



# FACT SHEET

## Fair Work Commission

Updated: July 2016  
Replaces: January 2013

From 1 July 2009 when the *Fair Work Act 2009* (the 'Act') took effect, Fair Work Australia ('FWA') came into being as the new 'one stop shop' for industrial relations matters. FWA absorbed the functions of the Australian Industrial Relations Commission ('AIRC') as well as several other agencies.

FWA was renamed the Fair Work Commission ('FWC') on 1 January 2013. Reference in this Fact Sheet to the FWC includes reference to FWA as it may have been known at the timeframe referred to in the Fact Sheet.

*Please note that due to the Queensland Government referring its industrial relations powers to the Commonwealth, effective on and from 1 January 2010, this Fact Sheet applies to all private sector employers.*

### FAIR WORK COMMISSION

The Fair Work Commission is the national workplace relations tribunal which provides information, advice and assistance on employment issues and works to ensure compliance with workplace laws.

The FWC replaced a number of entities that had specific functions under the legislation in place prior to the Act. These bodies were:

- **The Australian Industrial Relations Commission and Australian Industrial Registry ('Registry')**  
The AIRC and the Registry operated until 31 December 2009 with such functions as finalising the Award Modernisation process.
- **The Australian Fair Pay Commission ('AFPC') and Australian Fair Pay Commission Secretariat ('AFPC Secretariat')**  
The AFPC and AFPC Secretariat ceased to operate on 31 July 2009 upon the finalisation of the 2009 minimum wage review decision. The FWC assumed the duty of conducting minimum wage reviews on 1 January 2010. No minimum wage review was conducted between August and December 2009.
- **The Workplace Authority ('WA')**  
The WA operated until 31 January 2010 with limited functions. One of its last functions was to assess Collective Agreements made before 1 July 2009 and ITEAs made until 31 December 2009. Since 1 July 2009 Enterprise Agreements have been lodged with the FWC for approval.
- **The Workplace Ombudsman**  
The Workplace Ombudsman ceased operation on 30 June 2009. Its functions were assumed by the Office of the Fair Work Ombudsman, which is a part of the FWC. The advisory service (telephone hotline) previously provided by the Workplace Authority is now provided by the Office of the Fair Work Ombudsman.
- **The Australian Building and Construction Commission ('ABCC')**  
The ABCC was replaced by Fair Work Building & Construction ('FWBC') on 1 June 2012, with the FWBC serving as the building industry regulator.

## **FAIR WORK COMMISSION'S OBJECTIVES**

The FWC is independent of unions, businesses and the government. It must perform its functions and exercise its power in a manner that is:

- Fair and just;
- Quick, informal and avoid unnecessary technicalities;
- Open and transparent; and
- Promotes harmonious and cooperative workplace relations.

## **STRUCTURE OF FAIR WORK COMMISSION**

The FWC consists of the President, Vice Presidents, Deputy Presidents (which includes Senior Deputy Presidents), Commissioners and Expert Panel Members, with various divisions and Panels having responsibility for certain functions.

## **FUNCTIONS OF THE FAIR WORK COMMISSION**

Pursuant to section 576(1), the FWC has a number of functions conferred on it by the Act in relation to the following subject matters:

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| (a) the National Employment Standards (Part 2-2); | (i) unfair dismissal (Part 3-2);                  |
| (b) modern awards (Part 2-3);                     | (j) industrial action (Part 3-3);                 |
| (c) enterprise agreements (Part 2-4);             | (k) right of entry (Part 3-4);                    |
| (d) workplace determinations (Part 2-5);          | (l) stand down (Part 3-5);                        |
| (e) minimum wages (Part 2-6);                     | (m) other rights and responsibilities (Part 3-6); |
| (f) equal remuneration (Part 2-7);                | (n) the extension of the National Employment      |
| (g) transfer of business (Part 2-8);              | (o) Standards entitlements (Part 6-3);            |
| (h) general protections (Part 3-1);               | (p) unlawful termination protections (Part 6-4).  |

In addition to the abovementioned functions, the FWC is also required to deal with disputes where it is expressly authorised to do so or where it considers it appropriate.

Further, the FWC will be required to provide assistance, advice about its functions and activities, and also provide administration support.

