

New federal workplace laws

How do they affect you?



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The Queensland position

The Queensland Government is opposed to the federal government's *Workplace Relations Amendment (WorkChoices) Act 2005* (the WorkChoices amendments) that commenced on 27 March 2006. It has challenged these new laws in the High Court with an outcome expected possibly as early as the end of 2006.

The Queensland industrial relations system has worked well for both employers and employees. It has also been a key factor underpinning Queensland's strong economic performance.

The state system provided Queensland employers with the flexibility to make agreements that suit their business needs while ensuring workers are protected.

Queensland's track record speaks for itself. Queensland has experienced high economic and employment growth, and a low strike rate. The economy continues to outperform the national economy with economic growth in the year to September 2005 reaching 4.0% compared to national growth over the same period of only 2.8%.

Queensland also continues to experience an historically low level of industrial disputes – the average quarterly strike rate for the year to December 2005 is 4.4 working days lost per thousand employees. The Australian average is 50% higher at 6.6. Victoria, which is under the federal industrial relations system, has almost double the Queensland strike rate on 8.4.

Queensland has demonstrated that strong and fair employment rights are an integral part of a successful economy. Even the federal Productivity Commission has extolled the competitive benefits of a dual industrial relations system.

Less choice

A defining feature of WorkChoices is what the laws have taken away from employees and employers. For example, the new laws:

- remove the right of up to four million Australian workers to seek a remedy if they feel they have been unfairly dismissed;
- force workers to be employed under agreements that provide just five minimum conditions – workers are at risk of losing award provisions for overtime, rest breaks, redundancy pay, shift allowances, penalty rates, and public holiday pay if these conditions are expressly excluded from the agreement;
- remove the wage-fixing powers of the Australian Industrial Relations Commission and give them to the new Australian Fair Pay Commission, with an implied mandate to award lower minimum wage increases; and
- move many employers and employees currently operating under state systems of industrial relations into the federal system with no choice in the matter.

No evidence of the need for change

The federal government has argued that these changes were required for a stronger economy. However, the international evidence is that labour market deregulation has led to a widening wage gap without necessarily improving economic performance.

The new laws represent a major shift in the nation's industrial relations landscape with the following consequences:

- the risk of losing current work conditions for employees under the new federal system depending on an employee's bargaining power, employer behaviour, and the state of the economy;
- the likelihood of relatively lower increases in the minimum wage as the Australian Fair Pay Commission takes control of wage-fixing;
- reduced coverage of the Queensland state industrial relations jurisdiction from the current 70% of employees to 40%;
- a more difficult environment for unions with restrictions on industrial action and right of entry to workplaces; and
- employers will no longer have a choice of operating in the state or federal system.

We can help

Fair Go Queensland Advisory Service

In response to the new laws, the Queensland Government has established the Fair Go Queensland Advisory Service to help employees and employers navigate their way through the maze of information.

The service is operated by experts from the Department of Industrial Relations who are available to help employees and employers with queries relating to the following:

- unfair dismissals
- wages and conditions
- awards and agreements
- industrial disputes
- dispute resolution.

Examples of unfair dismissals reported to the Department of Industrial Relations include the following (as at 31 May 2006):

- Female office manager in a southside Brisbane suburb with almost 10 years service was dismissed for misconduct, but with little evidence to support the allegation
- Injured male working as a sales representative on the Gold Coast was dismissed via email on 27 March – the first day the new laws came into full force
- Employee was dismissed after 25 years by a multi-national employer citing redundancy
- Man with more than six years service was sacked by a Beenleigh firm for refusing to perform unsafe work with fibreglass
- Man from a southside Brisbane suburb with 14 months service with a printing firm was called at home by the employer and dismissed without reason
- Man with 13 years service was made redundant (without redundancy pay) after refusing to sign an alternative employment contract which took him from a full-time employee to a three day casual employee.

If you feel you've been unfairly dismissed or treated unfairly or would like more information on the impact of the new laws, contact the Fair Go Queensland Advisory Service on 1300 737 841 or visit www.dir.qld.gov.au.

