none"> <li>AIRC can resolve a dispute if the terms of a</li> </ul>	<ul style="list-style-type: none"> <li>Agreements must include procedure to settle</li> </ul>

Matter	Pre-1994	1994-1996	1996-2006	2006-2009	2009
	<p>agreements, or in relation to claims not covered in agreement, any party can seek compulsory conciliation and arbitration by AIRC (which leads to the making of an award).</p>	<p>resolve an industrial dispute (s 170MA).</p> <ul style="list-style-type: none"> <li>• All agreements must include procedure to settle disputes arising under the agreement (s 170MC(1)(c) &amp; 170MH).</li> <li>• AIRC can be nominated to settle disputes about the application of the agreement (s 170MH).</li> </ul>	<p>settle disputes arising under the agreement (s s 170LT(8)).</p> <ul style="list-style-type: none"> <li>• AIRC can be nominated to settle disputes about the application of the agreement (s 170LW).</li> </ul>	<p>workplace agreement allow it (s 709).</p> <ul style="list-style-type: none"> <li>• AIRC has powers given to it under the terms of the agreement (apart from making orders) (s 711).</li> <li>• The process must take place in private (s 712).</li> <li>• A body/person other than the AIRC can conduct dispute resolution (s 713).</li> <li>• All agreements must include procedure to settle disputes about matters arising under agreement (s 353).</li> <li>• No requirement to provide for 3<sup>rd</sup> party arbitration.</li> <li>• AIRC does not have the power to compel a party to do anything, arbitrate or make an order unless the parties have given it in an agreement. Compulsory arbitration powers almost completely removed (s 701)</li> <li>• Unions do not have guaranteed role in dispute resolution unless</li> </ul>	<p>disputes about matters arising under the agreement (s 186).</p> <ul style="list-style-type: none"> <li>• Note that procedure can include a wider scope of disputes which can be dealt with.</li> <li>• [Note that <i>Woolworths Ltd trading as Produce and Recycling Distribution Centre</i> [2010] FWA FB 1464 provides that arbitration is not an essential ingredient in a disputes procedure.]</li> </ul>

Matter	Pre-1994	1994-1996	1996-2006	2006-2009	2009
Other				<p>appointed by an employee</p> <ul style="list-style-type: none"> <li>• Alternative dispute resolution by agreement for bargaining disputes (s 704).</li> <li>• AIRC does not have power to compel a person to do anything, arbitrate, make a determination, make an award, make an order or appoint a board of reference (no power even if parties agree AIRC should have power) (s 706).</li> <li>• The process must take place in private (s 707).</li> <li>• When an unfair dismissal application is made the AIRC must attempt to deal with it by conciliation (s 650).</li> <li>• If conciliation is unsuccessful, the applicant can elect to proceed to arbitration (ss 651 &amp; 652).</li> </ul>	<ul style="list-style-type: none"> <li>• FWC can deal with a dispute about the agreement if the bargaining representatives for the agreement are unable to resolve the dispute. FWC can only arbitrate if all the parties to the dispute agree (s 240).</li> <li>• FWC can deal with general protections disputes involving termination of employment first by compulsory conciliation and voluntary arbitration (ss 365-370).</li> <li>• FWC can deal with general protections dispute which does not involve termination of employment by voluntary conciliation (ss 372-374).</li> <li>• FWC must conduct a conference or hold a hearing to determine matters in dispute in relation to an unfair dismissal application (ss</li> </ul>

Matter	Pre-1994	1994-1996	1996-2006	2006-2009	2009
<b>Other Matters</b>				<ul style="list-style-type: none"> <li>• ABCC 2005-2012.</li> <li>• <i>Building and Construction Industry Improvement Act 2005</i> (Cth) (BCII Act).</li> </ul>	<b>397-399</b> <ul style="list-style-type: none"> <li>• From 1 June 2012 Fair Work Building and Construction operates.</li> <li>• Provisions within the BCII Act which dealt with industry-specific laws (such as unlawful industrial action, discrimination, coercion and unfair contracts) repealed and FW Act provisions apply.</li> <li>• Coercive powers of the Director of the Inspectorate subject to 3 year sunset provision.</li> <li>• Higher penalties for building industry participants for breaches of industrial law and broader circumstances under which industrial action attracts penalties removed.</li> <li>• To ensure that all building industry participants are not subject to multiple proceedings, the Inspectorate cannot prosecute building workers when the parties</li> </ul>

Matter	Pre-1994	1994-1996	1996-2006	2006-2009	2009
					have settled or discontinued matters.