



Australian Government

OVERVIEW OF FAIR WORK AUSTRALIA AND THE FAIR WORK OMBUDSMAN

Fair Work Australia

Fair Work Australia commenced operation on 1 July 2009, and will be fully operational by 1 January 2010. Fair Work Australia has been established under the *Fair Work Act 2009* to oversee the new workplace relations system.

What is the Role of Fair Work Australia?

Fair Work Australia is the national workplace relations tribunal. It is an independent body - independent of unions, business and government - and will focus on providing help to employees and employers.

Fair Work Australia's powers are broader than the powers of the Australian Industrial Relations Commission and include the power to:

- vary awards;
- make minimum wage orders;
- assess agreements using the better off overall test;
- approve agreements;
- determine unfair dismissal claims;
- make orders on such things as good faith bargaining and industrial action;
- vary or modify the application of transferring employment instruments in a transfer of business;
- assist employees and employers to resolve disputes at the workplace;
- deal with matters arising under right of entry provisions;
- deal with issues arising under general protections and unlawful termination provisions;
- deal with the extension of National Employment Standards entitlements.

What are the different types of Fair Work Australia members?

In general, there are two types of members of Fair Work Australia:

- primary Fair Work Australia members including the President, Deputy Presidents (currently 15) and Commissioners (currently 18) who are appointed until the age of 65 and are full-time; and
- minimum Wage Panel members who are appointed for a set period of not more than five years and are part-time.

The head of Fair Work Australia is known as the President. The current president is a member of the Federal Court of Australia and carries the title 'Justice'.

Minimum Wage Panel members are only involved with the minimum wage-setting function of Fair Work Australia. Other Fair Work Australia members are involved in the broad range of work.

How are Fair Work Australia members appointed?

The Governor-General of Australia appoints Fair Work Australia members.

What qualifications are required for appointment?

The *Fair Work Act 2009* requires that those appointed to Fair Work Australia have appropriate knowledge or experience in relevant fields such as workplace relations, law, business, industry or commerce.

Current Fair Work Australia members come from a diverse range of employment backgrounds including the law, unions and employer associations, human resources and management, and the public service.

Minimum Wage Panel members must have knowledge or experience in one or more of the fields of workplace relations, economics, social policy, business, industry or commerce.

Which bodies does Fair Work Australia replace and from what date?

By 1 January 2010, Fair Work Australia will replace the following agencies:

- Australian Industrial Relations Commission (31 December 2009);
- Australian Industrial Registry (31 December 2009);
- Australian Fair Pay Commission (31 July 2009);
- Australian Fair Pay Commission Secretariat (31 July 2009); and
- some functions of the Workplace Authority (31 January 2010)

Fair Work Australia is part of Australia's national workplace relations system which also includes the [Fair Work Ombudsman](#) and the Fair Work divisions of the [Federal Court of Australia](#) and the [Federal Magistrates Court of Australia](#).

When will I need to have contact with Fair Work Australia?

Employers, employees and bargaining representatives will have contact with Fair Work Australia in a number of circumstances, including those discussed below:

Enterprise Agreements

- Before 1 January 2010**, enterprise agreements will be assessed by Fair Work Australia against the no-disadvantage test using an appropriate reference instrument.
- From 1 January 2010**, enterprise agreements will be assessed by Fair Work Australia against the better off overall test (known as BOOT). A bargaining representative (including an employee, employer or employee organisation) must make an application for approval of the enterprise agreement by Fair Work Australia.

What are the lodgement timeframes?

An application to Fair Work Australia for approval on an enterprise agreement must be lodged within **14 days after the agreement has been made**. Fair Work Australia can extend that period if it considered it fair to do so in all the circumstances. An application to Fair Work Australia to approve a greenfields agreement also must be lodged within 14 days, however there are no provisions to extend that period (Section 185 *Fair Work Act 2009*).

What must accompany an application for approval of an enterprise agreement by Fair Work Australia?

When lodging an application, the applicant must ensure that it is accompanied by:

- ☑ declarations completed by each employer and each employee organisation which was a bargaining representative for the agreement (these declarations may be found at www.fwa.gov.au);
- ☑ an original of the written agreement signed by the bargaining representatives to the agreement;
- ☑ three copies of the agreement; and
- ☑ sufficient additional copies to enable a copy to be provided to each bargaining representative in the event of approval by Fair Work Australia.