Compare What's Fair online calculator

Employees can now compare pay and conditions in an Australian Workplace Agreement (AWA) against existing state awards.

The Compare What's Fair online calculator offers benefits to both employees and employers and provides practical assistance to deal with the impact of the new laws.

Compare What's Fair lets employees calculate exactly how a dollar figure is presented to them under a WorkChoices AWA compared with their state award. In addition, it can be used to find out if workers will lose any rights or entitlements.

The calculator also calculates the amount earned in a week or year, based on a typical working week under an existing award and a proposed AWA.

For employers, the calculator allows them to ascertain whether or not they are offering a fair equivalent to the award package, which will help them retain valued staff.

The Compare What's Fair online calculator can be accessed from the Department of Industrial Relations' Wageline website at www.wageline.qld.gov.au

Key points of the changes to federal workplace laws

A 'national' system based on the corporations power

The new federal laws are based on the corporations power in the Australian Constitution and covers all foreign, financial or trading corporations. These are what is known as 'constitutional corporations'.

Employers who are constitutional corporations and who currently operate in the state system have up to three years during which their current state awards and/or agreements will continue to apply.

Employers who are not constitutional corporations, but are currently covered by federal awards or agreements, will have a transitional period of up to five years. If, at the end of five years they have not become corporations, those employers will be moved to the state system.

The new federal laws mean that except where the new federal laws explicitly provide for them, state laws no longer apply to employees of constitutional corporations.

What is corporations power?

The corporations power in the Commonwealth Constitution gives the Federal Parliament the power to make laws that apply to foreign, financial or trading corporations.

If the federal government and a state government both legislate on an issue, the federal law prevails where any inconsistency exists.

An association or body that is incorporated generally will be subject to the corporations power if it meets the following conditions:

- it engages in trade or finance; and
- the engagement is at a level that is more than trivial or insignificant; or
- it is a corporation formed overseas.

Minimum conditions – the Australian Fair Pay and Conditions Standard

Under the new federal laws, the federal government has established the Australian Fair Pay and Conditions Standard of minimum wages and four minimum conditions for employees:

- maximum ordinary hours of 38 hours a week may be averaged over 12 months
- annual leave of four weeks per year, plus an additional week's leave for shift workers
- parental leave of 52 weeks unpaid leave
- personal leave of 10 days a year of which all 10 days can be used for carer's leave, two additional days for unpaid carer's leave and two days compassionate leave per occasion.

Federal awards and agreements with provisions more favourable than the Australian Fair Pay and Conditions Standard continue to apply. If the provisions are less favourable, such as awards with only eight days sick leave, the Australian Fair Pay and Conditions Standard applies.

The Australian Fair Pay and Conditions Standard and minimum conditions in federal awards and agreements override the minimum conditions provided in state legislation.

Minimum wages set by the Australian Fair Pay Commission

The Australian Industrial Relations Commission has lost its long-standing powers to set minimum wages across the award system. The new laws have established an Australian Fair Pay Commission (AFPC).

The Australian Fair Pay Commission sets and adjusts the minimum wage, and wages across award classification levels, as well as wages for junior, apprentices and trainees, employees with disabilities, piece workers, and loadings for casual workers.

The Australian Fair Pay Commission will fix wages at or above the level of the current minimum wage of \$12.75 per hour set by the Australian Industrial Relations Commission in the 2005 national wage case.

Making agreements

Under the new laws, federal agreements no longer have to pass a no-disadvantage test.

Federal collective agreements and individual agreements (Australian Workplace Agreements) will continue under the new federal laws for a nominal term of five years.

To become operational, such agreements will only have to be lodged with the federal Office of the Employment Advocate, and meet the Australian Fair Pay and Conditions Standard.

This standard includes four minimum legislated conditions and the relevant minimum rate of pay set by the Australian Fair Pay Commission.

What is an Australian Workplace Agreement?

