

# Fair Work Act 2009

Presented by Cheryl-Anne Laird, Director

On 12 February 2010

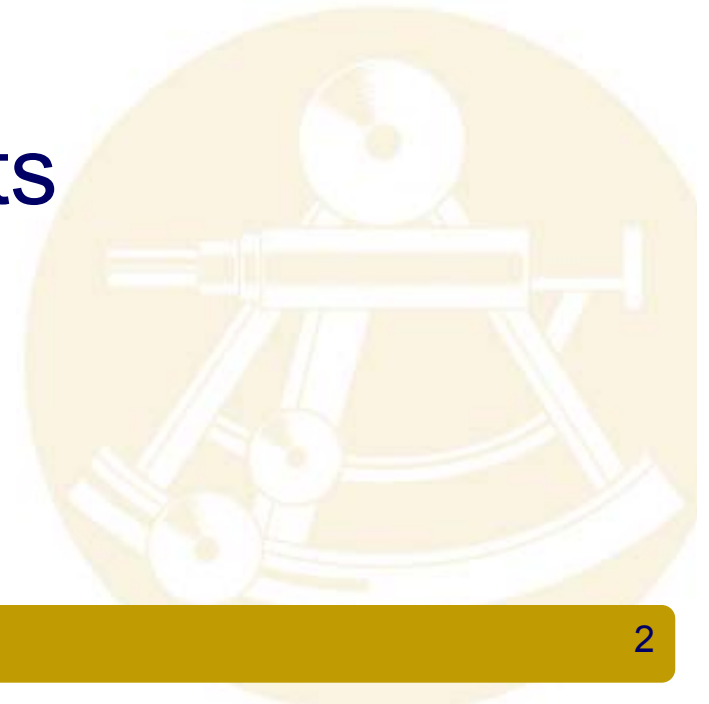


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# What is the Fair Work Act?

- 1 July 2009 commencement of;
  - Fair Work Australia (FWA)
  - New rules on Agreement making
  - New rules on Unfair Dismissal
- 1 January 2010 commencement of;
  - National Employment Standards
  - Modern Awards



# What is the Fair Work Act?

THEN	NOW
Workplace Authority Australian Industrial Relations Commission Australian Fair Pay Commission	Fair Work Australia  includes Minimum Wage Panel
Workplace Ombudsman	Fair Work Ombudsman
Federal Court & Federal Magistrates Court	Fair Work Divisions incorporated into Courts

# State Referral of Powers



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# State Referral of Powers

- From 1 January 2010 all sole traders and partnerships will be covered by the Federal Workplace Legislation and NES (“no detriment rule” applies)
- If covered by a State Award this continues until 1 January 2011
- Post 1 January 2011 will be covered by Modern Award

# Fair Work Act

What applies to your  
Employee's?