Fair Work Australia has broad powers as to how it informs itself whether the agreement passes the better off overall test (BOOT) and how it deals with matters generally. Rather than conducting hearings for all cases, it is open to Fair Work Australia to use a less formal process such as conferences, visiting the workplace and making decisions **on the papers**.

Meaning of 'on the papers'

The Fair Work Australia Rules 2009 require parties to lodge a statutory declaration which asks a number of questions about how they believe the agreement and its pre-approval process meets the requirements of the *Fair Work Act 2009*. Assuming these statutory declarations are completed accurately, Fair Work Australia may decide to approve an agreement on the information provided to it, rather than conduct a hearing.

'[Application for Approval of Enterprise Agreement](http://www.fwa.gov.au)' forms are available from www.fwa.gov.au or call the national Fair Work Australia Helpline on 1300 799 675

What will Fair Work Australia consider?

To approve an enterprise agreement, Fair Work Australia must be satisfied that certain requirements have been met. This includes that:

- ☑ the agreement has been made with the genuine agreement of the employee's covered by the agreement;
- ☑ the agreement passes the better off overall test (from 1 January 2010) and does not include any unlawful terms or designated outworker terms;
- ☑ the group of employees covered by the agreement was fairly chosen;
- ☑ the agreement specifies a date as its nominal expiry date (not more than four years after the date of Fair Work Australia approval);

- ☑ the agreement provides a dispute settlement procedure; and
- ☑ the agreement includes a flexibility clause and a consultation clause.

Approval of an enterprise agreement with undertakings

Fair Work Australia may approve an enterprise agreement that does not meet the requirements in the *Fair Work Act 2009* if satisfied that a written undertaking addresses the area of concern.

Fair Work Australia may only accept a written undertaking from an employer, after seeking the views of each person who Fair Work Australia knows to be a bargaining representative for the agreement. It also must be satisfied that accepting the undertaking is not likely to cause financial detriment to any employee or result in substantial changes to the agreement.

Variation of agreements

Employers and employees may agree to vary an enterprise agreement, but such a variation has no effect unless it is approved by Fair Work Australia. An application to Fair Work Australia can be made by a person covered by the agreement. Once approved, an undertaking becomes part of the agreement.

What are some of the approval requirements for varying an agreement?

- ☑ The application must be lodged within 14 days after the variation is made. Fair Work Australia has the discretion to extend this period if it considers that, in all the circumstances, it would be fair to do so.
- ☑ The application must be accompanied by:
 - a signed copy of the variation;
 - a copy of the agreement as proposed to be varied; and
 - any declarations that are required by the procedural rules to accompany the application.
- ☑ Fair Work Australia will approve the agreement if it meets certain requirements such as that the variation has been genuinely agreed to, and that the agreement as varied will pass the better off overall test and does not contravene the National Employment Standards.

In what other circumstances will Fair Work Australia vary an enterprise agreement?

Fair Work Australia can vary an enterprise agreement to remove an ambiguity or uncertainty in an agreement. An application can be made by one or more of the employers covered by the agreement, an employee covered by the agreement or an employee organisation covered by the agreement.

'[Application for Approval of Variation of Enterprise Agreement](#)' forms are available from www.fwa.gov.au or call the national Fair Work Australia Helpline on 1300 799 675.

In what circumstances can Fair Work Australia terminate an agreement?

If an enterprise agreement has **passed its nominal expiry date**, one or more of the employers, an employee or an employee organisation covered by the agreement may apply to Fair Work Australia for termination of the agreement. Fair Work Australia will terminate an agreement past its nominal expiry date if it

considers it appropriate to do so, including taking into account the views of employees, employers and employee organisations covered by the agreement.

The termination operates from the day specified in the decision of Fair Work Australia to terminate the agreement.

If a termination of an enterprise agreement **before its nominal expiry date** has been agreed to by the employers and employees covered by an agreement, a person covered by the agreement must apply to Fair Work Australia for approval of the termination.

Fair Work Australia will terminate an enterprise agreement if certain requirements are met, such as, that employees who cast a valid vote approved the proposed termination and Fair Work Australia considers it is appropriate to approve the termination, taking into account the views of the employee organisations covered by the agreement.

