



Australia's Fair Work system

3. A strong and simple safety net

The Australian Government has delivered a strong, simple and fair safety net as part of the Fair Work system.

Work Choices provided only five very basic minimum entitlements for employees—annual leave, personal/carer's leave, parental leave, maximum ordinary hours of work and basic rates of pay and casual loadings. Some vital award conditions could be removed or modified by a workplace agreement without compensation including redundancy payments and penalty rates. The number and types of matters that could be provided in awards were restricted and certain matters were completely prohibited.

In the Government's Fair Work system all employees have the benefit of clear, comprehensive and enforceable minimum protections that cannot be stripped away. Both employees and employers have the benefit of a safety net that is simple and flexible—easy to understand and easy to apply.

The safety net comprises two parts—the National Employment Standards and new modern awards. It applies to all employees in the federal system from 1 January 2010.

The National Employment Standards

- Maximum weekly hours of work
- The right to request flexible working arrangements
- Parental leave and related entitlements
- Annual leave
- Personal/Carer's leave and compassionate leave
- Community service leave
- Long service leave
- Public holidays
- Notice of termination and redundancy pay
- Provision of a Fair Work Information Statement, which details the rights and entitlements of employees under the new system and how to seek advice and assistance.

Modern Awards

The second element of the safety net is the creation of modern awards by the Australian Industrial Relations Commission. Modern awards are industry or occupation-based and have streamlined and simplified thousands of awards.

Special provision has been made to modernise enterprise awards on a case by case basis and integrate them into the new system. In deciding whether to make a modern enterprise award, both enterprise specific and broader industry factors are relevant.

Modern awards build on the National Employment Standards and may include an additional 10 minimum conditions of employment, tailored to the needs of the particular industry or occupation. These include minimum wages, types of employment, arrangements for when work is performed, overtime and penalty rates, annualised wage or salary arrangements, allowances, leave related matters, superannuation and procedures for consultation, representation and dispute settlement.

The Commission has included a flexibility clause in each modern award which will enable employers and employees to negotiate arrangements to meet their individual needs. Protections are designed to make sure that an employee is better off overall under the flexibility arrangement.

Case Study

Sally works in a small retail business in the city. Her daughter's school has asked her to coach a school softball team each Wednesday afternoon. This will require Sally to leave work two hours earlier than usual. Sally writes to her employer asking if she can come to work an hour earlier on Monday and Tuesday mornings and have Wednesday afternoons off. Her employer agrees to trial this for three months. Both Sally and her employer set out the arrangement in writing on the basis that Sally is better off overall because of the change.

Who is covered by modern awards?

The Commission has created modern awards to cover all employees who perform work that has historically been regulated by awards. Modern awards do not cover those classes of employees who, because of the nature or seniority of their role have not traditionally been covered by awards.

Modern awards do not apply to employees with guaranteed annual earnings of more than \$100,000 (pro rata for part-time employees). The high income threshold will be indexed annually from 27 August 2007 and adjusted in July each year in line with annual growth in average weekly ordinary time earnings for full-time adult employees. The figure that applies on commencement is \$108,300. This figure will be adjusted on 1 July 2010.

These employees and their employers are free to agree on terms to supplement the National Employment Standards without reference to an award.

This exemption from the award applies if an employer provides a written undertaking to pay an employee annual earnings at or above the high income threshold over a period of 12 months or more.

A guarantee for a shorter period may apply in the case of a short-term, fixed-term contract or a particular type of work on a short-term basis.

The employer and employee must reach agreement about the undertaking before it commences operation. A guarantee can be entered into before employment commences.

How often will modern awards be reviewed?

Fair Work Australia will undertake four yearly reviews of each modern award to maintain a relevant and fair minimum safety net and to make sure it continues to meet the needs of the community. The first such review is set to take place in 2014, four years after modern awards commence on 1 January 2010.

An interim review of modern awards will take place in 2012, two years after modern awards commence. This review will examine whether modern awards are achieving the modern awards objective and operating effectively, without anomalies or technical problems arising from the award modernisation process.

Awards may also be varied in other limited circumstances (for example where the variation is necessary to achieve the modern awards' objective of a fair and relevant safety net).

Fair Work Australia will undertake annual reviews of minimum wages but will be able to vary award wages outside these reviews, in limited circumstances. These include where Fair Work Australia is satisfied that:

- there are work value reasons that justify the variation where the variation is occurring as part of a four yearly review of a modern award, or
- if the variation is outside the four yearly review and annual wage review processes, there are work value reasons that justify the variation and it is necessary in order to achieve the modern awards' objective of a fair and relevant safety net.

Fair Work Australia will balance public interest, social and economic factors when considering whether and how to vary the content of modern awards.

What about people who are not covered by awards?

The Australian Government is committed to providing protections for employees who are not covered by an award. The 10 National Employment Standards will apply to all employees—whether they are covered by an award or not.

There will be a national minimum wage order for all employees not covered by a modern award.

Other protections for employees

As part of its award modernisation process, the Government has asked the Australian Industrial Relations Commission to create a modern award to provide minimum entitlements for employees who are not covered by another (industry or occupation-based) modern award, and who are performing work of a similar nature to that which has historically been regulated by awards. This award is not to apply to those classes of employees who, because of the nature or seniority of their role have not traditionally been covered by awards.

Default rules for employees not covered by awards or enterprise agreements

To ensure that the National Employment Standards operate effectively, simple and flexible 'default rules' will apply consistently to all employees not covered by an award or enterprise agreement.

The default rules will set out how the National Employment Standards will apply to such employees, by:

- defining which shift workers are entitled to an extra week of annual leave under the Standards
- providing a mechanism to set the employee's 'ordinary hours of work' to underpin the calculation of leave accrual and payment under the Standards, if these are not agreed between the employer and employee
- allowing the averaging of working hours, by written agreement, over a maximum period of 26 weeks
- allowing the cashing out of annual leave by agreement subject to protections, including a requirement that the employee retains at least four weeks leave after the cash out
- allowing agreement between an employer and employee about when and how paid annual leave may be taken
- allowing employers to give reasonable directions about the taking of paid annual leave by an employee, and
- allowing the substitution of public holidays by agreement.