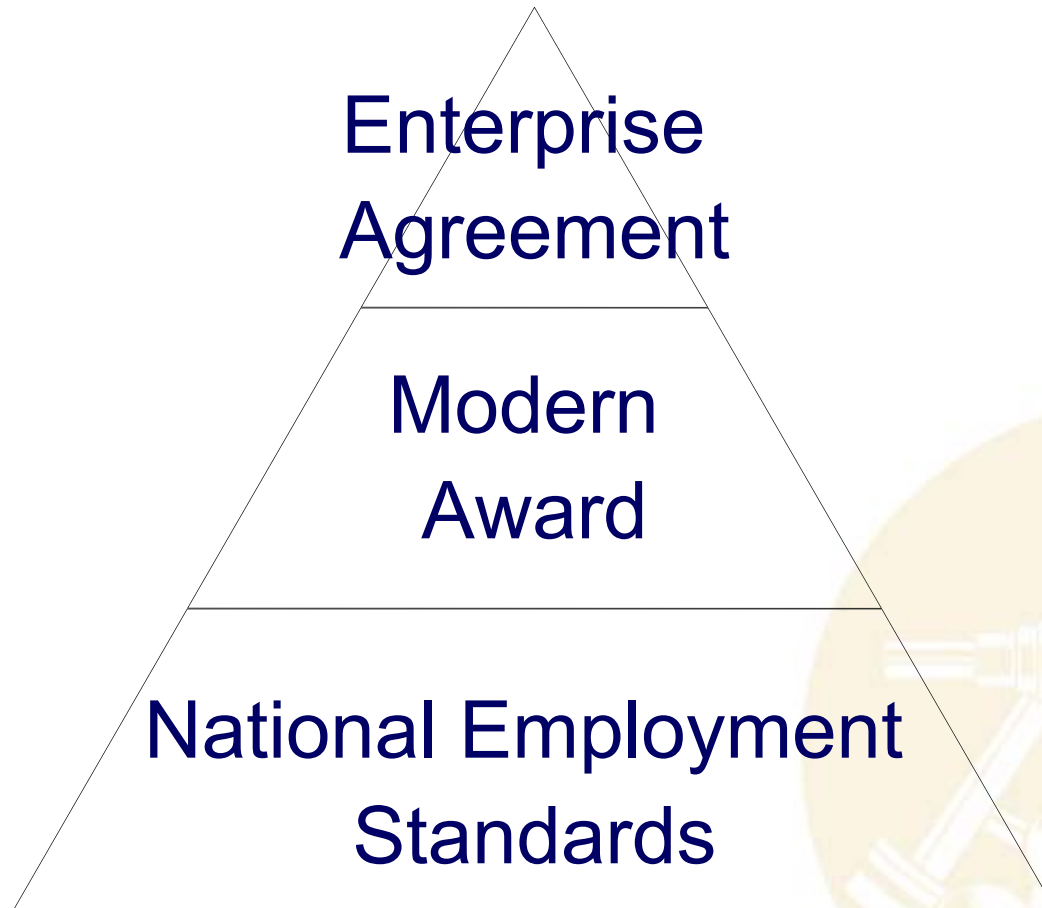
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# Fair Work Act – Safety Net

1. National Employment Standards (NES) covers ALL Employees (Will override any 'detrimental' terms in current agreements/awards)
2. Modern Awards cover Employers or Employees specified in Award
3. Enterprise Agreement covers the Employer and Employees specified and Employees must be Better Off Overall (BOOT) than if Modern Award covered them

# Fair Work Act - Safety Net



# National Employment Standards

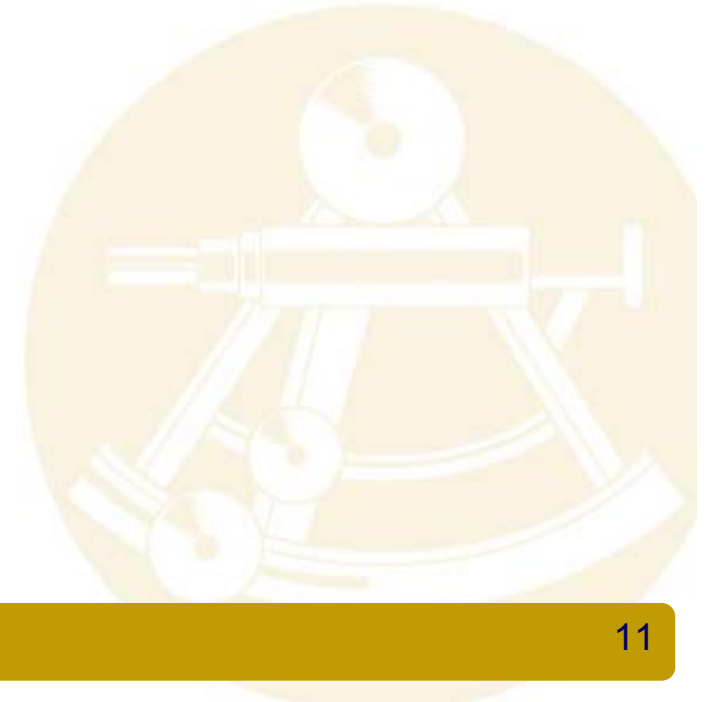


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# 1. Maximum Weekly Hours

- Standard 38 hours per week
- Plus reasonable additional hours
- May be averaged over a period of time