The termination operates from the day specified in the decision of Fair Work Australia to terminate the agreement.

['Application for Termination of Enterprise Agreement'](#) forms are available from www.fwa.gov.au or call the national Fair Work Australia Helpline on 1300 799 675

Good Faith Bargaining

The good faith bargaining provisions of the *Fair Work Act 2009* require bargaining representatives to meet certain requirements when bargaining for a proposed enterprise agreement (other than a greenfields agreement).

*[N.B. For an outline of these requirements, refer to the **Collective Bargaining Module**]*

When can I apply to Fair Work Australia for a good faith bargaining order?

A bargaining representative may apply to Fair Work Australia for a bargaining order in relation to the agreement if the bargaining representative has concerns that:

- one or more of the bargaining representatives for the agreement have not met, or are not meeting, the good faith bargaining requirements; or
- the bargaining process is not proceeding efficiently or fairly because there are multiple bargaining representatives for the agreement.

A good faith bargaining order is not available earlier than **90 days before the nominal expiry date of an agreement**.

A bargaining order will come into operation the day it is made and will cease to operate when an agreement has been approved by Fair Work Australia or if Fair Work Australia revokes the order.

How do I apply to Fair Work Australia for a good faith bargaining order?

Applications for bargaining orders can only be made by a bargaining representative and are not available in relation to a proposed multi-enterprise agreement (except where Fair Work Australia has issued a low-paid authorisation).

Bargaining orders issued by Fair Work Australia will specify things such as:

- actions and requirements imposed on bargaining representatives to meet good faith bargaining requirements of the Fair Work Act 2009 (Section 228); and
- requirements imposed on bargaining representatives to not take action that would be capricious or unfair (Section 231).

'Application for a Bargaining Order' forms are available from www.fwa.gov.au or call the national Fair Work Australia Helpline on 1300 799 675

In what instances can I make an application for a majority support determination?

A bargaining representative of an employee can apply to Fair Work Australia if a majority of the employees who will be covered by a proposed enterprise agreement want to bargain with an employer. This is called a **majority support determination**. An application for a majority support determination must include the group of employees that will be covered by the proposed agreement. Fair Work Australia will decide how it will investigate whether a majority of employees want to bargain. This might be done through secret ballot, survey, written statements or a petition (Section 236-237 *Fair Work Act 2009*).

Fair Work Australia must also be satisfied that it is reasonable in all the circumstances to grant the determination.

'[Application for a Majority Support Determination](http://www.fwa.gov.au)' forms are available from www.fwa.gov.au or call the national Fair Work Australia Helpline on 1300 799 675

In what instance can I make an application for a scope order?

A bargaining representative can apply to Fair Work Australia for a **scope order** if they believe that bargaining for a proposed agreement is not proceeding fairly because the agreement does not cover an appropriate group of employees. A bargaining representative can only make a scope order application if they have given written notice to the appropriate bargaining representative of their concerns and have given the bargaining representative enough time to respond.

A scope order must specify the employer and the types or classes of employees that will be covered by the proposed agreement. The order may require an employer to include or exclude a class of employee in the proposed enterprise agreement. A scope order comes into operation the day it is made (Sections 238-239 *Fair Work Act 2009*).

'Application for a Scope Order' forms are available from www.fwa.gov.au or call the national Fair Work Australia Helpline on 1300 799 675

What can Fair Work Australia do if a good faith bargaining order is breached?

Where a bargaining representative believes another party has seriously breached the bargaining order they may apply for a **serious breach declaration** and Fair Work Australia may, in certain circumstances, make a **bargaining related workplace determination**.

Fair Work Australia may make a serious breach declaration if it is satisfied, among other things, that:

- ☑ a bargaining representative has contravened one or more bargaining orders;
- ☑ the contravention has been serious and sustained and significantly undermined bargaining;
- ☑ the other bargaining representatives have exhausted all reasonable alternatives to reach agreement; and
- ☑ no agreement will be reached in the foreseeable future.

Once Fair Work Australia has made a serious breach declaration, the bargaining representatives have a further 21 days to make an agreement (though Fair Work Australia can extend this if all of the bargaining representatives jointly agree for the extension).

