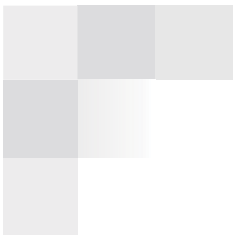


Annual Report of

FAIR WORK AUSTRALIA

1 July 2010–30 June 2011



Publication inquiries

Digital versions of this report (in PDF format) are available on the Fair Work Australia website: www.fwa.gov.au.

Printed copies of this report are available from the contact officer listed below.

Contact officer

Requests for further information about this report should be directed to:

Ms Judy Hughes
Communications Manager
Fair Work Australia
GPO Box 1994
Melbourne VIC 3001

Phone: (03) 8661 7862
Email: communications@fwa.gov.au
Fax: (03) 9655 0401

A full list of Fair Work Australia offices is included in Appendix A of this report.

Copyright

ISSN 1838-5222

Annual Report of Fair Work Australia

© Commonwealth of Australia 2011

This work is copyright. Apart from any use as permitted under the *Copyright Act 1968*, all other rights are reserved. Requests and inquiries concerning reproduction and rights should be addressed to:

Copyright officer
Fair Work Australia
GPO Box 1994
Melbourne VIC 3001

Phone: 1300 799 675
Email: inquiries@fwa.gov.au

This report was printed by Camten Graphics, Rowville, Victoria



THE HONOURABLE JUSTICE GIUDICE
PRESIDENT

30 September 2011

Senator the Hon. Christopher Evans
Minister for Tertiary Education, Skills, Jobs and Workplace Relations
Parliament House
CANBERRA ACT 2600

Dear Minister,

I am pleased to present to you the annual report of Fair Work Australia for the year ended 30 June 2011.

This report is provided pursuant to section 652 of the *Fair Work Act 2009*.

Yours sincerely,

11 Exhibition Street Telephone: +61 3 8661 7829
Melbourne Victoria 3000 Facsimile: +61 3 9650 3354
GPO Box 1994 Email: chambers.giudice@fwa.gov.au
Melbourne Victoria 3001 Internet: www.fwa.gov.au



Table of contents

1. Overview of Fair Work Australia

1.1	President's introduction	1
1.2	Establishment, role and functions	2
1.3	Legislation, regulations and rules	2
1.4	Portfolio structure	3
1.5	Outcome and program structure	3
1.6	Organisation structure	4
1.7	Members	4
1.8	Staff	7

2. Work of the tribunal

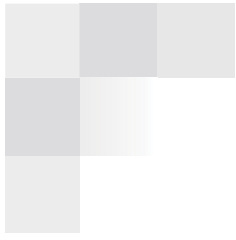
2.1	Overview	9
2.2	Dispute resolution	11
2.3	Agreement making	11
2.4	Termination of employment	12
2.5	Award modernisation	15
2.6	Minimum wages	17
2.7	Organisations	19
2.8	Significant cases	21
2.9	Members' external activities	35
2.10	Education and information services	38
2.11	Client research	44

3. Management and accountability

3.1	Corporate governance	47
3.2	External scrutiny	50
3.3	Management of human resources	50
3.4	Financial management	56
3.5	Other mandatory information	60
3.6	Information management and technology	61
3.7	General Manager's reporting requirements	62

Appendices

A:	List of Fair Work Australia addresses	65
B:	Documents relating to the work of the tribunal	67
C:	Key performance indicators	69
D:	Organisation structure	70



E: List of members	71
F: Panel assignments	73
G: Lodgment and caseload statistics	78
H: Subscription services	86
I: Financial statements	88
J: Agency resource statement.....	141
K: Expenses and resources for outcome	142
L: Information on specific statutory requirements	143
M: Glossaries	152
N: List of requirements.....	165
Index	171

Tables and charts

Tables

Table 1: Indicators of caseload	9
Table 2: Historical table of common caseload categories	10
Table 3: Full Bench matters 2010–11	11
Table 4: Enterprise agreements—lodgment and finalisation 2010–11	12
Table 5: Enterprise agreements processing time—lodgment to finalisation 2010–11	12
Table 6: Applications in relation to termination of employment finalised during 2010–11	12
Table 7: Bases on which termination of employment applications were finalised by decision during 2010–11	14
Table 8: Appeals on termination of employment decisions during 2010–11	14
Table 9: Employment status and gender by APS level	52
Table 10: Location and gender by APS level	53
Table 11: Geographic deployment of staff	53
Table 12: New consultancy contracts in 2010–11	59
Table 13: Expenditure on consultancy contracts	60



OVERVIEW

Table C1: Key performance indicators—budget target and actual results.....	69
Table G1: Lodgment of all matters by location	78
Table G2: Breakdown of matters by selected categories (other than registered organisation matters) by location	78
Table G3: Lodgment of registered organisation matters by location	79
Table G4: Number of hearings and conferences by location	79
Table G5: Nature of proceedings.....	80
Table G6: Caseload measures	84
Table G7: Registered organisation matters finalised	84
Table J1: Fair Work Australia resource statement 2010–11	141
Table K1: Expenses and resources for outcome.....	142
Table L1: Advertising and market research expenditure in 2010–11 (over \$11 200).....	147

Charts

Chart 1: Outcome and program structure	3
Chart 2: Conciliation settlement rate.....	13
Chart 3: Reasons for contacting Fair Work Australia Help Line	41
Chart 4: Fair Work Australia website—visitors by month	42
Chart D1: Fair Work Australia organisation structure	70

1.1 President's introduction

This is the annual report of Fair Work Australia for the financial year 2010–11. It deals with important aspects of the operation of the tribunal including financial, staffing and administrative matters. The General Manager is the responsible officer for the purposes of the *Financial Management and Accountability Act 1997* (FMA Act) and the *Public Service Act 1999*. Where the report deals with the functions of the General Manager under those acts, including specific reporting requirements, the report has been prepared at the direction of and has been authorised by the General Manager.

The report covers the first full year of operation of the new national workplace relations system. That system commenced on 1 January 2010. The system covers the private sector in all states and territories, with the exception of unincorporated employers and their employees in Western Australia. Employment in the public sector in most states and employment in local government in most states are within the jurisdiction of state tribunals.

The report deals with the main areas of activity during the reporting period and provides a significant amount of statistical information. Where comparisons are made with previous years it should be borne in mind that direct comparison may be misleading because of differences in the legislative framework. As well, new procedures have been developed in a number of areas. For example, since 1 July 2009 most applications for an unfair dismissal remedy go through a voluntary conciliation phase before a specialist staff conciliator. This has streamlined the conciliation process in the face of an increase in lodgments. Additional administrative resources have been provided to assist in the agreement approval process. It should also be noted that there have been major changes as a result of the increasing use of technology and the internet. One area in which the use of the internet has expanded rapidly is in multi-party proceedings. Submissions and other documents are loaded on to a dedicated web page and all affected parties notified by email. This often relieves the parties from serving documents physically or electronically and leads to significant savings in time and other resources. These developments have been particularly important in proceedings relating to awards. That is because the application of awards is no longer confined to respondents named in the awards. Modern awards apply to all relevant employers (and their employees) in a defined geographic area. Extensive use of email and the internet simplifies communication of important material in this new environment.