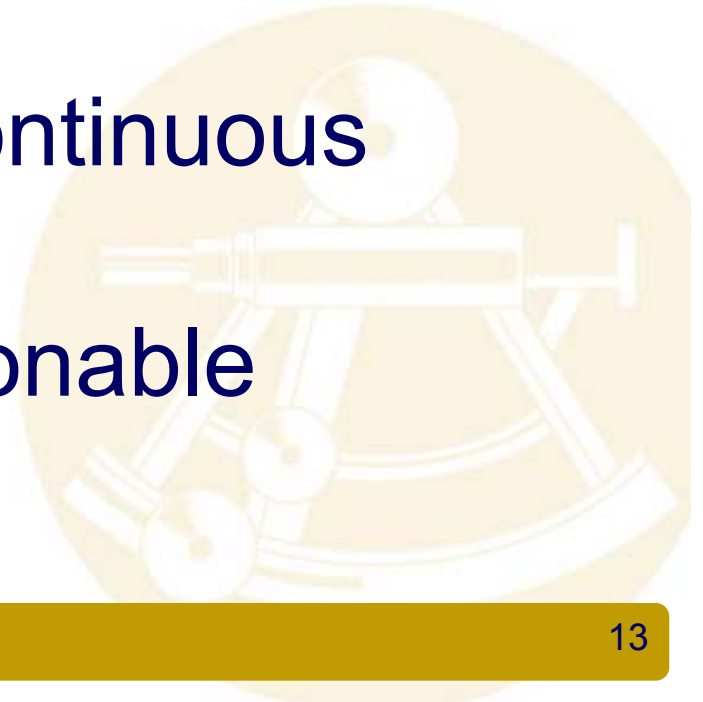


# Reasonable Hours

- Any health and safety risk to employee
- Employee's personal circumstances
- Needs of the workplace
- Overtime or penalty rates for extra hours
- Notice given to employee or employer
- Usual patterns of work in the industry
- Nature of employee's role and responsibility

## 2. Flexible Working Arrangements

- Parents (or person with responsibility for care) of children under school age, or children under 18 with a disability, may request a change in working arrangements
- Must have 12 months continuous service
- May be refused on reasonable business grounds



# 3. Parental Leave

- 12 months unpaid leave
- Must have completed 12 months continuous service
- Employee can request an additional 12 months unpaid leave
- May be refused on reasonable business grounds



# 4. Annual Leave

- 4 weeks paid per year
- Additional week for continuous shift workers
- Employers can direct employees to take annual leave if it is reasonable
- No cashing out of annual leave unless provision in award or agreement
  - If annual leave is cashed out, must have 4 weeks balance remaining.

## 5. Personal/Carer's and Compassionate Leave

- 10 days per year
- Award or Agreement may include provision to Cash Out leave (15 day balance remaining)
- Extra 2 days for compassionate leave
- Extra 2 days unpaid carer's leave

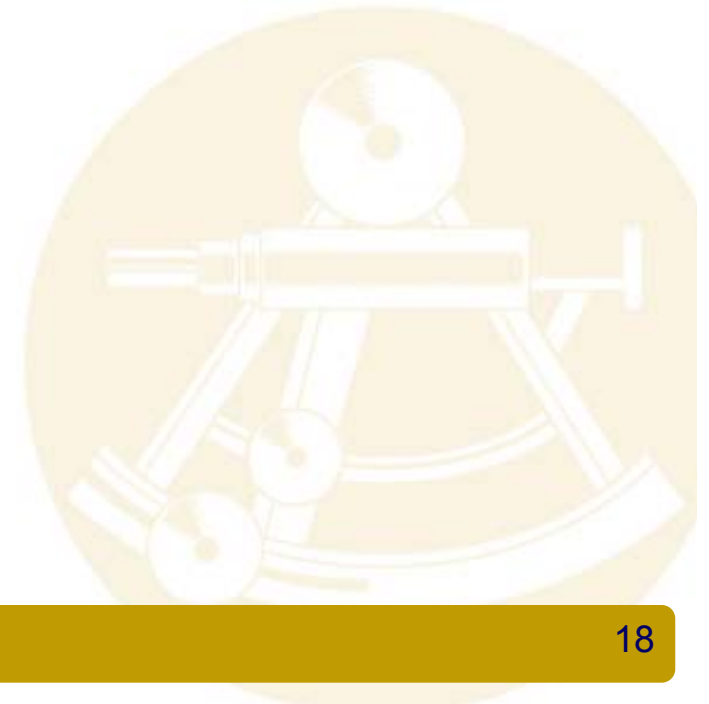
# 6. Community Service Leave

- Jury Service
  - Only required to pay for first 10 days
  - Must pay base rate of pay
  - If employee receives jury service pay, only need to top-up pay to meet employee's base rate of pay
- Voluntary Emergency Service
  - unpaid
  - State or Territory law may entitle employee to be paid