An Australian Workplace Agreement is a written agreement made directly between an employer and an employee about the employee's wages and conditions of employment.

Employees who are members of a union can choose a union to negotiate their Australian Workplace Agreement, but there is no requirement for union involvement.

An Australian Workplace Agreement applies in the federal jurisdiction and is lodged with the Office of the Employment Advocate. An Australian Workplace Agreement overrides conditions in state and federal awards, and state certified agreements, where any inconsistency exists.

The Australian Industrial Relations Commission no longer has a role in scrutinising agreements. Instead, the federal Office of the Employment Advocate is now responsible for accepting all agreements when lodged. All agreements become operational when they are lodged with the Office of the Employment Advocate if they meet the legal minimum standards.

Agreements are able to remove or modify seven current award entitlements without any compensating benefits:

- public holiday pay
- rest breaks

- overtime/shift loadings
- annual leave loading
- incentive-based bonuses and payments
- allowances
- penalty rates.

These seven award entitlements will continue to apply if the agreement does not make any reference to them.

If an agreement is terminated and not renegotiated, the employee falls back to the minimum conditions under the Australian Fair Pay and Conditions Standard.

The new laws prohibit certain matters from being included in agreements. These include prohibitions on AWAs, restrictions on the use of independent contractors or on-hire arrangements, providing for trade union training leave or bargaining fees, or providing a remedy for unfair dismissal.

Agreements made under the existing system continue to operate, except that prohibited clauses have been removed. However, since the new legislation came into force, existing agreements cannot be varied or extended.

Awards

Existing federal awards continue to operate, but the award system has been further reduced in scope and influence in the overall industrial relations system. The matters that can be included in awards have been reduced from 20 to 16.

Certain conditions have been excluded from awards on the basis that they are covered by existing state or federal legislation, including:

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

Existing awards that contain these entitlements continue to apply to existing and new employees covered by those awards, but the Australian Industrial Relations Commission can no longer vary them.

A number of matters currently in federal awards have become unenforceable. These include enterprise flexibility provisions that allow individual workplaces to decide on the basis of majority agreement how a particular award clause operates, any restrictions relating to contractors or labour hire workers and trade union training leave.

The Australian Industrial Relations Commission is only able to vary awards in limited circumstances to remove ambiguity, discriminatory provisions or changes in coverage.

The Australian Industrial Relations Commission is only able to make new awards, in line with the recommendations of a government-appointed Award Review Taskforce. This taskforce rationalises the number of federal awards and examines existing wage classification structures with a view to simplifying them.

Unfair dismissal

Employers with up to 100 employees are exempt from unfair dismissal laws and their employees are excluded from unfair dismissal claims.

Employees will continue to have access to federal unlawful dismissal remedies for unlawful terminations based on discrimination or other prohibited grounds, but potentially at considerable expense. They will continue to have access to state (and federal) anti-discrimination laws.

All employees with less than six months service are excluded from an unfair dismissal claim. This exemption also covers seasonal workers.

Employees made redundant or dismissed because of the operational requirements of a business are excluded from an unfair dismissal claim.

Transmission of business

The protection of awards and agreements have been reduced under the transmission of business provisions in the legislation since they only apply for a maximum of 12 months and only to employees of the previous employer.

Under these provisions, an employer could restructure and move employees to a new entity. Then, after 12 months, the new entity could offer positions to the employees on the condition that they sign an Australian Workplace Agreement. This means they could lose accumulated entitlements to paid leave such as long service leave.

Industrial action

The new laws only protect industrial action in the bargaining period for a new agreement. All other forms of industrial action are unlawful and not protected. The new laws:

- make voting for protected action more complicated, expensive and easier to take action against individual employees who take non-protected action
- make secret ballots compulsory before any protected industrial action can be taken by unions or employees
- allow heavy financial penalties against individuals for taking unlawful industrial action
- remove the requirement for parties to go to the Australian Industrial Relations Commission in an attempt to resolve a dispute before they take common law action to sue for damages caused by industrial action
- give the federal minister power to order protected industrial action to stop even though it is lawful under the legislation if he can argue that the action threatens life, safety, health or welfare of the population, or threatens significant damage to the economy
- enable third parties affected by industrial action (e.g. patients affected by a doctors' strike) to seek orders from the Australian Industrial Relations Commission to stop the industrial action
- add a new provision to stop 'damaging industrial action' by parties in state systems even though it is lawful under the legislation if they can argue that that action would have a 'substantial harmful effect' on a constitutional corporation.