During the reporting period the number of members reduced by three, two in Sydney and one in Melbourne. Another member resigned in Victoria in May 2010. Until 30 June 2011 no members had been appointed in those two states since the system commenced in full on 1 January 2010.

Once again I express my gratitude to the many staff who have supported the members of the tribunal during the year. Their loyalty and hard work is appreciated by all of the members. I acknowledge in particular the General Manager, Mr Lee, and his branch managers.

1.2 Establishment, role and functions

Fair Work Australia is Australia's national workplace relations tribunal. It is an independent body with power to carry out a range of functions including:

- providing a safety net of minimum conditions, including minimum wages, in awards
- facilitating good faith bargaining and the making of enterprise agreements
- granting remedies for unfair dismissal
- regulating the taking of industrial action
- resolving a range of collective and individual workplace disputes through conciliation, mediation and, in some cases, arbitration
- functions in connection with workplace determinations, equal remuneration, transfer of business, general workplace protections, right of entry and stand down.

The tribunal commenced operations on 1 July 2009. Other bodies in the national workplace relations system include the Office of the Fair Work Ombudsman and the Fair Work divisions of the Federal Court of Australia and the Federal Magistrates Court.

1.3 Legislation, regulations and rules

The principal powers and functions of Fair Work Australia are in the *Fair Work Act 2009* (Fair Work Act).

Fair Work Australia also carries out functions under the following legislation:

- *Fair Work (Registered Organisations) Act 2009*
- *Fair Work Regulations 2009*
- *Fair Work (Registered Organisations) Regulations 2009*
- transitional legislation including the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* and the *Fair Work (State Referral and Consequential and Other Amendments) Act 2009*.

On 17 December 2010, the President of Fair Work Australia, after consulting the other Fair Work Australia members, made the *Fair Work Australia Rules 2010*.



The new rules commenced on 1 January 2011. Interim Fair Work Australia Rules had been in place since the commencement of the Fair Work Act on 1 July 2009.

For a full list of documents relating to the work of Fair Work Australia, see Appendix B.

1.4 Portfolio structure

Fair Work Australia is part of the Education, Employment and Workplace Relations portfolio.

1.5 Outcome and program structure

Government outcomes are the intended results, effects or consequences of actions by the Australian Government on the community. The 2010–11 portfolio budget statement for Fair Work Australia outlines a single, planned outcome and the tribunal's program of work, which contributes to that outcome.

Outcome 1 is described below together with the related program specifying the performance indicators and targets used to assess and monitor the performance of Fair Work Australia in achieving government outcomes.

Chart 1: Outcome and program structure

Outcome 1: Simple, fair and flexible workplace relations for employees and employers through the exercise of powers to set and vary minimum wages and modern awards, facilitate collective bargaining, approve agreements and deal with disputes.
Program 1: Dispute resolution, minimum wages, orders and approval of agreements.

Key strategies toward achieving the Fair Work Australia outcome in 2010–11 were to:

- provide effective assistance to Fair Work Australia members to meet the objects of the Fair Work Act
- implement processes and systems to support the exercise of new and/or changed powers under the Fair Work Act
- develop and provide information to promote public understanding of the functions and activities of Fair Work Australia
- undertake research activities to support the minimum wage process.

The key program deliverables were:

- dispute resolution—unfair dismissal application processing
- minimum wage decisions

- orders relating to industrial action
- approval of agreements.

The key performance indicators for Fair Work Australia in 2010–11 were:

- improve or maintain the time elapsed from lodging applications to finalising conciliations in unfair dismissal applications
- annual wage review to be completed to enable an operative date of 1 July
- improve or maintain average time taken to list applications relating to industrial action.

The key deliverables are discussed in section 2, 'Work of the tribunal'. In relation to the key performance indicators, the budget target and the results are set out in Appendix C.

1.6 Organisation structure

Members of Fair Work Australia are supported in the carrying out of their statutory functions by the General Manager and his staff. The organisation structure is set out in Appendix D.

1.7 Members

There are three types of members:

- full-time members including the President, deputy presidents and commissioners, who are appointed until the age of 65, including some who are also members of state industrial relations tribunals
- Minimum Wage Panel Members, who are appointed for a set period of not more than five years, are part time and sit only on annual wage reviews
- part-time members, who are also members of a state industrial tribunal.

As at 30 June 2011, there were 39 full-time members—the President, 15 Deputy Presidents and 23 Commissioners. In addition there were 12 part-time members. Three of those are appointed only to the Minimum Wage Panel. The remaining nine part-time members are also members of state industrial tribunals. Members are based in Melbourne, Sydney, Brisbane, Perth, Adelaide, Canberra, Hobart and Newcastle.

A list of members as at 30 June 2011 is included in Appendix E.



Left to right: Senior Deputy President Cartwright, Commissioner Foggo and Commissioner Larkin.

1.7.1 Resignations

The following members departed during 2010–11:

- Senior Deputy President Cartwright resigned on 31 March 2011
- Commissioner Foggo resigned on 17 November 2010
- Commissioner Larkin resigned effective 15 October 2010.

1.7.2 Appointments

There were no appointments in the reporting period.

1.7.3 Panels

The work of the tribunal is dealt with according to a panel system.

The panels are:

- industry panels, of which there are four
- Termination of Employment Panel
- Organisations Panel
- Minimum Wage Panel.

Except in the case of the Minimum Wage Panel, there is a senior member of the tribunal, known as the panel head, who has the main administrative responsibility for the work of each panel. Every application is allocated to the relevant panel head and dealt with according to established procedures under the administration of the panel.

The operation of the Minimum Wage Panel is different. That panel has particular functions in relation to minimum wages.

On 1 July 2010 a number of changes were made to panels in Queensland, South Australia and Western Australia. The following tables show alterations in industry panel allocations, by member:

Queensland

Member	2009–10 panel allocation	2010–11 panel allocation
Richards SDP	Watson VP, Watson SDP, Organisations Panel	Watson SDP Organisations Panel
Spencer C	Watson SDP	Lawler VP
Asbury C	Watson SDP, Harrison SDP	Harrison SDP
Simpson C	No panel assignments	Watson VP

South Australia

Member	2009–10 panel allocation	2010–11 panel allocation
O'Callaghan SDP	All industry panels	Watson SDP
Bartel DP	No panel assignments	Harrison SDP
Hampton C	Watson VP, Watson SDP	Watson VP
Steel C	No panel assignments	Lawler VP

Western Australia

Member	2009–10 panel allocation	2010–11 panel allocation
McCarthy DP	All industry panels	Watson SDP
Williams C	All industry panels	Harrison SDP
Cloghan C	All industry panels	Lawler VP, Watson VP

In New South Wales, Commissioner Harrison joined Senior Deputy President Harrison's panel.