If at the end of this 21-day post-declaration negotiating period the bargaining representatives have not settled all of the matters that were at issue during the bargaining for the agreement; Fair Work Australia must make a workplace determination.

'[Application for a Serious Breach Declaration](#)' forms are available from www.fwa.gov.au or call the national Fair Work Australia Helpline on 1300 799 675

Can Fair Work Australia deal with a bargaining dispute?

Fair Work Australia may deal with a bargaining dispute on the request of a bargaining representative for the proposed agreement.

Fair Work Australia may deal with the dispute by mediation, conciliation, making a recommendation or expressing an opinion. It may only arbitrate the dispute if the bargaining representatives have agreed to it doing so.

Industrial action

Fair Work Australia plays a role in ensuring that the bargaining process, and any associated industrial action, occurs according to law. Bargaining representatives of employees wishing to take industrial action to support their claims must first seek an order from Fair Work Australia for a protected action ballot authorising the industrial action.

Fair Work Australia has the power to suspend or terminate protected industrial action. Fair Work Australia may also make orders to stop or prevent unprotected industrial action. Such orders are enforceable in the courts.

Protected Action Ballots

A bargaining representative can apply to Fair Work Australia for an order to undertake a protected action ballot. The reason for a protected action ballot is to determine how many employees want to take industrial action for a new enterprise agreement.

Bargaining representatives can make joint orders for a protected action ballot, for example, two employee organisations that are bargaining representatives

can apply for a joint order from Fair Work Australia for a protected action ballot for a new enterprise agreement.

What information do I need to include when applying for a protected action ballot order?

When applying for an order for a protected action ballot from Fair Work Australia, a bargaining representative must include the following information:

- which employees are going to be balloted;
- the questions that the employees are going to be asked in the ballot;
- the date on which balloting will close;
- what type of industrial action is proposed;
- who will undertake the ballot (only if it is not the Australian Electoral Commission); and
- any further documentation that the regulations set out (Section 437 *Fair Work Act 2009*).

Note

A bargaining representative cannot make an order for a protected action ballot for a new greenfields or multi-enterprise agreement as protected industrial action cannot be taken when bargaining for those agreements.

After the bargaining representative has made an application to Fair Work Australia, they must inform the employer of the application within 24 hours. If this is done, Fair Work Australia will determine the application for a protected action ballot within two working days (Section 441 *Fair Work Act 2009*).

Fair Work Australia must make sure that applicants are, and have been, trying to reach genuine agreement before they grant a protected action order (Section 443).

After making a protected action ballot order, Fair Work Australia will provide a copy of the order to the applicant, the employer and the protected action ballot agent (Section 445 *Fair Work Act 2009*).

Can I apply to Fair Work Australia to vary a protected action ballot order?

An applicant can apply to Fair Work Australia to vary or revoke a protected action ballot order. A protected action ballot agent can apply to Fair Work Australia to change the closing date for a protected action ballot. The application to Fair Work Australia can be made any time before the ballot closes (Section 447 *Fair Work Act 2009*).

'[Application for a Protected Action Ballot Order](#)' forms are available from www.fwa.gov.au or call the national Fair Work Australia Helpline on 1300 799 675

Can I apply to Fair Work Australia for an order to stop protected industrial action?

Where protected action is causing or is threatening to cause significant harm to the Australian economy or part of it, or endangers the safety, health or welfare of the population or part of it, Fair Work Australia will be required to order the parties to stop taking industrial action. Fair Work Australia can make this order on its own initiative, by application of a bargaining representative or

by application from the Minister for Employment and Workplace Relations (Section 423 *Fair Work Act 2009*).

Fair Work Australia can make an industrial action related workplace determination if protected industrial action instrument has been terminated (such as an order to stop industrial action), or if the bargaining representatives for an agreement have not settled all of the matters that were at issue during bargaining for the agreement. Fair Work Australia can extend the post industrial action negotiating period if all of the bargaining representatives jointly apply to Fair Work Australia within 21 days after the termination of the industrial action instrument was made (Section 266 *Fair Work Act 2009*).

['Application for an Order to Suspend or Terminate Protected Industrial Action'](#) forms are available from www.fwa.gov.au or call the national Fair Work Australia Helpline on 1300 799 675

Can I apply to Fair Work Australia for an order to stop or prevent unprotected industrial action?

