

## Awards

### Introduction

Awards provide minimum terms and conditions that an employer must provide employees if an award covers employment at a particular workplace.

Historically, an award was a formal document created by the Australian Industrial Relations Commission as a result of a dispute between employers and employees (usually trade unions on behalf of employees) about pay and conditions of work.

Awards are binding and penalties can be imposed for employers who breach any terms of an award. Employers who are in breach of award conditions are also liable to pay back-pay to employees.

### Who is covered by an award?

#### Respondents – history

Federal awards have traditionally applied only to 'respondents' to these awards. The word 'respondent' comes from the time when the award was created and the union which wanted to create the award served a 'log of claims' (a list of employment conditions and entitlements) on businesses which they wanted to comply with the award.

The respondents were the businesses which 'responded' to the log of claims and became a party to the proceedings in the Industrial Relations Commission. When the award was made their names will have been entered in one of the schedules to the award as 'respondents'.

Respondents may be individual 'named respondents' which means their property or business name is actually listed in the award. Respondents may also be 'association respondents'. This means that the business is a member of an organisation which has been named as a respondent to the award in the same way as an individual named respondent.

The federal Pastoral Industry Award 1998 had a number of association respondents which were related to the state farming organisations. For example in Western Australia, the WAFF Industrial Association was a named association respondent.

Farmers who are members of these organisations were automatically respondents to the federal Pastoral Industry Award 1998 and were bound by its terms while they remained members.

Named respondentcy to an award flowed with the property when it was sold or transferred while respondentcy as part of an association depended on the person retaining their membership of the association.

#### Federal awards – history

The WorkChoices laws created two categories of federal awards (e.g. the Pastoral Industry Award 1998), pre-reform awards and transitional awards.

Pre reform awards applied to national system employers and transitional awards applied to non-national system employers.

In all states except Western Australia this distinction is no longer relevant because all private sector employers in all states and territories except Western Australia are now part of the federal industrial relations system.

Under the WorkChoices laws, some state awards were called Notional Agreements Preserving State Awards or NAPSAs. These awards were state awards which applied to employers who were national system employers because they ran their businesses as companies. These awards no longer apply and the Pastoral Award 2010 applies in their place.

The Fair Work Act created awards called Division 2B Awards. These awards were state awards which applied to sole traders and partnerships as at 1 January 2010. As of 1 February 2011 all Division 2B Awards ceased to apply and the Pastoral Award 2010 applies in their place.

### **Modern Awards**

In 2010, all federal awards in Australia, were modernised into industry based awards which apply to all national system employers. In the farming industry about 40 awards were taken into account in forming the modern Pastoral Award 2010 and the Horticulture Award 2010.

As of 1 January 2010, pre- reform awards and NAPSAs have been absorbed into the modern Pastoral Award 2010.

This award applies to all national system employers regardless of their residency in the past and regardless of whether they have been award free (such as the dairy industry in Queensland) in the past.

However, there are special rules about when that award began to apply to you which depend on your business structure and award coverage as at 1 January 2010.

If your business was run by a company or a trust with a company as trustee as at 1 January 2010, the Pastoral Award 2010 applies to you as of that date regardless of which award covered you before then and regardless of whether you were award free.

If your businesses is run by a sole trader, a partnership or trust which does not have a company trustee and was award free as at 1 January 2010 the Pastoral Award 2010 will apply to you as of that date.

If your businesses is run by a sole trader, a partnership or trust which does not have a company trustee and if your business was covered by a state award and employed employees under that award as of 1 January 2010, the state award continued to apply for a 12-month transitional period. After that time the modern Pastoral Award 2010 applies.

If your businesses is run by a sole trader, a partnership or trust which does not have a company trustee and if your business was covered by the federal Pastoral Industry Award 1998 as a transitional employer as at 1 January 2010, you are bound by the modern Pastoral Award 2010 as of 1 January 2010.

Importantly for dairy farmers, the modern Pastoral Award 2010 retains the hours of work terms of the current Pastoral Industry Award 1998 which allow for 152 hours to be worked by full time and casual employees over 4 consecutive weeks before overtime is payable.