Dispute resolution

The new federal laws reduce the ability to seek assistance from unions or the Australian Industrial Relations Commission in disputes between employers and employees by making third-party intervention a last resort, other than where industrial action is actually threatened or taking place.

A model dispute resolution procedure has been developed by the federal government and will apply to all federal awards that do not already contain a dispute resolution procedure.

Union right of entry

Union right of entry to workplaces to investigate a suspected breach of industrial obligations and to hold discussions with employees comes under greater scrutiny and control by the federal government.

Right of entry is now restricted where employees are on Australian Workplace Agreements and access to investigate a breach is only allowed if an employee provides written consent which will enable their employer to identify those who complain to a union.

Union checks are confined to union members' records only and unions are required to provide particulars of a breach to the employer.

This will enable employers to identify which employees belong to the union and who complained to the union. These aspects may be contrary to international conventions on freedom of association.

The new federal laws cover constitutional corporations with respect to union right of entry. Unions are only able to exercise their right of entry under federal legislation.

What does it mean for employees?

The federal government's new laws pose big changes for Australia's workers. The new laws favour non-union individual or collective agreements over the protections currently afforded by awards and union-negotiated collective agreements.

- Employees working for organisations with up to 100 staff are no longer covered by unfair dismissal laws.
- Agreement-making under the new laws will lead to a reduction in wages and conditions for workers.
- Employers can make employees sign an agreement that reduces basic entitlements as condition of employment.
- Employees are at risk of losing basic entitlements such as:
 - rest and meal breaks
 - incentive-based pay
 - annual leave loading
 - allowances
 - penalty rates and overtime, and
 - control over hours and rosters.
- Employees may not be entitled to penalty rates for working on public holidays. However, an employee has the right to refuse a request to work on a public holiday if he/she has reasonable grounds for doing so.
- Employees can be dismissed by employers for operational reasons and then offered employment under a new agreement.
- Employees are at risk of losing the extra money they currently enjoy for shift work, overtime and time off to spend with their family over the weekend.
- The only legally enforceable minimum conditions are annual leave, personal leave, parental leave and ordinary hours. These replace the no-disadvantage test and agreements no longer undergo any formal approval process.

Do the new laws strip existing awards?

In Queensland, awards operate to specify the minimum wages and conditions that a worker is to receive. Awards provide a safety net for all workers, and a fair and level playing field for competing businesses.

- Since 1996, the federal government has stripped back all federal awards to 20 allowable matters. The new federal laws have stripped these further to 16. Provisions for jury duty, long service leave, notice of termination and superannuation are excluded under the new laws. Existing awards that contain the above entitlements continue to apply to existing and new employees covered by those awards, but the Australian Industrial Relations Commission can no longer vary them.
- The federal government has stated that these benefits are still provided through state and federal legislation. This is only true for some workers.
- Even where workers are protected by legislation, the entitlement is likely to be less favourable than the current award provision.
- For workers who are employed on federal awards, these awards are subject to review by the Award Review Taskforce. The role of this taskforce is to recommend how awards can be simplified and rationalised.
- If you were employed on a state award and your employer is a constitutional corporation, you have now moved into the federal system as from 27 March 2006. This means that the terms and conditions of your state award have moved into 'Notional Agreement Preserving State Awards' (NAPSA) under the federal system.
- At any time during the three-year transitional period, many conditions contained in your former state award, now known as NAPSA, can be removed by the employer through the new federal agreement-making process.

What if I feel I have been unfairly dismissed?

