



Australian Government

## 2. Fair Work Australia institutions—A one stop shop

Under Work Choices employers and employees had to navigate seven agencies.

The Australian Government made a commitment to creating a new independent umpire, Fair Work Australia, to oversee the new workplace relations system.

Fair Work Australia will be a modern accessible institution. It will be independent of unions, business and government and focused on providing fast and effective assistance for employers and employees.

Fair Work Australia will be fully operational by 1 January 2010 and will replace the following Australian Government agencies:

- Australian Industrial Relations Commission
- Australian Industrial Registry
- Australian Fair Pay Commission
- Australian Fair Pay Commission Secretariat
- Workplace Authority

Fair Work Australia will oversee the new, fair, simple and modern workplace relations system. It is based around a user-friendly culture that moves away from the adversarial and often legalistic processes of the past in favour of less formal processes. The focus will be on providing fairness and efficiency, and excellent levels of service to users of the system.

Fair Work Australia will consist of the President, Deputy Presidents, Commissioners and Minimum Wage Panel members. Fair Work Australia will have the power to vary awards, make minimum wage orders, approve agreements, determine unfair dismissal claims and make orders on such things as good faith bargaining and industrial action, and to assist employees and employers to resolve disputes at the workplace.

Fair Work Australia will also have a General Manager and administrative staff. These administrative staff will exercise certain powers and functions under the supervision of Fair Work Australia members. They will also provide advice and assistance to employers and employees on the role, functions and processes of Fair Work Australia under the workplace relations laws.

### **Office of the Fair Work Ombudsman**

There will be an inspectorate headed by the Fair Work Ombudsman. The Office of the Fair Work Ombudsman will replace the following Australian Government agencies:

- Workplace Ombudsman
- Australian Building and Construction Commission (from 1 February 2010)

The Office of the Fair Work Ombudsman will also absorb the education functions of the Workplace Authority (i.e. Workplace Infoline).

While the Office of the Fair Work Ombudsman will have separate governance arrangements, its day-to-day operations will be practically integrated with Fair Work Australia. The Fair Work Ombudsman will appoint Fair Work Australia Inspectors who will assist employers, employees and organisations to comply with the new workplace relations laws and, where necessary, take steps to enforce the laws through the court system.

Fair Work Inspectors will have strong and effective investigative powers, including the power to inspect and copy documents and records on an employer's premises. For the first time, inspectors will be able to investigate and enforce breaches of terms of contracts of employment on behalf of an employee about matters in the National Employment Standards (NES) or modern awards where they are investigating or enforcing the NES, a modern award, enterprise agreement, workplace determination or wages order in relation to that employee.

## **Fair Work Divisions of the Court**

Specialist Fair Work Divisions will be created in the Federal Court and Federal Magistrates Court. The Fair Work Divisions will hear matters which arise under the new workplace relations laws.

The Fair Work Divisions will have flexible remedies. The Courts will be able to make any orders considered appropriate to remedy a contravention, including injunctions, rather than just imposing a penalty.

State and Territory courts will retain existing jurisdiction and powers.

## **Enforcement of basic safety net entitlements**

The legislation will also allow entitlements under a common law contract of employment that relate to subject matters described in the NES (e.g. leave and notice of termination and redundancy) or modern awards (e.g. wages, penalty rates and allowances) to be enforced by the Federal Court and the Federal Magistrates Court. This will make it easier for employers and employees to enforce related entitlements at the same time. State and Territory courts will also be able to hear claims about these matters.

## **Small claims**

The existing small claims mechanism will be extended to the Fair Work Division of the Federal Magistrates Court and the monetary limitation of the small claims mechanism will be increased from \$10,000 to \$20,000 (including in relevant state and territory courts). This will allow employees to elect to have claims about entitlements (e.g. underpayment of wages) dealt with under a simple and quick mechanism.

When dealing with a matter under the small claims procedure, the Fair Work Division may act in an informal manner, will not be bound by formal rules of evidence, and may act without regard to legal form and technicality. The Court will have discretion to allow a person to be represented by a lawyer but in most cases this will not be necessary.

Fair Work Australia		Office of the Fair Work Ombudsman	Fair Work Divisions of the Federal Court and Federal Magistrates Court
<b>President of FWA</b> <ul style="list-style-type: none"> <li>• Statutory office holder with tenure to age 65</li> </ul>		<b>Fair Work Ombudsman</b> <ul style="list-style-type: none"> <li>• Statutory office holder</li> <li>• Will promote compliance with legislation, including through education, information and assistance</li> <li>• Will appoint Fair Work Inspectors</li> </ul>	<ul style="list-style-type: none"> <li>• New specialist Fair Work Divisions will be created in Federal Court and Federal Magistrates Court</li> <li>– Will deal with all matters arising under new workplace legislation</li> <li>– Will deal with entitlements under a contract of employment about matters in the NES (e.g. leave) or modern awards (e.g. wages)</li> <li>• Small claims procedure will be extended to the Federal Magistrates Court</li> </ul>
<i>Tribunal functions</i>	<i>Non-Tribunal functions</i>		
<b>FWA Members</b> <ul style="list-style-type: none"> <li>• FWA Deputy Presidents and Commissioners</li> <li>• Statutory office holders with tenure to age 65</li> <li>• Functions/powers, include: <ul style="list-style-type: none"> <li>– Approval of enterprise agreements</li> <li>– Awards review and variation</li> <li>– Good faith bargaining orders</li> <li>– Unfair dismissal</li> <li>– Industrial action orders</li> <li>– Mediation and dispute resolution</li> </ul> </li> <li>• 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)</li> </ul>	<b>General Manager and staff</b> <ul style="list-style-type: none"> <li>• Statutory office holder</li> <li>• Will provide assistance to President and FWA members</li> <li>• Exercise powers under delegation of President</li> <li>• Will manage FWA staff, who will assist FWA members to discharge functions (e.g. provide registry functions, gather information for matters before FWA)</li> <li>• Provide information about role and functions of FWA</li> </ul>	<b>Fair Work Inspectors</b> <ul style="list-style-type: none"> <li>• Powers include: <ul style="list-style-type: none"> <li>– Entry to premises to monitor compliance with legislation or instruments made under legislation (e.g. NES, awards, agreements)</li> <li>– Bring court proceedings to enforce rights and obligations</li> <li>– Investigate and enforce common law entitlements that relate to the NES or modern awards</li> </ul> </li> </ul>	<b>State and Territory Courts</b> <ul style="list-style-type: none"> <li>• State and Territory Courts will retain existing jurisdiction and powers</li> </ul>
<b>Minimum wages panel (MWP)</b> <ul style="list-style-type: none"> <li>• Will set and adjust wages in its annual wage review</li> <li>• Headed by President</li> </ul>			