An order can be made by Fair Work Australia if unprotected industrial action is happening, threatened to happen or is likely to happen. Fair Work Australia can make the order on its own initiative or requested by a person affected by the industrial action or an organisation of which that person is a member (for example, a registered employer organisation).

The order will specify that the industrial action must stop, not occur or not be organised for a certain length of time known as the 'stop period'. This order can be also made if protected action is allowed as a result of a protected action ballot, however, the action occurs outside the time period specified in the protected action order (Section 418). Fair Work Australia can also make an order to stop industrial action being taken by non-national system employers (Section 419 *Fair Work Act 2009*).

Fair Work Australia must make these orders within a period of two working days. If Fair Work Australia cannot make an order within that period, they must make an interim order for the industrial action to stop, to not occur or to not be organised (Section 420 *Fair Work Act 2009*).

['Application for an Order to Stop or Terminate Prevent \(Unprotected\) Industrial Action'](#) forms are available from www.fwa.gov.au or call the national Fair Work Australia Helpline on 1300 799 675

Right of Entry

How can an official obtain a Right of Entry permit from Fair Work Australia?

An organisation can apply to Fair Work Australia for a right of entry permit for an official of the organisation. Fair Work Australia must be satisfied the official is a 'fit and proper' person before issuing them with an entry permit. Fair Work Australia must consider a range of matters to determine whether an official is 'fit and proper', including:

- what type of training the official has had;
- whether the official has ever convicted an offence under an industrial law; and

- ☑ whether the person has had to pay a penalty under any industrial law (Section 513 *Fair Work Act 2009*).

Fair Work Australia will also consider matters including those above when deciding whether to impose conditions on a right of entry permit.

Fair Work Australia can take action against a permit holder for misuse of rights of the permit. This could take the form of imposing conditions on the permit, suspending the permit or revoking the permit (Section 507 *Fair Work Act 2009*).

'[Application for an Entry Permit](#)' forms are available from www.fwa.gov.au or call the national Fair Work Australia Helpline on 1300 799 675

Can a permit holder access non-member records?

Where a permit holder has entered premises to investigate a suspected breach of the *Fair Work Act 2009* or an instrument made under it that relates to a member of the permit holder's union, the permit holder can inspect and copy documents relevant to that suspected breach. In general, this does not include documents relating to employees who are not members of the permit holder's union. However, documents relating to non-members can be inspected and copied by permit holders if the employee the document relates to agrees or Fair Work Australia makes an order allowing the permit holder to access and make copies of those documents. Fair Work Australia can make this order if it considers it necessary to investigate a suspected breach (Section 483 *Fair Work Act 2009*).

Can Fair Work Australia deal with a right of entry dispute?

Fair Work Australia can deal with a dispute on its own initiative or a permit holder, the organisation of a permit holder, an employer or an occupier of the premises can apply to Fair Work Australia to deal with a right of entry dispute (Section 505 *Fair Work Act 2009*).

Fair Work Australia can deal with the dispute by arbitration, including making orders for the following:

- ☑ imposing conditions on an entry permit;
- ☑ suspending an entry permit;
- ☑ revoking an entry permit; and
- ☑ about the future issuing of a permit to certain officials.

Transfer of Business

Fair Work Australia can make certain orders if there is, or is likely to be a transfer of business from an old employer to a new employer.

The types of orders that can be made include:

- ☑ that an old employer's workplace instrument will not transfer to the new employer at all, (there are separate orders for transferring or non-transferring employees); or
- ☑ to modify a transferring (old employer's) instrument so it can fit in with the operation of the new enterprise.

An application for an order can be made to Fair Work Australia by the new employer, a transferring employee, or an employee organisation covered by an enterprise agreement or an employer award.

There are certain factors that Fair Work Australia must consider when granting a transfer of business order including:

- ☑ the views of the new employer and transferring employees who would be affected by the order;
- ☑ whether the employees would be disadvantaged by the order in relation to their terms and conditions of employment; and
- ☑ what impact the transferring instrument would have on the productivity of the new employer's workplace.

A transfer of business order made by Fair Work Australia will not come into operation until the later date of:

- ☑ the time that the transferring employee becomes employed by the transferring employer, or
- ☑ the day on which the order was made (Sections 317-320 *Fair Work Act 2009*).