Under the previous system, if a Queensland worker felt they were unfairly dismissed, they could lodge a claim in the Industrial Relations Commission of Queensland, an independent body that can resolve issues by conciliation and arbitration.

Most unfair dismissal matters were listed immediately upon receipt with a compulsory conference within two weeks. Generally, 90 per cent of these were resolved before there was any need to go to arbitration.

- The new laws have removed unfair dismissal laws for all workers who are employed in organisations with less than 100 staff.
- This means that those who are dismissed unfairly, are not able to seek help from the Commission.
- If they have been unlawfully dismissed (e.g. for reasons of pregnancy or family responsibility), they will need to lodge an unlawful termination case in the Federal Court. Action in the Federal Court requires expensive legal representation that can take as long as three years to complete.
- The federal government has announced that it will offer \$4,000 in legal assistance to employees who are lodging an unlawful termination claim. However, this legal assistance will be based on your income. Some cases have cost up to \$40,000.
- The new laws mean that workers doing similar jobs will be treated differently based on the number of people employed in their workplace. The Queensland Government believes that all workers deserve to be treated fairly and all employers should have fair employment practices, regardless of the number of workers employed.

Will my wages and conditions be reduced?

The new federal government laws are aimed at increasing the use of individual employment agreements, known as Australian Workplace Agreements. These agreements generally reduce wages and conditions for workers.

- Recent research has shown that the average weekly earnings of workers on Australian Workplace Agreements have dropped by 11 per cent from May 2002 to May 2004.
- Women employed on Australian Workplace Agreements earn 11 per cent less per hour than women employed on collective agreements.
- Under the previous system, if an Australian Workplace Agreement was offered, it had to be approved by the Office of the Employment Advocate and pass a 'no-disadvantage' test. This test meant that

overall the Australian Workplace Agreement must be of no-disadvantage to the employee in comparison to their relevant award.

- Under the new laws, an Australian Workplace Agreement only has to meet five legislated minimum conditions. These five minimum conditions are significantly less than existing conditions.
- The federal government has stated that employees are still entitled to their award conditions for public holidays, rest breaks, incentive-based pay, annual leave loading, allowances, penalty rates and overtime loading when making an individual agreement. However, employees are only entitled to these conditions provided that their employer has not modified or removed them from their agreement.
- Employers can offer employees a job or promotion on the condition that they accept and sign an Australian Workplace Agreement. While technically employees cannot be forced onto an Australian Workplace Agreement in their current job, this may not prevent their employer threatening them with dismissal if they do not move to a new position on an Australian Workplace Agreement.
- An Australian Workplace Agreement may restrict penalty rates and overtime payments and allow for the 'cashing-in' of up to 10 days annual leave. 'Cashing-in' means an employee may have to go without their annual leave or work more hours to earn a pay increase.

Can I still rely on my union to represent me in the bargaining process?

Many workers have relied on their union to represent them in bargaining with employers to ensure that they receive fair wages and conditions. Under the new federal laws, unions have less power to represent their members.

- The federal government has made it harder for union representatives to enter a workplace to speak to members and investigate breaches.
- If employees want to take industrial action to support bargaining for a new agreement, for example, they have to apply to the Australian Industrial Relations Commission for a secret ballot.
- They are then required to pay 20 per cent of the costs of running the secret ballot. If most workers favour taking industrial action

then they will be allowed to take protected industrial action.

- The federal government has significantly increased the fines imposed on individuals and organisations for taking unprotected industrial action.

What happens to the minimum wage?

The new laws change the way the minimum wage and award wages are set. Previously, the Australian Industrial Relations Commission reviewed the federal minimum wage annually by examining submissions from unions, employers and governments.

- The Commission increased the minimum weekly wage by \$135 since 1997.
- The federal government opposed all of these increases. The new laws remove the Australian Industrial Relations Commission's minimum wage-fixing role and hands this role to a new body called the Australian Fair Pay Commission.
- The Australian Fair Pay Commission will use a less open and arguably less fair process to review the minimum wage for Australian workers which is likely to lead to employees receiving far lower pay rises than they have received in the past.
- The federal government has not said how often the Australian Fair Pay Commission will sit or how regularly award wages will be increased, if they are increased at all.