### **Transitional awards in WA**

Non-national system employers in WA who were bound by a federal award in March 2006 were able to rely on that federal transitional award (the Pastoral Industry Award 1998) until March 2011.

As of 26 March 2011 these employers are no longer able to use the federal transitional award.

They are now bound by any state award which applies to them as a common rule award.

Note that currently in WA there is no state award covering the dairy industry and therefore the state minimum conditions of employment legislation will apply to the dairy industry in WA after March 2011.

For more information on State laws WA, visit [thepeopleindairy.org.au/engagement-reward/WA-state-industrial-laws.htm](http://thepeopleindairy.org.au/engagement-reward/WA-state-industrial-laws.htm)

### **State awards**

All states except Western Australia are now a part of the federal industrial relations system. This is because all states except WA have handed over their powers to make industrial laws to the federal government and they no longer have a state industrial relations system for the private sector

### **What makes up an award?**

Awards contain terms dealing with a wide variety of other matters such as leave entitlements and allowances, which may or may not affect the wages paid to employees.

Awards also contain rates of pay and most farmers are used to adjusting rates of pay each year when the Australian Industrial Relations Commission handed down the annual National Wage Case decision.

The Fair Work Commission is the new body which replaced the Australian Industrial Relations Commission. The Fair Work Commission has the power to review minimum wages and make minimum wage orders which will apply to all modern awards and a federal minimum wage order for award free employees. These orders apply every year on 1 July.

### **Awards and common law contracts**

When you agree to engage an employee a common law employment contract is made regardless of whether you have written it down. Awards and federal and state industrial laws will almost certainly apply and you must comply with their terms.

All employers should prepare a written common law employment contract for all employees so that everyone is clear about the various entitlements and conditions of work. In addition, if there is a dispute about the terms and conditions of employment it will be easier to prove what had been agreed.

The common law employment contract must not contain any terms or conditions for work which are inconsistent with or less favourable to the employee than the relevant award or industrial law.

Employees can take action for payment of these entitlements, now or in the future, even if the common law employment contract does not include them. Employees have six years to make a claim for underpayment of wages and entitlements. Employers can also be prosecuted for breach of the award.

### **Awards and workplace agreements**

One of the ways that employees and employers can introduce flexibility into their workplace is to enter into formal workplace agreements. Workplace agreements allow employees and employers to tailor working conditions to suit the needs of their individual enterprise without the restrictions of rigid award terms.

Federal and state laws (in Western Australia) provide for making of workplace agreements.

A workplace agreement is not the same as a common law contract of employment because it can stand in the place of the award.

A formal workplace agreement is different because:

- it is lodged with an authority;
- it may be required to meet a 'no disadvantage' or 'better off overall' test; and
- the parties must follow specific legal requirements regarding content and process

### **Why make a workplace agreement?**

Workplace agreements enable employees and employers to take into account benefits such as over award payments and non-cash benefits to set up flexible work regimes which benefit both parties.

Employers should give consideration to putting in place workplace agreements if they find that the award terms do not provide the flexibility they need for their business.

Further information about how to make a workplace agreement, visit [thepeopleindairy.org.au/LiteratureRetrieve.aspx?ID=16581](http://thepeopleindairy.org.au/LiteratureRetrieve.aspx?ID=16581)

### **Individual Flexibility Agreements**

Every modern award must include a 'flexibility term' which enables employers and employees to agree to vary the effect of some award terms and put in place conditions of work which are tailor-made to suit the needs of their business and their employees. This is called an Individual Flexibility Agreement (IFA).

IFAs can only modify certain award terms as follows:

- arrangements for when work is performed such as working hours;
- overtime rates;
- penalty rates;
- allowances, and
- leave loading

Because Individual Flexibility Agreements stand in the place of the award terms which they modify, employers cannot be liable in the future for payment of those award entitlements.

The FW Act ensures these arrangements do not undermine minimum employee entitlements by requiring the employer to ensure the employee covered by the IFA is Better Off Overall on the IFA compared to the modern award.

For further information about IFAs, visit [thepeopleindairy.org.au/eski/ifa.htm](http://thepeopleindairy.org.au/eski/ifa.htm)