



## Fact Sheet 4

# National employment standards and modern awards

Under the new workplace relations system all employees will have access to minimum protections that “cannot be stripped away”.

The new safety net will comprise two parts—the National Employment Standards and new modern awards. It will apply to all employees in the federal system from 1 January 2010.

### **The National Employment Standards**

The legislated National Employment Standards provide a set of core employment conditions that apply as minimum standards for all Australian employees. They will apply regardless of what position the employee is employed in. This includes the CEO, Facility Managers and employees covered by enterprise agreements and modern awards.

The ten National Employment Standards are:

- Maximum weekly hours of work
- The right to request flexible working arrangements
- Parental leave and related entitlements
- Annual leave
- Personal/Carer’s leave and compassionate leave
- Community service leave
- Long service leave
- Public holidays
- Notice of termination and redundancy pay
- Provision of a Fair Work Information Statement, which will detail the rights and entitlements of employees under the new system and how to seek advice and assistance.

### **Modern Awards**

The second element of the safety net is the creation of modern awards by the Australian Industrial Relations Commission. Modern awards will be industry or occupation-based and will streamline thousands of awards, including the awards in the aged care industry. The modern awards for the aged care industry are the Nurses Award 2010, Aged Care Award 2010 and possibly the Home and Community Care Award. The latter is subject to consideration by the Australian Industrial Relations Commission in stage 4 of the Award Modernisation process.

Modern awards build on the National Employment Standards and may include an additional 10 minimum conditions of employment, tailored to the needs of the particular industry or occupation. These include minimum wages, types of employment, arrangements for when work is performed, overtime and penalty rates, annualised wage or salary arrangements, allowances, leave related matters, superannuation and procedures for consultation, representation and dispute settlement.

The Commission will include a flexibility clause in each modern award which will enable employers and employees to negotiate arrangements to meet their individual needs. Protections will make sure that an employee is better off overall under the flexibility arrangement.

### **Case Study**

Mary works in a small community care organisation. Her daughter's school has asked her to coach a school softball team each Wednesday afternoon. This will require Mary to leave work two hours earlier than usual. Mary writes to her employer asking if she can increase her hours of work on Monday and Tuesday to enable her to have Wednesday afternoons off. Her employer agrees to trial this for three months. Both Mary and her employer set out the arrangement in writing on the basis that Mary is better off overall because of the change.

### **Who will be covered by modern awards?**

The Commission will create modern awards to cover all employees who perform work that has historically been regulated by awards. Modern awards will not cover those classes of employees who, because of the nature or seniority of their role have not traditionally been covered by awards.

Modern awards will not apply to employees with guaranteed annual earnings of more than \$100,000 (pro rata for part-time employees). The high income threshold will be indexed annually from 27 August 2007 and adjusted in July each year in line with annual growth in average weekly ordinary time earnings for full-time adult employees. The figure that will apply on commencement is \$108,300. This figure will be adjusted and indexed on 1 July 2010.

These employees and their employers will be free to agree on terms to supplement the National Employment Standards without reference to an award.

This exemption from the award applies if an employer provides a written undertaking to pay an employee annual earnings at or above the high income threshold over a period of 12 months or more.

A guarantee for a shorter period may apply in the case of a short-term, fixed-term contract or a particular type of work on a short-term basis.

The employer and employee must reach agreement about the undertaking before it commences operation. A guarantee can be entered into before employment commences.

### **How often will modern awards be reviewed?**

Fair Work Australia will undertake four yearly reviews of each modern award to maintain a relevant and fair minimum safety net and to make sure it continues to meet the needs of the

community. The first such review is set to take place in 2014, four years after modern awards commence on 1 January 2010.

An interim review of modern awards will take place in 2012, to examine whether modern awards are achieving the modern awards objective and operating effectively, without anomalies or technical problems arising from the award modernisation process.

Awards may also be varied in other limited circumstances (for example where the variation is necessary to achieve the modern awards' objective of a fair and relevant safety net).

Fair Work Australia will undertake annual reviews of minimum wages but will be able to vary award wages outside these reviews, in limited circumstances. These include where Fair Work Australia is satisfied that:

- there are work value reasons that justify the variation where the variation is occurring as part of a four yearly review of a modern award, or
- if the variation is outside the four yearly review and annual wage review processes, there are work value reasons that justify the variation and it is necessary in order to achieve the modern awards' objective of a fair and relevant safety net.

Fair Work Australia will take into account public interest, social and economic factors when considering whether and how to vary the content of modern awards.

### **What about people who are not covered by awards?**

The 10 National Employment Standards will apply to all employees—whether they are covered by an award or not.

There will be a national minimum wage order for all employees not covered by a modern award.

### **Default rules for employees not covered by awards or enterprise agreements**

To ensure that the National Employment Standards operate effectively, 'default rules' will apply consistently to all employees not covered by an award or enterprise agreement.

The default rules will set out how the National Employment Standards will apply to such employees, by:

- defining which shift workers are entitled to an extra week of annual leave under the Standards
- providing a mechanism to set the employee's 'ordinary hours of work' to underpin the calculation of leave accrual and payment under the Standards, if these are not agreed between the employer and employee
- allowing the averaging of working hours, by written agreement, over a maximum period of 26 weeks
- allowing the cashing out of annual leave by agreement subject to protections, including a requirement that the employee retains at least four weeks leave after the cash out
- allowing agreement between an employer and employee about when and how paid annual leave may be taken
- allowing employers to give reasonable directions about the taking of paid annual leave by an employee, and

- allowing the substitution of public holidays by agreement.

### **Next steps**

The Modern Awards and National Employment Standards will commence on 1 January 2010. The Nurses Award is an occupational award that covers nurses in all locations; the Aged Care Award will cover personal carers and others in residential facilities while it is still unclear whether workers who provide care to older people in their own homes will be covered by a separate award or come under the Aged Care Award.

While the Modern Awards start from 1 January, the Commission has the ability to make transitional arrangements to give industry up to 5 years to accommodate the changes, however, no decision has been made yet regarding transition.