Some alteration was made to industry allocations. Educational services, federal police operations, pharmaceutical industry, and Northern Territory were moved from Vice President Watson's panel to Vice President Lawler's panel. The industry of storage

services moved from Vice President Watson's panel to Senior Deputy President Harrison's panel.

A list of panel assignments as at 30 June 2011 appears in Appendix F.

1.8 Staff

The General Manager is a statutory appointee who assists the President and oversees the staff.

Together the General Manager and Fair Work Australia staff constitute a statutory agency. The General Manager is the agency head.

As at 30 June 2011, there were 318 staff (detailed statistics on staffing appear on pages 52–55). Staff are organised in the following branches based on function:

- General Manager's office
- Award Modernisation and Contact Centre
- Communications
- Corporate Services
- Minimum Wages and Research
- Tribunal Services and Organisations
- Unfair Dismissals.

2.1 Overview

Table 1 gives some aggregate measures of activity and compares them with the previous two years. In 2009–10 the Australian Industrial Relations Commission (AIRC) and Fair Work Australia operated in tandem for the first six months. The previous year, 2008–09 was the last full year before Fair Work Australia commenced operation under the *Fair Work Act 2009* (Fair Work Act). Lodgments in the reporting period were down by more than 7000 compared with lodgments in 2009–10 but still more than double the number in 2008–09.

Table 1: *Indicators of caseload*

	AIRC 2008–09	AIRC/FWA 2009–10	FWA 2010–11
Lodgments	17 658	44 720	37 262
Hearings and conferences	11 526	21 770	24 178
Published documents	4861	11 281	11 648 ¹

(1) Involving 10 367 matters.

Table 2 shows lodgments for the more common categories of application since 2006. The historical data relating to particular applications should be approached with some caution, primarily because of changes in legislative arrangements. The Fair Work Act and other associated legislation contain many new provisions which affect access to the tribunal and which introduce new procedures. The Fair Work Act commenced for some purposes on 1 July 2009 and commenced to operate fully on 1 January 2010.

Dispute notifications increased. The increase corresponds roughly with the increase in the number of general protections disputes not involving dismissals. Applications related to the bargaining process—applications for protected action ballot orders, applications relating to industrial action and applications for good faith bargaining orders—showed little increase on last year and in two cases the number of applications reduced.

Applications in relation to termination of employment increased by almost 15 per cent. The data include applications under the general protections provisions in Chapter 3 of the Fair Work Act as well as applications for an unfair dismissal remedy. The increase in lodgments may be an indication of changed labour market conditions in some parts of the economy. Several years' experience will be needed, however, before any firm conclusions can be drawn.

Table 2: Historical table of common caseload categories

Application	AIRC 2006–07	AIRC 2007–08	AIRC 2008–09	FWA 2009–10 ¹	FWA 2010–11
Dispute notification ²	245	219	275	1445	1748
Notification under dispute settling procedure of pre-reform certified agreement	1142	1081	1243	992	810
Award variation	1230	1062	927	522	368
Agreement (approval, extension, variation and termination) ³	189	182 ⁴	986	24 053	15 300
Suspension or termination of industrial action ⁵	8	220	23	28	39
Protected action ballot order	271	574	328	981	926
Order relating to industrial action	112	144	145	163	175
Good faith bargaining order	–	–	–	121	96
Termination of employment ⁶	5173	6067	7994	13 054	14 897
Full Bench matters (including appeals)	876	146 ⁴	166	436	192

(1) Includes Australian Industrial Relations Commission matters.

(2) From 2009–10, includes disputes in relation to bargaining, right of entry, general protections disputes not involving dismissal and disputes notified under dispute resolution procedures in an enterprise agreement.

(3) From 2009–10, includes applications to terminate individual agreement-based transitional instruments.

(4) Amended figures.

(5) Before 2009–10, applications referred to suspension or termination of a bargaining period.

(6) From 2009–10, includes s.365 applications to deal with disputes involving dismissal, s.773 unlawful termination applications and applications lodged under s.643 of the Workplace Relations Act 1996.

The number of Full Bench matters reduced, as Table 3 indicates. The Full Bench statistics require some interpretation as the complexity of matters, and therefore the time and other resources needed, can vary significantly. There were a large number of Full Bench proceedings in relation to award modernisation and this contributed to the higher total in the previous year. The bulk of Full Bench matters determined in the reporting period were appeals.

Table 3: Full Bench matters 2010–11

Nature of proceeding	Matters lodged/referred	Matters determined
Notice of appeal ¹	175	135
Direction for a Full Bench (s.615)	14	12
Review on application by the Minister (s.605)	0	0
Direction by the President (s.582)	2	2
Annual wage review (s.285)	1	1
Total	192	150

(1) Includes appeals under s.604 of the Fair Work Act 2009 and s.120 of the Workplace Relations Act 1996.

2.2 Dispute resolution

Dispute resolution functions relate to collective bargaining, right of entry, general protection applications and disputes under awards, agreements and the National Employment Standards (NES). Dispute resolution involves conciliation, voluntary arbitration and, in a limited range of circumstances, compulsory arbitration. General protections applications under s.372 of the Fair Work Act, which do not involve dismissal, increased from 254 in 2009–10 to 504 in 2010–11. General protections applications under s.365, which involve dismissal, increased from 1188 in 2009–10 to 1871 in the reporting period, an increase of almost 60 per cent.

2.3 Agreement making

Fair Work Australia plays an active part in assisting parties to reach agreement. Assistance by way of conciliation can be provided under various statutory provisions, including those in Division 8 of Part 2–4 of the Fair Work Act. That Division contains provisions dealing with applications for good faith bargaining orders and applications for the tribunal to deal with a dispute. Over 7000 single enterprise agreements were finalised, almost 1500 more than in the previous year. The total number of agreement applications finalised, as shown in Table 4, was 7782. This can be compared with 6383 agreement applications finalised in the previous year. Processing times are shown in Table 5.

