



Federal and State Awards

About awards

Before the introduction of the Work Choices legislation, there were two sorts of awards - federal awards and state awards. The Australian Industrial Relations Commission (the Commission) held responsibility for federal awards throughout Australia and the state industrial tribunals in New South Wales, Queensland, South Australia, Western Australia and Tasmania were responsible for state awards in their respective states. In Victoria, the Australian Capital Territory and the Northern Territory, only federal awards apply.

The new national system

Under the Work Choices legislation, all federal and many state awards are to be combined into a national system. The Commission will only be able to create awards as part of a rationalisation process and may only vary awards under limited circumstances.

The move to a national award system is planned to take three years, during which time transitional arrangements will apply. Since the new system is designed to cover [constitutional corporations](#), for a time awards will be duplicated - those covering employers that are constitutional corporations and their employees, and those covering employers that are not constitutional corporations and their employees.

The different awards in the new national system will be known as:

- **pre-reform awards** - federal awards created before the Work Choices legislation came into operation and covering employers that are constitutional corporations; and
- **transitional awards** - federal awards created before the Work Choices legislation came into operation and covering employers that are not constitutional corporations.

There will also be **notional agreements preserving state awards** - state awards created before the Work Choices legislation came into operation and covering employers that are constitutional corporations (see the AIRC fact sheet - [constitutional corporations](#)).

State awards covering employers that are not constitutional corporations continue to apply and remain the responsibility of the state industrial tribunals.

What happens to awards?

With the introduction of Work Choices, existing awards continue to apply, with some changes. For pre-reform awards and transitional awards the following apply:

- new lists of matters legally allowed in awards come into effect;
- non-allowable matters are no longer legally enforceable; and
- certain specified award conditions may be retained as **preserved terms**.

The Australian Fair Pay and Conditions Standard

Under the Work Choices legislation the Australian Fair Pay and Conditions Standard (the Standard) is established.

The Standard contains five minimum conditions, which are:

- basic rates of pay and casual loadings;
- maximum ordinary hours of work;
- annual leave;
- personal leave; and
- parental leave and related entitlements.

The main responsibility for setting minimum wage rates now lies with a new body, the **Australian Fair Pay Commission** (AFPC).

The Standard does not apply to transitional awards. The Commission is responsible for maintaining wage rates in **transitional awards** that were previously federal awards.

Allowable matters in awards

For those covered by pre-reform awards the provisions that continue to be allowed in those awards include:

- ordinary time hours of work and the time within which they are performed, rest breaks, notice periods and variations to working hours;
- incentive-based payments and bonuses;
- annual leave loadings;
- ceremonial leave;
- leave for the purpose of seeking other employment after the giving of a notice of termination by an employer to an employee;
- public holidays;
- monetary allowances;
- loadings for working overtime and shift work;
- penalty rates;
- redundancy pay (except for small business);
- stand-down provisions;
- type of employment, such as full-time employment, casual employment, regular part-time employment and shift work; and
- conditions for outworkers.

Matters no longer allowed include:

- conversion from casual employment to another type of employment;
- union picnic days; and
- dispute resolution training leave.

In addition to the allowable matters listed above, **transitional awards** may also include the following:

- classifications of employees and skill-based career paths;
- rates of pay (including general rates, and rates for juniors, trainees and those employees under the supported wage system);
- annual leave;
- parental leave, including maternity and adoption leave;
- dispute settling procedures; and
- personal/carer's leave.

Preserved terms in awards

Some award provisions are no longer allowable, but if *more generous* than the Standard are retained as preserved terms that cannot be adjusted.

For **pre-reform awards**, such provisions include:

- annual leave;
- personal/carer's leave;
- parental leave, including maternity and adoption leave;
- long service leave;
- notice of termination;
- jury service; and
- superannuation.

For **transitional awards**, such provisions include:

- long service leave;
- notice of termination;
- jury service; and
- superannuation.

Prohibited content

Certain provisions contained in state awards that become **notional agreements preserving state awards** are now deemed to be **prohibited content**. This means they are no longer legally enforceable and may be removed. Prohibited content includes:

- terms preventing the making of an Australian workplace agreement (AWA); and
- terms restricting training.

Model dispute resolution process

Dispute resolution procedures in pre-reform awards and notional agreements preserving state awards no longer have effect and are deemed to be replaced by the model dispute resolution process outlined in Part 13, Division 2 of the *Workplace Relations Act 1996*.

The aim of the model process is the resolution of industrial disputes at the workplace level. For more information on the model dispute resolution process see the AIRC fact sheet [Assisting with dispute resolution](#).

Existing dispute resolution clauses in transitional awards continue to apply.

Award rationalisation and simplification

Under the new national system, a substantial rationalisation and simplification of awards is to take place. The aim of this process is to reduce the number of awards and their complexity as well as to ensure the removal of any non-allowable matters.

This fact sheet has been prepared by the Australian Industrial Registry. It is not intended to be comprehensive, but is designed to assist in gaining an understanding of the Commission and its work. The Registry does not provide

legal advice.

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