



# Australia's Fair Work system

## 2. Fair Work Australia institutions

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

The new workplace relations system has a new independent umpire to make sure the system is fair and simple to understand for working Australians. This new umpire is Fair Work Australia.

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

Fair Work Australia replaces 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 oversees 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 is on providing fairness and efficiency, and excellent levels of service to users of the system.

Fair Work Australia consists of the President, Deputy Presidents, Commissioners and Minimum Wage Panel members. Fair Work Australia has 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. Fair Work Australia is also able to vary or modify the application of transferring employment instruments in a transfer of business on application from a new employer, and assist employees and employers to resolve disputes at the workplace.

Fair Work Australia has a General Manager and administrative staff. Administrative staff may exercise certain powers and functions under the supervision of Fair Work Australia members. They 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 is also an inspectorate headed by the Fair Work Ombudsman. The Office of the Fair Work Ombudsman replaces the Workplace Ombudsman.

The Office of the Fair Work Ombudsman also absorbs the education and general advisory functions of the Workplace Authority. Information and advice on all aspects of the new workplace relations system can be obtained by contacting the Fair Work infoline on **13 13 94** or by visiting [fairwork.gov.au](http://fairwork.gov.au).

While the Office of the Fair Work Ombudsman has separate governance arrangements, its day-to-day operations are practically integrated with Fair Work Australia. Fair Work Australia Inspectors work under the Fair Work Ombudsman to 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 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 are able to investigate and enforce breaches of 'safety net contractual entitlements' where they are investigating or seeking compliance with the National Employment Standards, a modern award, enterprise agreement, workplace determination, equal remuneration order or minimum wages order in relation to that employee. 'Safety net contractual entitlements' are terms of contracts that deal with subject matters covered by the National Employment Standards (eg, annual leave; parental leave) or modern awards (eg, minimum wages, penalty rates).

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

Specialist Fair Work Divisions have been created in the Federal Court and Federal Magistrates Court. The Fair Work Divisions hears matters that arise under the Fair Work laws.

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

State and Territory courts retain their existing jurisdiction and powers.

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

The Fair Work legislation also allows entitlements under a common law contract of employment that relate to subject matters described in the National Employment Standards (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 can also hear claims about these matters.

### ***Small claims***

The existing small claims mechanism has been extended to the Fair Work Division of the Federal Magistrates Court and the monetary limitation of the small claims mechanism has been increased from \$10,000 to \$20,000 (including in relevant state and territory courts). This allows 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, are not bound by formal rules of evidence, and may act without regard to legal form and technicality. The Court has 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>• Promotes compliance with legislation, including through education, information and assistance</li> <li>• Appoints Fair Work Inspectors</li> </ul>	<ul style="list-style-type: none"> <li>• New specialist Fair Work Divisions created in Federal Court and Federal Magistrates Court <ul style="list-style-type: none"> <li>– Deal with all matters arising under new workplace legislation</li> <li>– Deal with entitlements under a contract of employment about matters in the National Employment Standards (e.g. leave) or modern awards (e.g. wages)</li> </ul> </li> <li>• Small claims procedure extended to the Federal Magistrates Court</li> </ul>
<b>Tribunal functions</b>	<b>Non-Tribunal functions</b>		
<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 has 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</b> <ul style="list-style-type: none"> <li>• Statutory office holder</li> <li>• Provides assistance to President and FWA members</li> <li>• Exercises powers under delegation of President</li> <li>• Manages FWA staff, who will assist FWA members to discharge functions (e.g. provide registry functions, gather information for matters before FWA)</li> <li>• Provides information about role and functions of FWA</li> </ul> <p>Reviews developments in enterprise agreements</p> <ul style="list-style-type: none"> <li>• Conducts research on matters including the use of individual flexibility arrangements and operation of the National Employment Standards relating to requests for flexible working arrangements</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. National Employment Standards, awards, agreements)</li> <li>– Bring court proceedings to enforce rights and obligations</li> <li>– Investigate and enforce common law entitlements that relate to the National Employment Standards or modern awards</li> </ul> </li> </ul>	<b>State and territory courts</b> <ul style="list-style-type: none"> <li>• State and territory courts retain their existing jurisdiction and powers</li> </ul>
<b>Minimum wages panel (MWP)</b> <ul style="list-style-type: none"> <li>• Sets and adjusts wages in its annual wage review</li> <li>• Headed by President</li> </ul>			