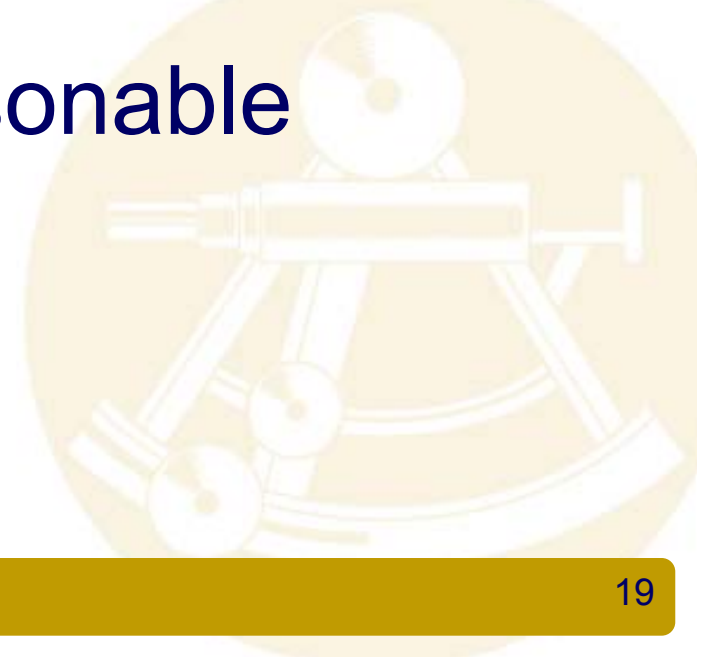
# 7. Long Service Leave

- Refers back to State Legislation



## 8. Public Holidays

- Employee is entitled to be absent
- Employer may request employees to work if reasonable
- Employee can refuse if reasonable
- Similar criteria to reasonable additional hours



# 9a. Notice of Termination

<b>Years of Continuous Service</b>	<b>Notice Required</b>
Not more than 1 year	1 week
More than 1 year but less than 3 years	2 weeks
More than 3 years but less than 5 years	3 weeks
More than 5 years	4 weeks
If over 45 years old and at least 2 years of continuous service	Additional 1 week

# 9b. Redundancy

- Excludes
  - Employees with less than 12 months continuous service
  - Employers who employ less than 15 employees
  - Employers who apply to FWA because obtain other acceptable employment for employee or can't pay



# Redundancy Pay Period

Employees period of continuous service	Redundancy Pay Period
At least 1 year but less than 2 years	4 weeks
At least 2 years but less than 3 years	6 weeks
At least 3 years but less than 4 years	7 weeks
At least 4 years but less than 5 years	8 weeks
At least 5 years but less than 6 years	10 weeks
At least 6 years but less than 7 years	11 weeks
At least 7 years but less than 8 years	13 weeks
At least 8 years but less than 9 years	14 weeks
At least 9 years but less than 10 years	16 weeks
At least 10 years	12 weeks

## 10. Fair Work Information Statement

- Provided to each new employee from 1 January 2010
- Prepared by Fair Work Ombudsman
- Statement provides information on legislation and employees rights at work
- Available from Fair Work website