Are there checks in place to ensure that an agreement is fair?

Before 27 March 2006 if you entered into a collective agreement, it was reviewed by the Australian Industrial Relations Commission to ensure that you were not disadvantaged in comparison to the relevant award.

Individual agreements were checked by the Office of the Employment Advocate against the same 'no-disadvantage' test. Under the new federal government laws, these checks have been removed.

- Under the new laws, an employee's individual or collective agreement must be lodged with the Office of the Employment Advocate by their employer for it to be valid.

- The employer only needs to attest that the agreement was made lawfully for it to apply.
- The Office of the Employment Advocate is not required to check agreements to ensure that they meet the five legislated minimum conditions, or any others.
- Under the new federal laws, employees are reliant on their employer to do the right thing.

Do the new laws affect overtime?

Under the new laws, employers can make agreements with employees to average a 38-hour working week over 12 months.

- Where such an agreement is in place, employers can insist on an employee working 50 hours one week by claiming that these extra hours are just part of the ordinary working week averaged over a year.
- Even where the parties do not make agreements to average hours over a 12 month period, employees may still be required to work “reasonable additional hours” over and above the 38-hour working week without overtime payments.
- In practice, either system may erode any overtime and related overtime pay and penalty rates that the employee may receive.
- For workers with family responsibilities who make averaging agreements with their employers, there are still questions as to whether this provision could possibly erode their right to refuse to work overtime on the basis of family responsibilities. This is because an employer might be able to claim that the hours such an employee is being asked to work are ordinary hours of work averaged over the year and therefore neither overtime nor ‘reasonable additional hours’.

Employee case studies

- **Professional engineer**

Daniel is employed under a state award in a busy engineering firm as a level three Professional Engineer. In order to cope with the volume of work, Daniel works a total of 50 hours a week spread over five days, Monday to Friday. He starts at 7.00am each day and does not

leave till 6.00pm most evenings. The total of ordinary hours is worked over four days making all hours on Friday payable at overtime rates.

Daniel's weekly income, before tax, under the award is \$1,262.33, which includes the payments for overtime.

Under the new laws, Daniel could be placed on an Australian Workplace Agreement and his overtime scrapped.

If Daniel did not receive the overtime rates payable over 40 hours, and if he was paid only the base hourly rate of pay as prescribed under the award his annual earnings would reduce by just over 14.5 per cent or \$9,533.16.

- **Restaurant worker**

Ken is a full-time experienced waiter working in a Brisbane restaurant. To meet the requirements of the business Ken works weekends. He earns \$729.73 before tax, which includes his penalty rates and four hours overtime on Saturday. It also includes a laundry allowance for maintaining his uniform.

Under the state award Ken must receive a meal break before working six hours continuously, and a rest break in the first and second half of the eight-hour period. Ken receives a paid meal allowance if he works more than two hours overtime beyond his rostered finishing time.

Ken only receives a pay increase when the annual safety net adjustment is passed on by the Queensland Industrial Relations Commission at the State Wage Case.

Ken's employer decides to make a new agreement under the new federal laws. The new agreement applies to all workers in the restaurant. It pays the same hourly rate as before but cuts out additional money for overtime and weekend work. Because most employees in the restaurant don't work overtime or weekends it doesn't bother them and they agree to the changed conditions.

For Ken, however, losing his overtime and weekend penalties results in his pay being cut by more than 20 per cent, or more than \$7,800 a year. Also, he no longer is able to rely on regular award increases through the State Wage Case. Instead he must wait to see if the Australian Fair Pay Commission will increase his wage.

What does it mean for employers?

Can my company choose which system to use?

In Queensland, companies have been able to choose the industrial relations system that best suits their needs. Businesses, particularly small ones, have overwhelmingly chosen the simple, transparent and fair state system. Small businesses employ 70 per cent of Queensland's employees.

