



# Fair Work Act Guide

# **Contents**

<b>Introduction .....</b>	<b>10</b>
<b>Section One .....</b>	
The National Employment Standards .....	12
Interaction with Modern Awards and Enterprise Agreements .....	13
Maximum Weekly Hours of Work.....	13
Request for Flexible Working Arrangements.....	14
Offers and requests for casual conversion.....	19
Parental Leave and Related Entitlements.....	20
Annual Leave .....	28
Personal/Carer's Leave, Compassionate Leave and Family and Domestic Violence Leave .....	31
Community Service Leave .....	38
Long Service Leave.....	40
Public Holidays.....	41
Notice of Termination and Redundancy Pay .....	44
Fair Work Information Statement.....	51
Casual Employment Information Statement .....	52
Sec 125B of the FW Act Superannuation .....	52
Miscellaneous.....	53
<b>Section Two .....</b>	
<b>Modern Awards.....</b>	<b>55</b>
Application.....	55
Coverage.....	55
What Terms May be Included in Modern Awards? .....	56
What Terms Must be Included in Modern Awards?.....	58
What Terms Must Not be Included in Modern Awards?.....	60
Four Yearly Reviews of Modern Awards .....	62
Exercising Modern Award Powers Outside 4 Yearly Reviews and Annual Wage Review .....	63
General Provisions Relating to Modern Award Powers.....	64
<b>Section Three .....</b>	
<b>Enterprise Agreements – What are They and Why Make Them? .....</b>	<b>67</b>

What Is Enterprise Bargaining?.....	67
Why Do Employers and Employees Make Agreements? .....	67
What Are the Benefits of Agreements? .....	67
What Are the Potential Problems with Agreements?.....	68
Types of Workplace Agreements.....	68
Who Can Enter into Agreements .....	70
Effect and Operation of Enterprise Agreements.....	70
Content of Workplace Agreements .....	73
Procedure for Making Enterprise Agreements.....	78
Good Faith Bargaining.....	80
Voting Process and Requirements .....	81
Approval Process .....	84
Role of the Fair Work Commission in Bargaining.....	88
Industrial Action.....	92
Operation of Agreements Made Before 1 July 2009 .....	94
<b>Section Four.....</b>	
<b>Federal Minimum Wages .....</b>	<b>98</b>
Introduction.....	98
Determination of Minimum Wages.....	98
Date of Effect of Changes to Minimum Wages.....	99
Equal Remuneration.....	99
Regulated Labour Hire Arrangement Orders .....	100
Payment of Wages .....	101
Method of Payment .....	101
Frequency of Payments.....	103
Authorised Deductions.....	103
Certain Terms have No Effect .....	104
What is a "High Income" Employee?.....	107
What Forms a "Guaranteed Period"?.....	108
What Comprises "Earnings"?.....	108
What Benefits are Not to be Included in "Earnings"?.....	108
An Employer's Obligations in Relation to a Guarantee .....	110
<b>Section Five .....</b>	



<b>Transfer of Business.....</b>	<b>113</b>
When is there a Transfer of Business?.....	113
Meaning of 'Associated Entity' .....	113
Meaning of 'Transfer of Business'.....	114
Meaning of 'Connection' Between Old and New Employer.....	114
Industrial Instrument Coverage on Transfer .....	115
What is a 'Flexibility Arrangement'?.....	116
Non-transferring Employees may be Covered by Transferring Instruments .....	117
Continuity of Transferable Instrument .....	117
Transferring High Income Employees.....	117
Preserved Redundancy Provisions.....	118
Fair Work Commission Orders.....	119
Variation of Transferable Instruments.....	119
Considerations for the Fair Work Commission .....	120
When a Fair Work Commission Order Comes into Operation.....	120
Continuity of Service and Leave Entitlements .....	121
Transfer between Non-associated Entities .....	121
Transfer between Associated Entities .....	122
Other Situation where Service Not Counted .....	123
Parental Leave.....	123
Written Notice – Obligations.....	123
Written Notice May Protect Against Unfair Dismissal.....	123
Fair Work Information Statement.....	124
General Protections.....	125
Record Keeping Requirements .....	125
<b>Section Six.....</b>	
<b>General Protections .....</b>	<b>128</b>
Workplace Rights .....	129
Adverse Action .....	131
Industrial Activities.....	132
Other Protections .....	135
Age Discrimination.....	136
Sham Arrangements.....	139