Table 4: Enterprise agreements—lodgment and finalisation 2010–11

Agreement type	Lodged	Finalised
s.185—Single-enterprise	6493	7174
s.185—Greenfields	534	549
s.185—Multi-enterprise	54	59
Total	7081	7782

Table 5: Enterprise agreements processing time—lodgment to finalisation 2010–11

Agreement type	Median number of days
s.185—Single-enterprise	22
s.185—Greenfields	15
s.185—Multi-enterprise	27

2.4 Termination of employment

During 2010–11 some 14 897 termination of employment applications were made to Fair Work Australia and 14 342 applications were finalised. Table 6 indicates that 11 893 (83 per cent) of these applications were finalised at, or before, conciliation. A further 1922 (13 per cent) of the applications were finalised thereafter without requiring a decision of the tribunal, and 527 (four per cent) were finalised by a decision. Fair Work Australia must issue a certificate that all reasonable attempts to resolve a general protections dispute involving dismissal or alleged unlawful termination application have been, or are likely to be, unsuccessful. Of the 1944 such matters finalised in 2010–11, the tribunal issued a certificate for 650 matters (33 per cent).

Table 6: Applications in relation to termination of employment finalised during 2010–11

Matter type	Finalised at or prior to conciliation	Finalised without requiring a decision	Finalised by a decision ¹	Total finalised
s.643—Workplace Relations Act	80	7	10	97
s.394—Fair Work Act	9869	1915	517	12 301
ss.365 & 773—Fair Work Act	1944	–	–	1944 ²
Total	11 893	1922	527	14 342

(1) This includes applications finalised by a jurisdictional or merits application.

(2) Fair Work Australia's role is limited to conciliation.



Chart 2 below shows that of the applications that were conciliated in 2010–11, 76 per cent were settled at conciliation. This includes s.394 applications for an unfair dismissal remedy, s.365 applications to deal with general protections disputes involving dismissal and s.773 unlawful termination applications, as well as applications lodged under s.643 of the *Workplace Relations Act 1996* (Workplace Relations Act).

Chart 2: Conciliation settlement rate

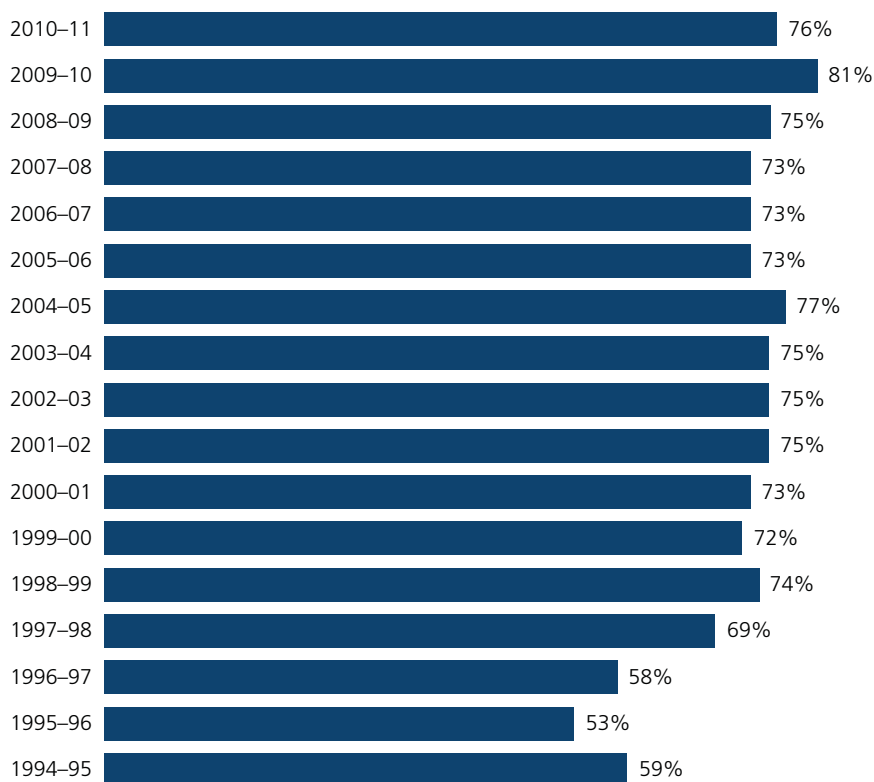


Table 7 sets out the bases on which termination of employment applications were finalised by a decision of Fair Work Australia. These data do not include all decisions, only those that led directly to the finalisation of the application. There were many preliminary decisions in the applicant’s favour, in relation to jurisdictional or other matters, which are not included. Those applications were subsequently finalised either by agreement, discontinuance or decision.

Table 7: Bases on which termination of employment applications were finalised by decision during 2010–11

Basis for decision	s.643 Workplace Relations Act	s.394 Fair Work Act
Out of time	5	66
Not an employee		8
Minimum employment period not met		28
Not less than high income threshold		8
No dismissal		38
Dismissal not harsh, unjust or unreasonable		165
Genuine redundancy		30
Dismissal consistent with Small Business Fair Dismissal Code		8
Frivolous/vexatious, no reasonable prospect of success		8
Dismissal harsh, unjust or unreasonable	3	151
Reinstatement order		25
Order for compensation instead of reinstatement		122
Other (e.g. no order as to remedy)		4
Other (e.g. not national system employer)	2	7
Total	10	517

In 2010–11, there were 68 appeal decisions relating to termination of employment applications, constituting 50 per cent of all appeals determined in the reporting period. Table 8 shows that 19 (28 per cent) of the appeals were upheld and 49 (72 per cent) were dismissed.

Table 8: Appeals on termination of employment decisions during 2010–11

Decisions appealed	Upheld	Dismissed	Total
Jurisdiction or merit	12	35	47
Remedy	3	5	8
Costs	1	2	3
Practice and procedure	3	7	10
Total	19	49	68

2.5 Award modernisation

Modern awards began operating on 1 January 2010, with 122 modern awards replacing approximately 1560 federal and state instruments. However, many modern awards contain transitional arrangements that phase in changes in wages, loadings and penalty rates over five years.

The modern awards, together with 10 minimum NES and the national minimum wage order, make up a safety net of terms and conditions for employees in the national workplace relations system.

The award modernisation process is continuing. Work by the tribunal during the reporting period has included the variation of modern awards, the Division 2B State awards process, the termination of instruments process, modernising enterprise instruments and dealing with take-home pay applications. In addition, Fair Work Australia updated rates and expense-related allowances in modern awards following the decision in the Annual Wage Review 2010–11.

Relevant documents—including applications, directions, submissions, notices of listing, decisions, statements and determinations—were published on the Fair Work Australia website.

2.5.1 Variation of modern awards

Between 1 July 2010 and 30 June 2011 there were 204 applications made to vary modern awards. Two hundred and twelve applications were determined during the reporting period.

2.5.2 Division 2B State awards

Approximately 1100 state awards became Division 2B State awards on 1 January 2010. These awards applied to employers in New South Wales, Queensland, South Australia and Tasmania who were not trading as constitutional corporations and who were previously covered by state workplace relations systems. These employers and their employees are now covered by the national system as a result of the referral of state industrial powers to the Commonwealth.

