

# Fair Work Act 2009: better rights for working Australians and their families

From July 1, 2009 Australian workers will be covered by new laws at work. The *Fair Work Act* replaces the *Workplace Relations Act* and restores many of the rights taken away under WorkChoices.

The new laws are the result of the historic Your Rights at Work campaign to restore the balance for working Australians. The tide has now turned and workers who are facing job insecurity because of the global financial crisis can look forward to greater protection at work.

There are 6 key areas where employees will see a difference.

- Unfair dismissal protection
- A strong safety net covering pay, penalty rates, hours of work and rest breaks.
- Collective bargaining rights – you can get together with co-workers to get a better deal
- A strong industrial umpire – with real teeth to settle disputes.
- No new AWA individual contracts.
- Right to union membership and representation – it's your right to join a union.

## 1. Protection from unfair dismissal

Four million Australian workers will get back protection from unfair dismissal they did not have under WorkChoices. All workers have protection after a six month qualifying period (12 months for small businesses with 15 full-time equivalent staff or less).

The exemption from unfair dismissal when sackings occur for “operational reasons” will be removed.

This is a major improvement on WorkChoices which slashed unfair dismissal rights and left many young and vulnerable workers with no protections at all, a situation that many employers exploited.

## 2. A strong safety net

The safety net of modern awards and National Employment Standards will be expanded far beyond the minimum five basic conditions under WorkChoices. Under the new laws, protected entitlements include maximum weekly hours of work, overtime pay, penalty rates, public holidays, redundancy pay, sick leave, paid parental leave, annual leave and rest breaks. Employers will not be able to strip them away.

**Media contact: Mark Phillips (03) 8676 7266 or 0422 009 011**

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A streamlined system of new, modern awards are also being created that will safeguard minimum wages, types of employment, superannuation, and procedures for dispute settlement. Many of these will come into force on 1 January 2010. Under the new laws they will be reviewed every four years.

Unions will also again be able to run “test cases” which were banned under WorkChoices. Test cases have in the past delivered such important conditions as carers leave, maternity leave and the 38 hour week across the community.

The process for determining minimum rates of pay will also be fairer and more transparent under Labor’s new laws. Under WorkChoices, the wages of more than one million award-reliant workers declined in real terms.

### **3. Collective bargaining rights**

Collective bargaining – where workers can join together to improve their wages and conditions - will be the centrepiece of the new IR system. Bargaining will be required to be conducted “in good faith” meaning that employers must be fair dinkum about trying to get a result.

A majority of workers will be able to insist on bargaining for a union collective agreement and your union will also have a guaranteed right to represent you — both things which were denied under WorkChoices.

Collective bargaining delivers results for workers. Under collective bargaining pay rates are up to 18% better than individual contracts.

In addition, the new industrial umpire, Fair Work Australia, will be able to step in to settle an agreement after all other efforts have been made and there is industrial action that is harming both parties. The umpire will also be able to intervene when there have been serious and persistent breaches of good faith bargaining, as we have seen in cases like Telstra and Cochlear.

Importantly, there will be new, effective ways for groups of workers like cleaners, childcare workers, hospital workers and community workers to bargain collectively in ways not previously possible.

### **4. An independent umpire**

The role of the independent umpire is vital to making sure the system works properly. It needs to be easy to use, affordable, timely and have the teeth to do the job properly.

WorkChoices rendered the industrial umpire powerless, but the new laws will deliver an umpire with the powers to get the job done. Fair Work Australia will be able to conciliate, mediate, call compulsory conferences and make recommendations.

As set out above, one of Fair Work Australia’s main roles will be assist with bargaining, including supervising industrial action, and facilitating bargaining for low paid workers. And the umpire will have real teeth, with new grounds for arbitration when bargaining fails.

In addition, the courts will be given enhanced powers to ensure that employers meet their obligations under industrial laws, awards and agreements. They will be able to issue injunctions for the first time, as well as fine employers who breach workers’ rights.



## **5. No new AWAs - individual contracts**

AWAs were the centrepiece of the Howard Government's WorkChoices. They were used to break down collective strength in the workplace, and to drive down wages and conditions. They were an anathema to the spirit of a fair go.

The Rudd Government banned the making of new AWAs in March 2008. The new laws will allow workers on expired AWAs to access collective bargaining. Other AWAs will also have to comply with the new National Employment Standards.

Existing AWAs can be terminated by agreement at any time by mutual agreement, or after the nominal expiry date on application by one party to Fair Work Australia.

## **6. Right to union membership and representation**

One of the basic tenets of democracy is the choice to belong to a union. WorkChoices encouraged a pattern of intimidation by threats of dismissal, pressure, discrimination and victimisation that eroded this basic right. The right to be in a union will be enshrined by the new laws and there will be greater protections for delegates during collective bargaining.

It will be unlawful to take action against someone simply because they exercise a workplace right, join a union or act collectively through a union.

In addition, there will be new obligations, in awards and agreements, for employers to consult over major workplace change. Workers will have a guaranteed right of union representation in those situations, as well as in dispute settlement processes.

Under the new laws, the ability of unions to enter workplaces to hold discussions with members or potential members and to check workers are not being ripped off cannot be displaced by non-union agreements.

### **More information**

If you have a question about your rights at work and your right to be represented by a union call our Unions Australia hotline on 1300 4 UNION or go to [www.unionsaustralia.com.au](http://www.unionsaustralia.com.au)