- Under the new laws, corporations have had this choice taken away and will have to operate in the complex and potentially costly federal system.

What impact does individual bargaining have?

Before the new laws became effective (on 27 March 2006), businesses in Queensland could compete equally with competitors due to the award safety net. Awards acted as a benchmark for fair and competitive wages and conditions.

In Queensland, the awards system was supported by a strong compliance service run by the Department of Industrial Relations. Industrial inspectors visited 11,000 workplaces in 2004-05, providing information and assistance to employers. Through enforcement activity, \$9.9 million was recovered in wages for employees.

- The new federal government laws remove the award safety net that provides fair competition between your business and your competitors.
- Rather than relying on a simple award you need to look at negotiating agreements and complying with the new rules around agreement-making.
- In doing that, you need to ensure that you do not include any prohibited clauses in your agreements or face fines of up to \$33,000.
- To undertake these negotiations, smaller employers may need to engage the assistance of expensive, external professionals (industrial relations consultants or lawyers) to ensure their agreements are lawful.
- Employers will now be required to keep additional records including details of start and finish times of non-award

employees earning less than \$55,000 per annum. Those records must be kept on file for seven years.

What does the removal of awards mean for my company's ability to compete?

The new laws change the award safety net, allowing your competitors to legally pay their staff wages which are below the award, resulting in price undercutting.

Previously, all employment agreements, including collective agreements or individual agreements (Australian Workplace Agreements), had to meet the 'no-disadvantage test'. This means that overall, the agreement could not be of disadvantage to an employee in comparison to the relevant award. This test prevented your competitors from undercutting staff costs by using individual or enterprise agreements.

- Under the new federal government laws, the 'no-disadvantage' test has been abolished.
- Agreements can only be compared against four minimum conditions and a minimum rate of pay.
- These minimum conditions are significantly less than those provided in most awards.
- Your competitors can legally provide their staff with wages and conditions that are significantly below the award.
- Even if you want to pay your employees fairly, you could be forced to reduce wages and conditions to remain competitive.

What do the new laws mean for unfair dismissal claims?

The federal government has changed the way in which employees can challenge a dismissal that they feel is unfair or unlawful.

Previously, employees could lodge an unfair dismissal claim either in the Australian Industrial Relations Commission or in the Queensland Industrial Relations Commission. The claim was heard promptly in an informal conciliation hearing, reducing the costs involved in a lengthy dispute.

- Under the new laws, employees are unable to lodge unfair dismissal claims in the Industrial Relations Commissions and are likely to take court action for unlawful termination. This change predominantly affects employers with fewer than 100 employees.
- If you are defending an unlawful termination claim, you will face proceedings in the Federal Court of Australia. These proceedings are formal and will require costly legal representation.
- Unlawful termination cases can take up to three years to be completed.

How do I determine what laws apply to my business?

With the introduction of the new changes, you may find yourself confused over what laws apply to your business.

- The federal government is using the corporations power for its new laws. This means that only businesses that are considered financial or trading corporations will be covered by the laws.
- Currently almost half the employers in Queensland are unincorporated.
- Unincorporated employers who are already covered by a federal award are now covered by the new federal system for five years.
- After that time, the only way an unincorporated business can be covered by the federal system is by incorporating.
- Incorporating can be expensive and will take away your choice to set up your business in the way that best suits your needs for tax, superannuation and liability purposes.
- It is estimated that the initial cost of incorporating for a small business is a minimum of \$1,600 with ongoing costs of at least \$600 annually. This does not include the lost time costs associated with the administration requirements of a 'Pty Ltd' company. If a 'shelf' company is purchased, costs may be significantly higher.
- Incorporated businesses will also face additional paperwork and red tape compliance requirements.

Can I still get the help of the Australian Industrial Relations Commission to resolve industrial disputes?

The federal government believes that industrial disputes should be sorted out between employers and employees without the assistance of a third-party such as the Australian Industrial Relations Commission. Unfortunately, this means that some employers will face lengthy and costly disputes.