From 31 December 2010, Division 2B State awards ceased to have effect. From that date, relevant employers and employees are covered by a modern award. Fair Work Australia was required to consider varying modern awards to continue the effect of the terms of Division 2B State awards for a transitional period after 31 December 2010.

On 5 November 2010 a Full Bench issued a decision varying the transitional provisions in modern awards to take account of the termination of Division 2B State awards.

2.5.3 Termination of instruments

Under item 3 of Schedule 5 of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Transitional Act), Fair Work Australia must terminate any modernisable instruments that have been completely replaced by

a modern award as soon as practicable after the modern awards have begun operating.

Modernisable instruments are defined as:

- award-based transitional instruments—federal awards and notional agreements preserving state awards (NAPSAs) created before 27 March 2006
- transitional Australian Pay and Classification Scales (APCS)—wage schedules derived from federal awards and NAPSAs on 27 March 2006 as adjusted by minimum wage decisions of the Australian Fair Pay Commission from 2006 to 2009.

On 22 December 2010 a Full Bench issued a decision that dealt with the legislative provisions, the various instruments relevant to the operation of item 3, ruled on a number of submissions relating to particular instruments and outlined some general principles. A further decision by the Full Bench on 16 June 2011 established a process for the termination of modernisable instruments by individual members of the tribunal.

The President issued a statement on 22 June 2011 providing additional information about the termination process. On 24 June 2011 a list of instruments capable of being terminated was published on the 'Termination of instruments' page of the Fair Work Australia website along with members allocated to hear any submissions—particularly those opposing termination. Other lists on the website give details of instruments excluded from the process.

2.5.4 Modern awards and the Annual Wage Review 2010–11

Fair Work Australia updated modern awards, effective from the first full pay period commencing on or after 1 July 2011, to reflect the *Annual Wage Review 2010–11 decision* made on 3 June 2011.

By 9 June 2011 the tribunal prepared and published draft determinations varying the rates in modern awards, giving interested parties the opportunity to review the rates. By 22 June 2011 it prepared, published and incorporated final determinations into modern awards.

2.5.5 Modern awards and expense-related allowances

Consistent with the process established in May 2010, Fair Work Australia adjusted expense-related allowances in modern awards by the percentage movement in the Consumer Price Index figure most recently published by the Australian Bureau of Statistics since the allowance was last adjusted.

After the *Annual Wage Review 2010–11 decision*, draft determinations updating the expense-related allowances were prepared and published on 7 June 2011, to allow for comment. Final determinations were prepared, published and incorporated into modern awards by 22 June 2011.

2.5.6 Modernisation of enterprise instruments

Schedule 6 of the Transitional Act provides for the modernisation of enterprise instruments by a Full Bench of Fair Work Australia upon application.

From an estimated 1625 enterprise instruments in the national system, Fair Work Australia has received five applications to modernise an enterprise instrument. Of these, one application was determined in May 2010 and two applications were determined during the reporting period. On 11 March 2011, the tribunal dismissed applications to modernise the *KFC National Enterprise Award 2001* and the *Pizza Hut—SDA National Employee Relations Award 2000*. (Note: Judicial review of these decisions is pending [NSD 428 and 430/2011]). An application to modernise the *Deakin Prime (Interim) Award 2003* was withdrawn on 16 August 2010.

The remaining application seeks to make a modern enterprise award to replace several enterprise instruments, including the *Telstra Corporation General Conditions Award 2001*.

When a decision is made not to modernise an enterprise instrument, the enterprise instrument terminates at the time of that decision.

2.5.7 Take-home pay applications

An employee whose take-home pay has been reduced as a result of the introduction of modern awards may apply to Fair Work Australia for a take-home pay order to preserve their existing take-home pay while they remain in the same job.

During the reporting period, Fair Work Australia received 57 take-home pay applications and determined seven—three applications were granted and four were refused. A further 54 applications were withdrawn and, at 30 June 2011, there were 10 applications pending.

2.6 Minimum wages

2.6.1 Annual Wage Review 2010–11

The Fair Work Act provides for an annual wage review conducted by the Minimum Wage Panel of Fair Work Australia (the Panel). The Panel comprises the President, three other full-time members and three part-time members. The Panel is required to review minimum wages in modern awards and make a national minimum wage order. Under the Transitional Act, the Panel also reviews minimum wages in some transitional instruments.

In undertaking the review, the Panel must take into account the minimum wages objective and the modern awards objective of the Fair Work Act.

The Panel conducted the Annual Wage Review 2010–11 between March and June 2011. It invited interested parties to make submissions and participate in regional consultations in March 2011 and final consultations in May 2011. During the review, the Panel received written submissions, submissions-in-reply and post-budget

submissions from a wide range of parties. Several research projects were undertaken and the findings were made available for use in the review.

On 3 June 2011, the Panel handed down its decision, which was to:

- increase all modern award minimum weekly wages and most transitional instrument wages by 3.4 per cent
- set the national minimum wage for award/agreement-free employees in the national minimum wage order at \$589.30 per week, or \$15.51 per hour (based on a 38-hour week for a full-time employee). A number of special national minimum wages were also set. The casual loading for employees not covered by an award or agreement was set at 22 per cent.

In accordance with the Fair Work Act, the decision came into operation on 1 July 2011 and took effect from the first full pay period on or after that date. The national minimum wage order and determinations varying modern awards were published before 1 July 2011. All submissions, research, additional information and transcripts were published on the Fair Work Australia website.

2.6.2 Research

Fair Work Australia undertakes and commissions research for use in the annual wage review. The Minimum Wages and Research Branch oversaw the research program for 2010–11 in consultation with representatives nominated by the:

- Australian Chamber of Commerce and Industry (ACCI)
- Australian Industry Group (Ai Group)
- Australian Council of Social Services (ACOSS)
- Australian Council of Trade Unions (ACTU)
- Australian Government
- state and territory governments.

Ten research reports were completed during the reporting period:

- *An overview of productivity, business competitiveness and viability*
- *Australian apprentice minimum wages in the national system*
- *Consolidated social research report*
- *Employees earning below the Federal Minimum Wage: Review of data, characteristics and potential explanatory factors*
- *Enterprise case studies: Effects of minimum wage-setting at an enterprise level*
- *Industry profile: Administrative and support services industry*
- *Industry profile: Other services industry*
- *Relative living standards and needs of low-paid employees: definition and measurement*

- *Research framework and data strategy*
- *Review of equal remuneration principles.*

Work on five other research projects also began. These reports will be completed to inform future annual wage reviews.

Further information about the research program can be found on the Fair Work Australia website.