'[Application for Orders in relation to Transfer of Business](#)' forms are available from www.fwa.gov.au or call the national Fair Work Australia Helpline on 1300 799 675

Dismissals

Fair Work Australia deals with three main types of dismissal applications:

- unfair dismissal;
- dismissal where there has been a breach of the 'general protections'; or
- an unlawful termination application.

In general, an employee cannot pursue more than one type of dismissal application at the same time.

What is unfair dismissal?

A person has been unfairly dismissed if Fair Work Australia finds that:

- ☑ the employee was dismissed;
- ☑ the dismissal was harsh, unjust or unreasonable;
- ☑ the dismissal was not a case of genuine redundancy, and
- ☑ the dismissal was not consistent with the Small Business Fair Dismissal Code, where the employee was employed by a small business.

Note: Unfair dismissal applications involving dismissals taking place before 1 July 2009 are covered by provisions of the *Workplace Relations Act*.

Who can make an unfair dismissal application to Fair Work Australia?

To make an unfair dismissal application an employee must be:

- ☑ covered by the national workplace relations system, and

- ☑ eligible to apply.

To be **eligible to apply** an employee must, amongst other things, have:

- ☑ completed a minimum employment period of at least six months (one year in the case of a small business employee), and
- ☑ be covered by an award (or award-based transitional instrument) or agreement (or agreement-based transitional instrument) if they earn more than \$108,300 a year.

When can I make an unfair dismissal application to Fair Work Australia?

If a person believes their dismissal was harsh, unjust or unreasonable they can make an unfair dismissal application to Fair Work Australia. **A person needs to make an application to Fair Work Australia within 14 days of their dismissal**, however, Fair Work Australia can extend this period at its discretion.

Fair Work Australia will decide on certain matters, such as whether the person is protected from unfair dismissal and whether the application was made within the 14-day time limit before considering the merits of an unfair dismissal application (Section 396 *Fair Work Act 2009*).

'[Application for an Unfair Dismissal Remedy](#)' forms are available from www.fwa.gov.au or call the national Fair Work Australia Helpline on 1300 799 675

How will Fair Work Australia deal with an unfair dismissal case?

If there are contested facts in an unfair dismissal case, Fair Work Australia will hold a conference or a hearing in relation to the matter. Conferences will be informal and will be held in private. Fair Work Australia conferences will be the preferred method of dealing with an unfair dismissal application.

Fair Work Australia hearings will only be held when Fair Work Australia considers it appropriate for both parties. Hearings will be held in public.

Unfair dismissal applicants are required to pay a \$59.50 application fee or any fees at the time of making their application, such as an application fee. The Regulations prescribe a method for indexing the fee annually and the circumstances in which all or part of the fee may be waived or refunded (Section 395 *Fair Work Act 2009*).

What are general protections?

The general protections provisions of the *Fair Work Act 2009* (the Act) aim to protect workplace rights and freedom of association and to provide protection from workplace discrimination.

The general protections provisions protect people from '**adverse action**'. This is a key definition that intersects with a number of the protections. What constitutes adverse action in a particular case depends on the nature of the relationship between the relevant persons. For example, adverse action taken by an employer against an employee includes dismissal, discrimination, refusing to employ a person, or prejudicially altering the position of the person. The definition covers certain conduct of employers, employees, industrial associations, independent contractors and principals. It also extends to protect prospective employees from adverse action in certain circumstances (Section 342 *Fair Work Act 2009*).

A person (such as an employer) must not take any adverse action against another person (such as an employee) because the other person has a workplace right, has exercised a workplace right, or proposes to exercise such a right. 'Workplace rights' has a broad meaning. For example, a person has a workplace right if he or she has an entitlement under an award or agreement or a workplace law, is able to initiate a proceeding under a workplace law or is able to make a complaint or inquiry in relation to their employment.

An employer must not take any adverse action against an employee (or prospective employee) because of his or her race, colour, sex, sexual preference, age, physical or mental disability, marital status, family or carer's responsibilities, pregnancy, religion, political opinion, national extraction or social origin.

In addition, an employer must not dismiss an employee because the employee is temporarily absent from work because of illness or injury.

What is a General Protections dismissal?

If a person believes they have been dismissed and allege that their dismissal was in contravention of the general protections provisions of the *Fair Work Act 2009*, they can apply to Fair Work Australia to deal with the dismissal.