- The lengthy, industrial dispute between maintenance workers at Boeing Australia at Williamstown in 2004-05 over the company's desire to keep its workers on individual agreements, rather than a union negotiated collective agreement, is the type of dispute that could become commonplace under the federal government's changes.
- Under the new federal system, the Australian Industrial Relations Commission has been stripped of its powers to resolve disputes. You could find your business embroiled in lengthy strikes without an independent umpire to resolve the dispute.

Am I likely to see an increase in accidents and workers compensation claims?

If businesses want to compete under the new laws they will be under pressure to negotiate away employee conditions such as meal breaks, public holidays and up to two weeks annual leave per year.

The removal of rest and meal break provisions is likely to result in employees who are tired, fatigued or with increased levels of illness.

Fatigued and tired workers pose a health and safety risk in the workplace and are likely to increase the incidence of workplace accidents and compensation claims.

Do the new laws have an impact on productivity?

The federal government has claimed that its new laws will improve productivity, although there is no evidence or research to support this. The evidence actually suggests that these changes are likely to result in a drop in productivity.

- During the 1990s, New Zealand introduced laws similar to the federal government's new laws. Between 1990 and 1999 productivity in New Zealand increased by only five per cent. In Australia, it rose 23 per cent. New Zealand ultimately scrapped the laws because they posed such a negative risk to productivity.
- The federal government's laws may result in reduced wages and conditions and encourage businesses to compete on wage costs rather than on quality and innovation.
- Quality, innovation and the effective use of technology have been shown to be key factors in improving workplace productivity and competitiveness. The new laws are not encouraging investment or competition in these areas.
- Productivity is likely to reduce as employees lose their working conditions and job security. In particular, employees who no longer have access to meal breaks, public holidays or half of their annual leave, are likely to become fatigued and be less productive.

Employer case studies

• Engineering firm

Connor runs a small Gold Coast engineering firm employing 20 workers, all employed under a state award.

Recently, one of his former employees claimed unfair dismissal and lodged the complaint with the Queensland Industrial Relations Commission. The claim was heard within three weeks in an informal conciliation hearing, reducing the costs involved in a lengthy dispute.

Under the federal reforms, because there are fewer than 100 employees in the workplace, there is no role for the Queensland Industrial Relations Commission or the Australian Industrial Relations Commission. In such cases it is possible that employers may find themselves facing action in the Federal Court of Australia in relation to an allegation of unlawful dismissal. Proceedings in the Court are formal and will require costly legal representation. They can also take years to settle.

- **Cleaning Contractor**

Simon owns a small successful cleaning company. Many of his employees have been with the company for many years. They work as a team and he pays above award rates.

Following the introduction of the new laws, some of his employees tell him that they are worried about their future. Despite telling them that they will be treated properly some of them are still clearly unsettled by the changes. Because their enterprise bargaining agreement is coming up for renewal, Simon suggests they include a statement in it that he will undertake to treat employees fairly and not to dismiss anyone unfairly.

He lodges the document with the Office of the Employment Advocate and is surprised to receive a call from a federal government official telling him he has included prohibited content in his agreement and that he now faces the threat of a fine of up to \$33,000. His employees have also received similar calls.

Everyone is affected by the federal government's workplace changes.

Employees

- are at risk of losing basic entitlements such as penalty rates, overtime, public holiday pay and time with family
- are at risk of being forced to move onto workplace agreements with reduced wages and conditions
- working for organisations with up to 100 staff are no longer covered by unfair dismissal laws

Employers

- are at risk of losing hours negotiating contracts, thousands of dollars in legal costs, and their best staff to big business who can afford to offer greater job security
- are at risk of cutting wages and conditions to compete
- are at risk of facing more industrial disputes and more costly unlawful dismissal claims
- are at risk of facing large fines for unwittingly breaching the new laws

Further information:
www.dir.qld.gov.au or call the
Fair Go Queensland Advisory Service 1300 737 841



**Queensland
Government**
Department of
Industrial Relations