2.7 Organisations

2.7.1 Organisations applications

During the year a number of cases were heard and determined by members of the Organisations Panel. The following applications were granted:

- applications for registration by Australian Public Transport Industrial Association and the Waste Contractors & Recyclers Association of NSW
- applications for a change of name and alteration of eligibility rules by The Licensed Clubs' Association of Australia (now Clubs Australia—Industrial)
- applications for a change of name by the Australian Federated Union of Locomotive Employees, Queensland Union of Employees (now Australian Federated Union of Locomotive Employees), Territory Construction Association (now Master Builders Association of the Northern Territory trading as Master Builders Northern Territory) and the Liquor, Hospitality and Miscellaneous Union (now United Voice)
- applications for alteration of eligibility rules by the CPSU, the Community and Public Sector Union, the CSR & Holcim Staff Association, the Liquor, Hospitality and Miscellaneous Union, the Master Builders Association of South Australia Incorporated and the National Union of Workers
- applications for cancellation of the registration of the Drycleaning Institute of Australia—NSW and the Drycleaning Institute of Australia—Queensland.

During the year, the following applications were withdrawn:

- applications for registration by the Building Service Contractors' Association of Australia—Queensland Division, Industrial Organisation of Employers, The Colliery Officials Association of New South Wales and Traffic Management Association of Australia
- applications for alteration of eligibility rules by the Police Federation of Australia, Property Sales Association of Queensland, Union of Employees and The Real Estate Association of New South Wales.

At the end of the reporting period there were 10 matters outstanding—four applications for registration and six applications for alteration of eligibility rules.

2.7.2 Registered organisations

As at 30 June 2011, there were 73 employer and 46 employee organisations registered under the Fair Work Act. In addition, there were 30 transitionally recognised employer associations and 61 transitionally recognised employee associations. Lists of both registered organisations and transitionally recognised associations are available on the Fair Work Australia website.

The number of organisations-related applications lodged during 2010–11 was 2231 (compared to 2883 lodged with Fair Work Australia during 2009–10). Outcomes for the processing of election matters and registration, amalgamation, eligibility or cancellation of registration matters were achieved or surpassed.

Rules matters did not consistently achieve their respective turnaround times, with 59 per cent of rules matters determined and decisions made within 28 days of receipt of the application (the target being 85 per cent). The greater turnaround time is attributable to the continued complexity of the rule alterations submitted, necessitating greater scrutiny and interaction with organisations.

The reporting period has seen further improvement in the number of annual returns finalised within the target rate of 28 days, with 80 per cent being finalised (62 per cent for 2009–10).

2.7.3 Compliance checks and investigations

Fair Work Australia provides a range of information materials and services to help registered organisations meet their obligations under the *Fair Work (Registered Organisations) Act 2009*, in particular, prompt and accurate information regarding organisations' rights and legislative obligations.

Outcomes for processing election matters, details of loans, grants and donations, exemptions from financial reporting requirements, right of entry permits and membership-of-an-organisation certificates were all achieved.

Outcomes in relation to processing financial returns fell short of their target, although there was some improvement, with 54 per cent of lodged financial returns being processed within 28 days of receipt (the target is 85 per cent processed, with 43 per cent processed for 2009–10).

With the emphasis on the increased level of compliance and improved disclosure to members, reporting units continue to be asked to provide documentation not previously required, which has contributed to the time elapsed between lodgment and finalisation.

Fair Work Australia made all available information accessible to auditors to assist them in undertaking their roles and responsibilities.

Statistics on a selection of matters finalised under the *Fair Work (Registered Organisations) Act 2009* appear in Table G7 in Appendix G.

2.8 Significant cases

Construction, Forestry, Mining and Energy Union v Woodside Burrup Pty Ltd and Kentz E & C Pty Ltd

Decision: Melbourne, 6 August 2010 [[2010] FWAFB 6021]

Full Bench: Vice President Lawler, Deputy President Ives, Commissioner Roe

This decision considered whether the tribunal should have issued an order to stop protected action by the employees of a contractor on a major construction site on the grounds that the action was causing 'significant harm' to a third party under s.426 of the *Fair Work Act 2009*.

The tribunal at first instance issued an order on the basis that, due to the complex interdependencies between the work of each contractor and the sequential nature of the work, the action threatened to cause significant harm to the other contractors on the site. The order suspended the action for three months.

The Construction, Forestry, Mining and Energy Union (CFMEU) appealed. The ACTU also was granted leave to intervene on the grounds that it was a 'person aggrieved' by the decision.

Section 426 confers a power to suspend, but not to terminate protected action on the basis of significant harm to a third party. When protected industrial action is terminated for other reasons under ss 423, 424 or 431, Fair Work Australia is obliged to make a workplace determination if the parties cannot reach agreement. Such a determination is a benefit that accrues to employees when the right to take industrial action is removed. Section 426 provides no such benefit when protected action is suspended.

Accordingly, it could be inferred that Parliament intended that a suspension of protected action under s.426 would provide a single instance of temporary respite for third parties from the adverse effects of protected action. However, the harm to the third party would need to be significant and not merely the suffering of a loss, inconvenience or delay. It was also anticipated that suspension of protected action under s.426 would occur only rarely.

After reviewing the facts, the Full Bench concluded that the tribunal had erred in two respects. First, it failed to recognise that the 'significant harm' under s.426 required identification of harm that was over and above harm of the sort that commonly results from protected action. Second, the three-month suspension was excessive as it almost certainly had the practical effect of terminating the protected action rather than merely providing a respite.

Accordingly, the appeal was allowed, the decision and order were quashed and the original application was dismissed.

MSS Security Pty Ltd v Liquor, Hospitality and Miscellaneous Union

Decision: Melbourne, 25 August 2010 [[2010] FWAFB 6519]

Full Bench: Vice President Lawler, Deputy President Hamilton, Commissioner Bissett

This decision considered whether there can be a 'bargaining representative' for a group of employees that has not been given a notice of representational rights regarding a proposed enterprise agreement under s.173 of the *Fair Work Act 2009*.

At first instance, the tribunal made a protected action ballot order covering three categories of employees of MSS Security Pty Ltd (MSS) as requested by the Liquor, Hospitality and Miscellaneous Union (LHMU), despite the fact that MSS had issued a notice of representational rights only to employees of one of those categories.

MSS appealed on the ground that only a 'bargaining representative' can apply for a protected action ballot under s.437(1) and that, in this case, there was no valid bargaining representative for the relevant employees as the employer had not yet issued a notice of representational rights to those employees.

The Full Bench held that the LHMU was a valid bargaining representative with respect to all three categories of employees because other legislative provisions (such as s.236 regarding majority support determinations) clearly operate on the premise that a person or union can be a bargaining representative before the employer has agreed to bargain. It follows that a union or other person may be a bargaining representative of an employee before the issue of a notice of representation rights issued under s.173.