# Modern Awards



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# Modern Awards

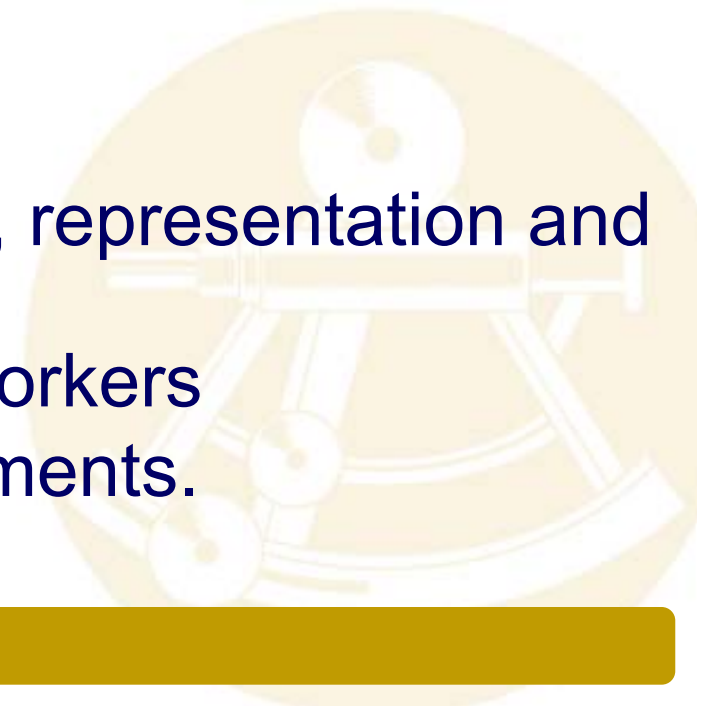
- Employee's Exempted
  - Covered by Enterprise Awards
  - Employees not traditionally covered
- Employee's who can Opt Out of Application
  - High Income Employees with a guarantee of annual earnings (> \$108,300K to June 2010)
- Commence 1 January 2010
  - Agreement base rates must meet Modern Award base pay rates as they apply in accordance with any transitional provisions
- Reviewed every 4 years

# Modern Awards

- All **Agreements** made after 1 January 2010 will be BOOT tested against the Modern Award.
- **Award employees** must be employed under the Modern Award from 1 January 2010
- **Rates of pay** will need to meet the Modern Award after 1 January 2010, unless there are transitional provisions.

# Modern Awards

- Types of employment;
- Arrangements for when work is performed;
- Overtime and penalty rates;
- Annualised wage or salary arrangements;
- Allowances;
- Leave and leave loadings;
- Superannuation;
- Procedures for consultation, representation and dispute settlement;
- Pay and conditions for outworkers
- Individual flexibility arrangements.



# Modern Awards

## Transitional Provisions

- Rates of pay, casual or part-time loading, Saturday, Sunday, public holiday, evening or other penalty, shift allowance/penalty as per award-based transitional instrument until 30 June 2010
- Then transition up or down to meet Modern Award equivalent from 1 July 2010

# Modern Award - Variations

- Substantive variations being dealt with first
- Residual variations - changes in terminology and statutory references, typographical and formatting issues and changes in standard or model provisions – to follow
- Daily changes, not all backdated to 1 January 2010

# Unfair Dismissal



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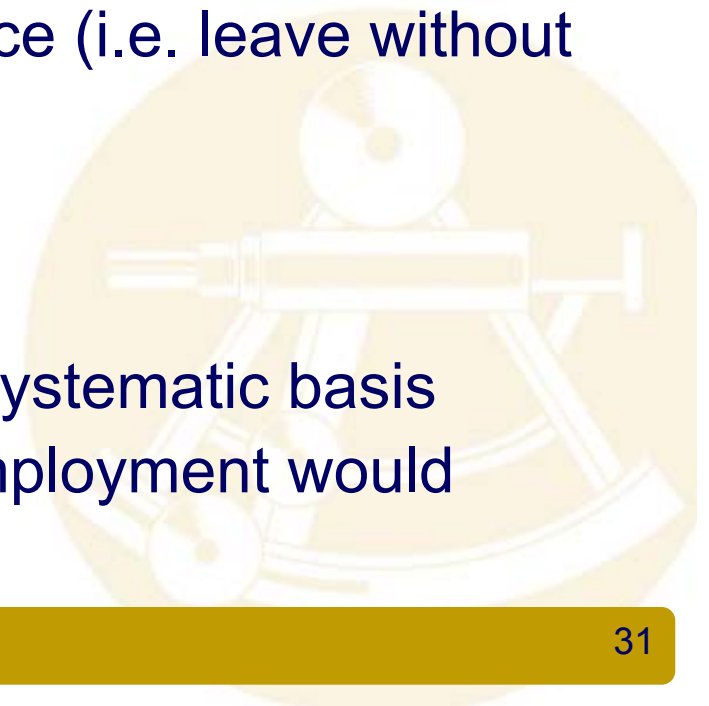
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# Unfair Dismissal

