



## More information

Workplace Infoline 1300 363 264

### In this edition:

- Workplace Ombudsman and Workplace Authority: getting on with the job
- Introducing the Workplace Ombudsman, Nicholas Wilson and the Director of the Workplace Authority, Barbara Bennett
- The new Workplace Relations Campaign
- The Workplace Relations Fact Sheet
- The Fairness Test

## Workplace Ombudsman and Workplace Authority: getting on with the job

Important changes to Australia's workplace relations system came into effect on 1 July 2007. The system has a set of rules and obligations that all employers are required, by law, to comply with.

Two new agencies, the Workplace Ombudsman and the Workplace Authority, also began operations on 1 July, to ensure the rights of employers and employees are protected.

The Workplace Ombudsman, previously known as the Office of Workplace Services, ensures the protection and enforcement of the rights of workers and employers under Commonwealth workplace relations laws.

The Workplace Ombudsman actively promotes voluntary compliance through education to ensure that employers comply with their legal obligations. In some cases where this cannot be achieved the Workplace Ombudsman can and will seek to prosecute employers who break the law.

The Workplace Authority is a newly established agency that takes on functions that were previously performed by the Office of the Employment Advocate and the Department of Employment and Workplace Relations.

The Workplace Authority provides advice, assistance, information and education to all employees and employers under Australia's workplace relations system, including workplace agreements.

It also administers the new Fairness Test which guarantees that protected award conditions, such as penalty rates and public holiday pay are not traded off without fair compensation. If an agreement doesn't pass the Fairness Test, it will need to be changed so that it is fair and the employer will have to make up any back pay. Mr Nicholas Wilson has been appointed as the new Workplace Ombudsman and Ms Barbara Bennett has been appointed as the Director of the new Workplace Authority.

## Biographies



### Nicholas Wilson-Workplace Ombudsman

Mr Wilson was appointed Australia's first Workplace Ombudsman on 1 July 2007 for a period of five years.

Prior to his appointment, he was Director of the Commonwealth Office of Workplace Services from its inception. In that role, he oversaw significant achievements including enhancement of the scope and capacity of investigations into breaches of workplace law and a successful program of litigation to recover worker entitlements and defend their rights.

As Workplace Ombudsman Mr Wilson brings the benefit of over 20 years practical experience in workplace relations and industrial matters including as Registrar and Chief Executive of the Australian Industrial Registry - the



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body that facilitates Australia's workplace relations system through its administrative support of the Australian Industrial Relations Commission.

Mr Wilson, his Office and Inspectors will ensure the rights and obligations of workers and employers are understood and enforced fairly.

'In just over one year, the Office of Workplace Services recovered over \$14 million for more than 10 000 employees across Australia. Moving forward as the Workplace Ombudsman we intend to build on these significant achievements to ensure that workplace rights across Australia are well-protected,' Mr Wilson said.

For more information contact the Workplace Ombudsman Help Line 1300 724 200 or visit [www.wo.gov.au](http://www.wo.gov.au).



#### Barbara Bennett-Director, Workplace Authority

Ms Bennett was appointed to head the Workplace Authority in July 2007 for a five-year term.

From 2005 to June 2007, Ms Bennett was the Chief Executive Officer of Comcare. Before 2005, Ms Bennett held several senior executive positions in the Department of Employment and Workplace Relations.

'I am establishing the Workplace Authority as the central point of contact for independent advice and practical help on agreement making and workplace relations.

'The Workplace Authority's role in applying the Fairness Test, provides us with a unique opportunity to engage with both employers and employees to educate and inform. We are committed to transparency and working honestly with employers and employees to give them confidence that they are getting a fair deal from their agreements,' Ms Bennett said.

For more information, please call the Workplace Infoline on 1300 363 264 or visit [www.workplaceauthority.gov.au](http://www.workplaceauthority.gov.au).

## New Workplace Relations Campaign

A second phase of the workplace relations system information campaign has begun, following on from an initial phase that commenced on 20 May 2007.

The information campaign informs Australian employees and employers how the workplace relations system affects them and where they can go if they need more information. It introduces the head of the Workplace Authority, Barbara Bennett, and outlines the role of the Workplace Ombudsman. The advertising also further explains the Fairness Test and explains to employers their obligation to provide the Workplace Relations Fact Sheet to employees.

To view recent workplace relations system advertisements, please visit [www.workplace.gov.au](http://www.workplace.gov.au) or for workplace relations information contact the Workplace Infoline on 1300 363 264.