The Full Bench also relied on the authority in *Stuartholme School and Others v Independent Education Union of Australia* [[2010] FWAFB 1714] for the principle that the scope of a proposed agreement can be the subject of bargaining for an agreement. Once an employer agrees to bargain in relation to a group of employees it is obliged to issue a notice of representational rights to all of the employees within the scope of the proposed agreement. In this case, the LHMU first proposed the agreement, and its proposal covered three categories of employees. Thus the 'proposed agreement' was the one first proposed by the LHMU, with that broader scope. In the absence of a scope order pursuant to s.238, the Full Bench held bargaining should proceed on the basis of that scope.

Accordingly, as there was no appealable error, the appeal was dismissed.

Award Modernisation—Division 2B State awards

Decision: Melbourne, 5 November 2010 [[2010] FWAFB 8558]

Full Bench: Justice Giudice, Senior Deputy President Acton, Commissioner Hampton

This decision established transitional provisions for the termination of Division 2B State awards.

Division 2B State awards were established as a result of the referral of certain state industrial relations powers by New South Wales, South Australia, Queensland and

Tasmania to the commonwealth effective from 1 January 2010. These awards cover non-constitutional corporation employers, chiefly small businesses.

Division 2B State awards were scheduled to exist only for the interim 12 months from 1 January 2010 until 1 January 2011 when modern awards commenced. During the 12-month life of each Division 2B State award, the tribunal was required to consider whether to:

- vary a modern award to continue the effect of terms of a Division 2B State award or
- make orders to continue long service leave terms of a Division 2B State award for a transitional period after 1 January 2011, as required by Schedule 3A of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.

Most modern awards contain model transitional arrangements dealing with the transition to modern award conditions. The Full Bench noted that these provisions had been in operation for some time and it would not be desirable to establish different provisions for Division 2B State awards, subject to some exceptions. There were also strong reasons of equity for not doing so, in light of the statutory objective that all parties within an industry ultimately be subject to the minimum terms of the relevant modern award.

After considering submissions, the Full Bench determined that from 1 February 2011 (deferred from 1 January 2011) a Division 2B employer must pay no less than the minimum wages, loadings and penalty rates which it would be required to pay under the phasing schedule if it had been a national system employer immediately prior to 1 January 2010.

The Full Bench acknowledged that in some awards this would lead to a significant increase in minimum wages on 1 February 2011. However, that should be seen in light of the fact that minimum wages in Division 2B State awards had not increased for a significant time. In addition, standardising such entitlements would reduce the regulatory burden on employers.

The Full Bench also indicated that it would, on application, make an order for each relevant Division 2B State award to preserve long service leave entitlements for the transitional period. It also made transitional provisions regarding redundancy and accident pay.

Ulan Coal Mines Limited v Honeysett and others, and Murray and others v Ulan Coal Mines Limited

Decisions: Sydney, 12 November 2010 [[2010] FWAFB 7578]

Full Bench: Justice Giudice, Senior Deputy President Hamberger, Commissioner Cambridge

This decision considered whether it would have been reasonable for an employer to redeploy redundant employees to an associated enterprise under s.389 of the *Fair Work Act 2009*.

A number of employees were retrenched following a restructure of the coal mining operations of Ulan Coal Mines Limited (Ulan), which is part of Xstrata Coal Pty Ltd

(Xstrata). At the time there were vacancies at other mines in the Xstrata group. While Ulan helped employees to ascertain the availability of suitable positions, they had to compete against other applicants for those positions.

Ten of the retrenched employees lodged unfair dismissal applications under s.394. The decision at first instance found that six employees were not genuinely redundant (because it would have been reasonable for those employees to have been redeployed to other businesses within Xstrata's control). Four employees were found to be genuinely redundant.

Ulan appealed against the finding that six employees were not genuinely redundant. Three of the 'genuinely redundant' employees also appealed. The appeals were heard together.

The Full Bench first noted that the question of whether it would be 'reasonable' to redeploy an employee will always depend upon the circumstances. However it was considered implicit in the terms of s.389 that, in some circumstances, it may be reasonable for an employer to redeploy an employee to an associated entity (with the degree of managerial integration between the entities being relevant). The question of whether redeployment would have been reasonable is to be applied at the time of the dismissal.

The Full Bench also noted that when an employer decides that, rather than fill a vacancy by redeploying an employee into a suitable job in its enterprise (or a related enterprise) it will advertise the vacancy and require the employee to compete with other applicants, it may subsequently be found that the resulting dismissal is not a genuine redundancy. This is because it would have been reasonable to redeploy the employee into the vacancy.

In light of the above, it was open to the tribunal to have found the six employees not to be genuinely redundant, as the employer failed to redeploy those employees to associated entities. It was also open to the tribunal to have found three employees to be genuinely redundant, as they were not prepared to travel the distance required for redeployment.

Accordingly, the appeals were dismissed.

Award Modernisation—Termination of Modernisable Instruments

Decisions: Melbourne, 22 December 2010 [[2010] FWAFB 9916]
Melbourne, 16 June 2011 [[2011] FWAFB 3773]

Full Bench: Justice Giudice, Vice President Watson, Commissioner Smith

These decisions concerned the responsibility of Fair Work Australia to terminate instruments replaced by a modern award as soon as practicable after all the modern awards came into operation on 1 January 2010.

Modern awards replaced, in a general sense, many instruments created under the *Workplace Relations Amendment (Work Choices) Act 2005* (Work Choices Act) and the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (the Transitional Act). All such instruments can be traced back to federal and state awards

applying before the Work Choices Act began in 2006. The task of terminating these instruments was complex because there were many types—as listed in a glossary to the decision.

The main provision covering the termination of such instruments is item 3 of Schedule 5 of the Transitional Act. The key provisions in item 3 are as follows:

- item 3(1) requires Fair Work Australia to terminate a modernisable instrument as soon as practicable after a modern award made under Part 10A of the *Workplace Relations Act 1996* comes into operation that completely replaces it; and to vary the coverage of a modernisable instrument that is only partly replaced by the modern award
- item 3(2) requires Fair Work Australia to terminate all modernisable instruments as soon as practicable after all the modern awards have come into operation
- item 3(3)(a) prohibits Fair Work Australia from terminating certain instruments.

No instruments were terminated under item 3(1) during the modernisation process. Accordingly, once all modern awards had come into operation the President issued, under item 3(2), a list of modernisable instruments and invited objections to their termination.

The Full Bench first noted that the legislative scheme provides for a comprehensive system of modern awards that replaces modernisable instruments entirely. Accordingly, it was concluded that once the award modernisation process had ended, item 3(2) became operative and item 3(1) (which purportedly may have allowed modernisable instruments to be varied and continue in operation indefinitely) ceased to have effect.