- Employee completed minimum employment period of:
  - 6 months
  - Or 12 months for small business with less than 15 full time equivalent employees (before 1 Jan 2011)

Period of employment is actual service (i.e. leave without pay is not counted)

- If casual,
  - Been employed on a regular and systematic basis
  - Have a reasonable expectation employment would continue



# Unfair Dismissal

- Eligible for Unfair Dismissal if:
  - Covered by Modern Award or Enterprise Agreement; or
  - Not covered by Modern Award or EA & is not a high income employee (currently \$108,300).



# How is a Dismissal Unfair?

- Harsh, unjust or unreasonable
- Not consistent with the “Small business Fair Dismissal Code”
- Dismissal was not a genuine redundancy
  - Employer no longer required persons job to be performed
  - Complied with Award/EA consultation procedures
  - Unreasonable to be redeployed

# Small Business Fair Dismissal Code

- A Small Business is:
  - Employers with less than 15 full-time equivalent Employees
- Can terminate an employee in accordance with the “Code”
- Minimum employment period of Employee extended to 12 months

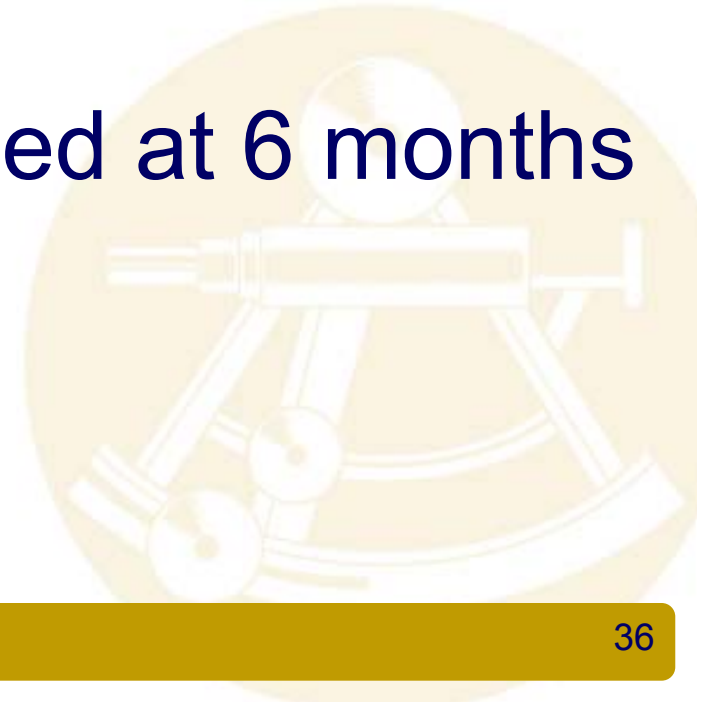
# Unfair Dismissal Process

- Application lodged within **14 days** of dismissal
- FWA will;
  - Conduct initial inquiries
  - Hold informal conference
  - Seek mediated resolution
- If not resolved, may proceed to arbitration



# Remedies

- Reinstatement
- Re employment to another role
- If reinstatement is inappropriate compensation
- Compensation capped at 6 months remuneration



# Enterprise Agreements



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# Enterprise Agreements

## Case Law Highlights

- Preferred hours clauses fail NDT
- Dispute resolution clauses must allow arbitration (currently under appeal)
- BOOT to be conducted at 31 July each year where Modern Award has transitional provisions
- Notice of representational rights requires some degree of personalisation (general notice on notice board(s) not sufficient)

# For further information

Or if you have any questions regarding the presentation please contact our Presenter, Cheryl-Anne Laird or one of our Consultants at:

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**Our Management Training Program delivers a series of products across all areas of Human Resource Management and Workplace Relations.**

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- Good Faith Negotiation Skills
- The Fair Work Basics
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- And more.....

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