The FWC's primary functions are to:

### **1. ASSIST PARTIES TO RESOLVE WORKPLACE GRIEVANCES**

The FWC has the ability to deal with the dispute as they consider appropriate, which includes by:

- Mediation or conciliation;
- Making a recommendation or expressing an opinion; or
- Arbitration.

### **2. ADJUST MINIMUM WAGES AND AWARD CONDITIONS**

The FWC is required to conduct 4 yearly reviews of modern awards in order to ensure the safety net is maintained and is current. It is also required to conduct an annual wage review in each financial year.

Where necessary, the FWC may make one or more determinations varying modern awards to set, vary or revoke award minimum wages and must make a national minimum wage order.

### **3. RESOLVE UNFAIR DISMISSAL AND UNLAWFUL TERMINATION CLAIMS**

Where an employee has been unfairly or unlawfully dismissed they may apply to FWC to progress their complaint. FWC will hear and decide upon Unfair Dismissal applications, and will initially try to resolve a General Protections claim (if it cannot be resolved, the employee can progress the claim to a federal court).

The FWC has the ability to award various remedies.

### **4. MONITOR COMPLIANCE** (refer to the below section titled Office of the Fair Work Ombudsman)

The Fair Work Ombudsman and its inspectors is required carry out several functions in order to ensure that legislative requirements are complied with.

### **5. FACILITATE BARGAINING (GOOD FAITH BARGAINING)**

The FWC is able to facilitate good faith bargaining and the making of Enterprise Agreements, including through:

- Making bargaining orders; and
- Dealing with disputes where a bargaining representative requests assistance; and
- Ensuring that applications for the approval of Enterprise Agreements are dealt without delay.

### **6. REGULATE REGISTERED INDUSTRIAL ORGANISATIONS**

The Act details certain administrative matters for registered industrial organisations.

### **7. REVIEW AND APPROVE ENTERPRISE AGREEMENTS**

The FWC is responsible for approving Enterprise Agreements. Approval will only be made where the Enterprise Agreement meets all the necessary requirements prescribed by the Act.

### **POWER TO INFORM**

The FWC has the ability to inform itself in relation to any matters before it, in such a way as it considers appropriate.

Under section 590 of the Act, the FWC has the ability to inform itself in the following ways:

- By requiring a person to attend before FWC;
- By inviting oral or written submissions;
- By requiring a person to provide copies of documents or records, or to provide any other information in FWC;
- By taking evidence under oath or affirmation in accordance with the regulations;
- By requiring FWC Member, a Full Bench or the Minimum Wage Panel to prepare a report;
- By conducting inquiries;
- By undertaking or commissioning research;
- By conducting a conference; or
- By holding a hearing.

### **OFFICE OF THE FAIR WORK OMBUDSMAN**

The Office of the Fair Work Ombudsman ('FWO') is responsible for providing information and advice to both employer and employees.

The FWO's main functions are to:

- Promote and monitor harmonious, productive and cooperative workplace relations and compliance with the Act and fair work instruments;
- Provide education, assistance and advice to employees, employers, outworkers, outworker entities and organisations and producing best practice guides to workplace relations or workplace practices;
- Inquire and investigate any act or practice that may be contrary to the Act, a fair work instrument or a safety net contractual entitlement;
- Commence proceedings in a court, or to make applications to the FWC to enforce the Act, fair work instruments and safety contractual entitlements;
- Refer matters to relevant authorities;
- Represent employees or outworkers who are, or may become, a party to a proceeding in a court or a matter before FWA; and
- Undertake any other function conferred on the FWO.

*Refer: QHA's Fair Work Ombudsman Fact Sheet*

### **FAIR WORK DIVISIONS OF THE FEDERAL AND FEDERAL CIRCUIT COURT**

A specialist Fair Work Division in the Federal Court and Federal Circuit Court has been created to deal with matters that arise under the new Fair Work legislation.

The purpose of this Division is to be able to award flexible remedies to a remedy for a contravention. For example, the Court will be able to award an injunction to prevent someone from doing something, rather than just imposing a penalty.

#### **Further Assistance**

Financial QHA members are encouraged to contact the QHA's Employment Relations Department (refer the contact details at the bottom of this page) for a confidential discussion about the information in this Fact Sheet, or to discuss any queries relating to specific workplace matters.

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