

# Fair Work | Comparison Table

## Comparison of WorkChoices and Fair Work

Subject	WorkChoices	Fair Work
Federal system	Introduced the Federal system	The Federal system is retained
Institutions	<ul style="list-style-type: none"> <li>▪ Federal Court of Australia</li> <li>▪ Federal Magistrates Court</li> <li>▪ Australian Industrial Relations Commission</li> <li>▪ Australian Fair Pay Commission</li> <li>▪ Australian Fair Pay Commission Secretariat</li> <li>▪ Australian Industrial Registry</li> <li>▪ Workplace Authority</li> <li>▪ Australian Building and Construction Commission</li> <li>▪ Workplace Ombudsman</li> </ul>	<ul style="list-style-type: none"> <li>▪ Federal Court of Australia (new Fair Work Divisions)</li> <li>▪ Federal Magistrates Court (new Fair Work Divisions)</li> <li>▪ Fair Work Australia as the new umpire to oversee the new workplace relations system</li> <li>▪ Fair Work Ombudsman</li> </ul>
Awards	Awards were intended to be rationalised but the process did not commence	<p>Award modernisation in process</p> <p>New modern awards will commence operation on 1 January 2010</p>
Agreement making	<p>Focus on individual agreement making in the form of Australian Workplace Agreements (AWAs)</p> <p>Fairness Test is the basis of agreements to be assessed</p>	<p>Abolished AWAs but as a means of phasing out the AWA arrangements, Individual Transitional Employment Arrangements (ITEAs) can be used until 31 December 2009</p> <p>Focus on collective bargaining at the enterprise level (enterprise agreements) and general obligation to bargain in <i>good faith</i></p> <p>Replaced the Fairness Test by the No Disadvantage Test and from 1 January 2010 Fair Work Australia will apply the Better Off Overall Test (BOOT)</p>
Minimum employment standards	Australian Fair Pay and Conditions Standard	10 National Employment Standards (NES) will apply from 1 January 2010



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Unfair dismissal	Exclusions such as 100 rule	100 rule abolished  Exemption for small business employers (less than 15 employees) who comply with the Small Business Fair Dismissal Code
Redundancy	No provision for redundancy	National Standard for redundancy including a statutory entitlement to redundancy pay will apply from 1 January 2010
Industrial action	Distinction between protected and unprotected action	Distinction between protected and unprotected action retained, protected action requiring the action to be in support of an enterprise agreement, pursuant to a secret ballot and in accordance with a prescribed notice  Circumstances where industrial action can be terminated by compulsion have increased  Changes concerning “strike pay”
Right of entry	Restrictions on the rights of unions to enter employers’ premises	Union rights to enter workplaces have slightly expanded  Unions are able to inspect a wider range of documents
General protections	Protection provisions were scattered throughout the <i>Workplace Relations Act 1996</i>	Protection provisions were consolidated and streamlined into one part of the <i>Fair Work Act 2009</i>  Broad generally applicable and therefore expanded protections



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<p>Transmission or transfer of business</p>	<p>'Transmission of business' occurred where a new employer became a successor, transmittee or assignee to the whole or part of a business</p> <p>Any award, collective or individual workplace agreement which transmitted to a new employer applied only for a maximum period of 12 months.</p>	<p>New definition of 'transfer of business' resulting in broader protection for employees' terms, conditions and entitlements</p> <p>Industrial instruments of the previous employer apply to the transferring employees and any new employees who are performing the transferring work and who are not covered by an industrial instrument until they are terminated or replaced</p>
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Sourced from Australian Human Resources Institute (2009), Professional Diploma of Human Resources, Topic 4, Employment Relations.

[Professional Diploma of Human Resources](#)



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