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## Important information for employees and employers

All employees in the federal workplace relations system are to receive a **Workplace Relations Fact Sheet** to assist them in better understanding the workplace relations system, their entitlements, protections and where to go for information and advice.

**As of 20 July 2007 it is a legal requirement that all employers in the federal workplace relations system provide the Workplace Relations Fact Sheet to their employees.**

All businesses in Australia will receive a copy of the Workplace Relations Fact Sheet and a letter explaining employers' obligations from the Workplace Authority. Additional printed copies of the Fact Sheet can be obtained from the Workplace Authority or downloaded from the Workplace Authority website, [www.workplaceauthority.gov.au](http://www.workplaceauthority.gov.au).

Existing employees need to be given the Workplace Relations Fact Sheet before 20 October 2007. For new employees, the Workplace Relations Fact Sheet must now be provided within seven days of them starting work. This can be done in a number of ways, including by providing a hard copy of the fact sheet to each employee or emailing a copy or link of the fact sheet to the employee.

The Workplace Relations Fact Sheet provides simple, straight-forward information about the workplace relations system. If more detailed information is required, employers or employees can contact the Workplace Infoline on 1300 363 264 or visit [www.workplace.gov.au](http://www.workplace.gov.au).

By providing this basic factual information, each of your employees will know where they stand - meaning everyone can get on with business.

## The Fairness Test

The Australian Government has introduced a Fairness Test that will ensure that workplace agreements provide fair compensation if protected award conditions are removed or changed.

- If you are currently making a workplace agreement, you need to be aware of the Fairness Test.

The Fairness Test applies to new workplace agreements (and variations to existing workplace agreements) lodged with the Workplace Authority from 7 May 2007 where the employee(s) covered by the agreement:

- perform the kind of work specified in a Federal award that binds the employer; or
- work in industries or jobs usually covered by a Federal award; or
- were subject to a Notional Agreement Preserving a State Award (NAPSA) or Preserved State Agreement (PSA) immediately before the workplace agreement commenced; or



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- work in industries or jobs usually covered (prior to 27 March 2006) by a State award; and
- the agreement modifies or excludes protected award conditions (or protected notional or preserved conditions, in the case of NAPSAs or PSAs).

The Fairness Test applies to both Australian workplace agreements (AWAs) and collective agreements, but does not apply to AWAs covering employees with full-time (or full-time equivalent) base salaries of more than \$75,000 per annum.

Protected conditions are terms derived from federal awards, NAPSAs or State awards (in the case of PSAs) that relate to:

- penalty rates
- shift and overtime loadings
- monetary allowances
- annual leave loadings
- public holidays
- rest breaks
- incentive-based payments and bonuses.

For a workplace agreement to pass the Fairness Test, the Workplace Authority must be satisfied that the agreement provides fair compensation for any protected conditions that have been changed or removed.

- In deciding whether fair compensation has been provided, the Workplace Authority will consider the value of any monetary and non-monetary compensation, as well as the work obligations of the employee (for example, hours of work).
  - 'Non-monetary compensation' means compensation that has a money equivalent, and confers a benefit or advantage that is of significant value to the employee.
- An employee's personal circumstances (including family responsibilities) may also be taken into account. In exceptional circumstances (and where it is not contrary to the public interest) the Workplace Authority can consider the employer's industry, location or economic situation.

If an agreement does not pass the Fairness Test, the employer will have 14 days to either vary the agreement in the normal way, or provide a written undertaking to do so. If no action is taken (or if the varied agreement does not pass the Test), the agreement will cease to operate and the parties will be covered by the arrangements that would otherwise have applied, but for the agreement.

If an agreement does not pass the Fairness Test, an employee is entitled to compensation for any shortfall arising during the Fairness Test period, which is from the date of lodgement to the date that the agreement does not pass the Fairness Test.

Where an agreement fails the Fairness Test and an employer fails to compensate the employee(s), the Workplace Ombudsman will be able to seek to recover any shortfall in payments on behalf of affected employees.



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Back pay for conditions such as penalty rates will be payable from the date the agreement was lodged.

If you need further information about the Fairness Test, call the Workplace Infoline on 1300 363 264 or visit [www.workplace.gov.au](http://www.workplace.gov.au).

**Whether you're an employee or employer, there's one place you can go for information, help and advice. Call the Workplace Infoline on **1300 363 264** or alternatively visit the Workplace website at [workplace.gov.au](http://workplace.gov.au).**

The workplace  
relations system  
**Know where  
you stand.**