Reverse Onus of Proof.....	140
Rebutting the Presumption.....	140
Ancillary Rules .....	141
Compliance.....	141
Workplace Bullying and Sexual Harassment.....	142
Anti-bullying and Sexual Harassment Measures .....	142
When is a Worker Bullied at Work? .....	143
When is a Worker Sexually Harassed at Work? .....	143
Harassment on the ground of Sex .....	145
What Does 'At Work' Mean? .....	145
What is the Process?.....	146
Orders and Remedies.....	147
<b>Section Seven .....</b>	
<b>Termination of Employment .....</b>	<b>150</b>
Notice of Termination by Employers: Written Notice .....	150
Notice Periods .....	150
Payment in Lieu of Notice .....	151
Exclusions .....	151
Notice of Termination by Employees .....	151
Redundancy Pay.....	153
Quantification of Redundancy Payments .....	153
Variation in the Amount of Redundancy Payments.....	154
Exclusions from the Obligation to Pay Redundancy .....	155
Definition of Small Business .....	156
Transfer of Employment .....	156
Limits on the Scope of this Division .....	156
Unfair Dismissal .....	156
Objectives of the Fair Work Act.....	156
Protection from Unfair Dismissal .....	157
Meaning of the Minimum Employment Period .....	157
Period of Employment.....	158
What is an Unfair Dismissal?.....	158
The Meaning of 'Dismissed'.....	159

Determining Whether the Dismissal was Harsh, Unjust or Unreasonable.....	162
The Small Business Fair Dismissal Code .....	163
Summary Dismissal .....	165
The Meaning of Genuine Redundancy.....	165
Remedies .....	166
Remedies for Unfair Dismissal .....	166
The Remedy of Reinstatement .....	166
The Remedy of Compensation .....	167
Misconduct .....	167
Shock and Distress.....	167
Procedural Matters .....	168
Application for Unfair Dismissal Remedy .....	168
Application Fees .....	168
Conferences and Hearings.....	169
Dismissing Applications.....	169
Appeals .....	169
Cost Orders Against Parties .....	169
Cost Orders Against Solicitors and Paid Agents .....	170
Notifications of Redundancy.....	170
Centrelink .....	170
Union Notification.....	171
Exemptions.....	172
<b>Section Eight.....</b>	
<b>Industrial Action .....</b>	<b>174</b>
Overview .....	174
What is Industrial Action? .....	174
Protected Industrial Action .....	175
Unprotected Industrial Action .....	176
Employer Responses to Unprotected Industrial Action .....	176
Orders from the Fair Work Commission – Stop Industrial Action .....	176
Employer Responses to Protected Industrial Action .....	177
Federal Court - Injunctive Relief.....	179
Actions in Tort .....	180



Payment in Relation to Periods of Industrial Action .....	180
Protected Action.....	180
Pecuniary Penalties for Non-Compliance with Industrial Action Payment Provisions .....	181
Workplace Rights in Relation to Protected Industrial Action .....	182
Dispute Resolution and Consultation .....	183
Stand Down .....	184
Overview.....	184
Fair Work Act .....	184
<b>Section Nine .....</b>	
<b>Right of Entry for Unions to a Workplace.....</b>	<b>187</b>
What Is Right of Entry?.....	187
Glossary of Terms .....	187
Provisions for Employers Covered Under Fair Work Act.....	188
Applying for a Right of Entry Permit.....	188
Entry to Investigate Suspected Breaches.....	189
Notice of Entry to the Premises to Investigate a Breach .....	189
Access to Records .....	190
Access to Non Member Records.....	190
Entry to Hold Discussions with Employees.....	191
Notice of Entry to the Premises to Hold Discussions .....	191
Entry for Work Health and Safety Purposes.....	192
General Overview .....	192
Limitations.....	193
Conduct Whilst On Site – General Overview.....	194
Abuse of Right of Entry.....	194
Accommodation and Transport Arrangements in Remote Locations .....	196
Information Obtained after the Inspection .....	198
<b>Section Ten .....</b>	
<b>Record Keeping and Payslips .....</b>	<b>200</b>
Record Keeping .....	200
Responsibilities in Relation to Records .....	203
Access to Employment Records.....	204

Payslips .....	204
<b>Section Eleven .....</b>	
<b>Sex Discrimination and Fair Work (Respect at Work) Amendment Act 2021 .....</b>	<b>208</b>
<b>Schedule of Rates .....</b>	<b>209</b>
<b>Appendix: Upcoming Fair Work Act Amendments .....</b>	<b>210</b>