Fair Work Australia must convene a private conference in an attempt to deal with the dispute. Fair Work Australia may deal with the dismissal by mediation or conciliation, or by making a recommendation or expressing an opinion.

If the dismissal remains unresolved Fair Work Australia must issue a certificate. The applicant can then make an application to a court to deal with the matter. This must occur within 14 days of the certificate being issued. If Fair Work Australia considers that such an application would not have a reasonable prospect of success, it must advise the parties accordingly.

A general protections dismissal application must be lodged **within 60 days of the dismissal** taking effect and there is a fee of \$59.50 to make the application.

'[Application for FWA to deal with a General Protections Dispute](#)' forms are available from www.fwa.gov.au or call the national Fair Work Australia Helpline on 1300 799 675

Fair Work Australia can also deal with unlawful termination claims (Division 2 of Part 6-4 *Fair Work Act 2009*). The unlawful termination protections in Section 772 broadly reproduce the unlawful termination grounds in the now repealed subsection 659(2) of the *Workplace Relations Act 1996*.

The unlawful termination protections apply to all employees in Australia. However, a person can only make an unlawful termination claim if he or she is unable to make a general protections claim.

Contacting Fair Work Australia:

You can contact Fair Work Australia through the following:

- **Online:** Live online help is available. Go to the [Talk to us online link](#) on the www.fwa.gov.au website
- **Email:** Inquiries can be emailed to inquiries@fwa.gov.au

- **Telephone:** The national Fair Work Australia Help Line number is **1300 799 675**
- **Post:** You can write at: Fair Work Australia, GPO Box 1994, Melbourne VIC 3001
- **In person:** Visit the Fair Work Australia office in your capital city refer to www.fwa.gov.au

Fair Work Ombudsman

The Fair Work Ombudsman commenced operation on 1 July 2009.

What is the role of the Fair Work Ombudsman?

The role of the Fair Work Ombudsman is to promote harmonious, productive and cooperative workplaces and where necessary, compliance with workplace relations laws. The Fair Work Ombudsman will also provide information and advice on Commonwealth workplace laws to employees, employers, outworkers, outworker entities and organisations.

Which bodies does it replace and from what date?

The Fair Work Ombudsman will replace the following bodies:

- Workplace Ombudsman (1 July 2009); and
- the general advisory functions, including the Workplace Info Line from the Workplace Authority (1 July 2009).

What are the functions of the Fair Work Ombudsman?

The functions of the Fair Work Ombudsman are to:

- promote harmonious, productive and cooperative workplace relations;
- promote and monitor compliance with the *Fair Work Act 2009* ;
- provide education and assistance to employees, employers, outworkers, outworker entities and organisations;
- inquire into and investigate any act or practice that contravenes the *Fair Work Act 2009*, a Fair Work Workplace Instrument or safety net entitlements;
- commence proceedings in a court or to make an application to Fair Work Australia to enforce the *Fair Work Act 2009*, a workplace instrument or safety net entitlements; and
- represent employees or outworkers who are involved in a matter before Fair Work Australia that the Fair Work Ombudsman considers need representation.

When should employees ask the Fair Work Ombudsman for help?

To check that you are getting the correct pay, conditions and workplace rights, call the Fair Work Infoline on 13 13 94.

You can also make a complaint to the Fair Work Ombudsman if you think your employer (or prospective employer) is unlawfully discriminating against you.

What is a Fair Work Inspector and what is their role?

The Fair Work Ombudsman appoints Fair Work Inspectors 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 are government officials appointed by the Fair Work Ombudsman.

Their job is to:

- carry out targeted education campaigns;
- conduct compliance audits;
- investigate workplace complaints;
- investigate suspected contraventions of workplace laws; and
- take steps to enforce workplace laws through the court system (where necessary).

Fair Work Inspectors will have strong and effective investigative powers, including the power to inspect and copy documents and records on an employer's premises. Inspectors will be able to investigate and enforce breaches of contracts or the National Employment Standards on behalf of an employee, where they are investigating or enforcing the National Employment Standards, a modern award, enterprise agreement, workplace determination, or minimum wages order or equal remuneration order.

What powers will Fair Work Inspectors have?

Fair Work Inspectors have the power to:

- enter a workplace to investigate a suspected breach;
- inspect any work, process or object or interview any person while on premises;
- inspect, and then copy or keep, any record or document kept on premises (including computer files);
- take samples of goods or substances kept on premises;
- take an assistant on premises, where appropriate;
- require people to provide their name and addresses, and if suspected to be false, proof of that these details are correct; and
- give notice (in writing) to a person to provide certain records or documents (Sections 707-714 *Fair Work Act 2009*).

What is an Identity Card?

Fair Work Inspectors must carry an identity card at all times when performing their functions or exercising their powers as Fair Work Inspectors. Identity cards will be the same for all inspectors and will have the inspectors photographs printed on them. When entering a workplace premises, a Fair Work Inspector must show his or her identity card to the occupier as soon as practicable (Sections 702 and 708 *Fair Work Act 2009*).

What restrictions do Fair Work Inspectors have?

A Fair Work Inspector cannot:

- enter residential premises of a property unless they reasonably believe that work is being performed on a residential part of the property;
- enter a workplace by force; or
- inspect documents, such as personal documents, for any purpose other than compliance or as conferred by other legislation.

What are the new anti-discrimination powers of Fair Work Inspectors?

If a person believes they have been discriminated against in relation to employment, they may be able to lodge a complaint with the Fair Work Ombudsman.

Fair Work Inspectors will undertake a number of activities to address discrimination including complaint handling, provision of information, targeted compliance activities and education.

When investigating discrimination complaints, Fair Work Inspectors will consider:

- whether the discrimination occurred (or continues) on or after 1 July 2009;
- whether the employer is covered by the *Fair Work Act 2009*;
- whether the complaint is lodged by an individual or a group;
- the grounds of discrimination;
- the nature of the adverse action; and
- the nature of the written and verbal evidence that they gather.

Can a Fair Work Inspector bring someone else to the workplace?

A Fair Work Inspector can take an assistant to a workplace to assist the inspector in the performance of his or her investigation without the authorisation of the occupier. For example, an assistant could be a translator, forensic accountant or IT specialist. An assistant may only accompany an inspector if the Fair Work Ombudsman considers it necessary and appropriate and that the assistant has suitable qualifications and experience. The assistant will work under the direction of the Fair Work Inspector (Section 710 *Fair Work Act 2009*).

What is the effect of a compliance notice from a Fair Work Inspector?

A Fair Work Inspector can issue a compliance notice to a person if the inspector reasonably believes that person has contravened one or more of the following:

- a provision of the National Employment Standards
- a term of a modern award
- a term of an enterprise agreement
- a term of a workplace determination
- a term of a national minimum wage order
- a term of an equal remuneration order.

A compliance notice issued by a Fair Work Inspector will give a person notice to take certain action to remedy the direct effects of their specific contravention and to provide evidence of that action. The notice will specify a time period in which this is to happen.

Reviewing a compliance notice

A person who has been given a compliance notice can apply to the Federal Magistrates Court, Federal Court or an eligible State or Territory Court to review a compliance notice on the grounds that:

- the person did not commit the contravention set out in the compliance notice, or

- ☑ the notice did not contain all the information required (for example, it does not provide details of the contravention, the action that should be taken and the relevant time periods).

The court can confirm, cancel or vary the notice after reviewing it.

What does the Fair Work Infoline do?

The Fair Work Infoline provides advice and assistance to employers, employees and other bodies on:

- ☑ rights and entitlements under the federal workplace relations system
- ☑ pay and conditions for employees in the federal workplace relations system
- ☑ workplace Inspections and the complaints process
- ☑ anti-discrimination entitlements under the *Fair Work Act 2009*.
- ☑ referrals to other agencies for specific workplace relations help.

Contacting the Fair Work Ombudsman:

Fair Work Online: www.fairwork.gov.au

Fair Work Infoline: 13 13 94

Monday to Friday, between 8.00am–6.00pm.

Need language help?

Contact the Translating and Interpreting Service (TIS) on 13 14 50.

Hearing & speech impairment

Call through the National Relay Service (NRS):

- For TTY: 13 36 77
Ask for the Fair Work Infoline 13 13 94.
- Speak & Listen: 1300 555 727
Ask for the Fair Work Infoline 13 13 94.