The Full Bench then emphasised the requirement in item 3(2) that what is practicable in relation to a particular instrument determines when the instrument should be terminated. If the termination of an instrument would deprive employees of award coverage or impose unreasonable obligations on employers, it could be concluded that it would not be practicable to terminate the instrument, but that would depend on the circumstances.

Two types of modernisable instruments are to be terminated under item 3(2):

- award-based transitional instruments—which include awards; state reference transitional awards; state reference common rules; and NAPSAs
- transitional APCs.

However, item 3(3)(a) provides that the tribunal must not terminate a modernisable instrument of any of the following types:

- an enterprise instrument
- a state reference public sector transitional award
- that covers employees who are also covered by an enterprise instrument
- that covers employees who are also covered by a state reference public sector transitional award.

Determining whether an instrument falls into one of the exempt categories may be difficult. For example, 'enterprise instruments' from the former state and federal workplace relations systems often operate in conjunction with other instruments. It is necessary for each instrument to be examined to ascertain its coverage. Accordingly, the Full Bench requested the General Manager of Fair Work Australia to examine such instruments and to make relevant information publicly available. Similarly, though a 'state reference public sector transitional award' may have the same award origin as a corresponding 'state reference transitional instrument', they are not the same and termination of one does not lead to the termination of the other.

The decision then discussed particular submissions relating to specific instruments.

In its subsequent decision of 16 June 2011, the Full Bench noted that additional submissions had been received. The Full Bench resolved to adjourn the proceedings to permit termination of instruments by individual members in the first instance.

Armacell Australia Pty Ltd and others

Decision: Melbourne, 24 December 2010 [[2010] FWA FB 9985]

Full Bench: Justice Giudice, Senior Deputy President Acton, Commissioner Lewin

This decision considered in what circumstances an enterprise agreement may allow for the cashing out of annual leave and long service leave.

At first instance, the tribunal refused to approve three agreements on the grounds that the provisions in the agreements allowing for the cashing out of annual leave were contrary to the 'better off overall test' in the *Fair Work Act 2009*. In particular, while the tribunal acknowledged that s.93 allows for the cashing out of annual leave subject to certain safeguards, it was of the view that the agreements should provide additional safeguards regarding annual leave.

The tribunal also found that the proposed cashing out of long service leave in two of the agreements was inconsistent with provisions in state legislation dealing with long service leave and was also contrary to the better off overall test.

The relevant employers appealed against the decisions. The appeals were heard together.

After reviewing the facts, the Full Bench concluded that the tribunal, in applying the better off overall test, had erred by seeking to impose additional safeguards regarding annual leave over and above those provided by Parliament in the legislation in s.93.

With respect to long service leave, the Full Bench noted that, while s.192(1) provides that approval of an agreement may be refused if the terms of the agreement may result in a person contravening a law of the Commonwealth, there is no discretion to refuse to approve an agreement that is inconsistent with state legislation.

Accordingly, the appeals were allowed and the decisions quashed. The Full Bench then indicated it was prepared to approve the agreements subject to certain undertakings.

McConnell v A & PM Fornataro (trading as Tony's Plumbing Service)

Decision: Adelaide, 31 January 2011 [[2011] FWA 466]
Full Bench: Vice President Lawler, Senior Deputy President O'Callaghan, Commissioner Bissett

This decision considered whether a general protections application, relating to a termination of employment, was lodged late due to 'representative error'.

The relevant employee resigned from his employment. However, the employee later formed the view that he had been forced to resign and, after making inquiries to the Fair Work Ombudsman, lodged an application for an unfair dismissal remedy under s.394 of the *Fair Work Act 2009* (Fair Work Act). That application was lodged within the statutory time frame.

Subsequently, the former employee obtained legal representation. On his representative's advice, the former employee discontinued his s.394 application and lodged a general protections dispute application under s.365 of the Fair Work Act. That application was lodged late.

The tribunal at first instance refused to extend time for the lodgment of the s.365 application based on the view that there were no 'exceptional circumstances' under s.366(2) and that the former employee's tardiness in seeking advice significantly contributed to the delay. The former employee then lodged an appeal.

By majority the Bench found no error in the finding that the former employee's actions had substantially contributed to the delay. Nor did they blame the delay on representative error. In addition, the majority emphasised that the former employee did not argue the issue of representative error at first instance or on appeal. Accordingly, leave to appeal was refused.

Ford v Fish Liquor Pty Ltd trading as Marina Quays International

Decision: Melbourne, 4 February 2011 [[2011] FWA 785]
Member: Senior Deputy President Kaufman

This decision considered whether a former employer's failure to participate in unfair dismissal proceedings could provide grounds for costs to be ordered against the former employer under s.611 of the *Fair Work Act 2009*.

A former employee lodged an unfair dismissal under s.394. The respondent failed to participate in telephone conciliation in any meaningful way and failed to comply with directions or attend the arbitration hearing. These failures allowed the application to proceed unchallenged, and the dismissal was found to be unfair and compensation was ordered.

The former employee then sought costs against the former employer under s.611.

The general rule under s.611 is that parties will bear their costs. However, when a former employee seeks costs against a former employer, costs can be ordered under s.611(2) if it is found that the respondent 'responded to the application' vexatiously

or without reasonable cause, or where it should have been reasonably apparent to the former employer that its 'response to the application' had no reasonable prospect of success.

Hence it was necessary to determine whether the conduct of the respondent in the substantive proceedings constituted a response for the purposes of s.611(2).

On this point the tribunal concluded that, because the respondent neither appeared at the arbitration, nor provided any material to contest the former employee's application, the respondent did not provide a 'response' that could enliven s.611(2). All that the respondent's refusal to participate in the hearing did was require the applicant to make her case, something she had to do regardless of whether the respondent appeared or not.

It was also noted that costs could previously be ordered against a party on the grounds of an unreasonable act or omission under s.658(3) of the *Workplace Relations Act 1996*. However that ground is not contained in s.611 and it remains a ground for ordering costs only against lawyers and paid agents (under s.401).

Accordingly the costs application was dismissed.

Parmalat Food Products Pty Ltd v Wililo

Decision: Sydney, 2 March 2011 [[2011] FWAFB 1166]

Full Bench: Vice President Watson, Deputy President Sams, Commissioner Asbury

This decision considered whether a termination of employment found to be for a 'valid reason' may still be 'harsh' under ss 385 and 387 of the *Fair Work Act 2009*.

The relevant employee was summarily dismissed for serious misconduct after a company investigation found he had behaved in a grossly negligent and dangerous manner while driving a forklift.

The tribunal at first instance found there was a valid reason for the termination because the employee's actions caused serious and imminent risk to his health and safety. However, notwithstanding that, the dismissal was found to be harsh based on a number of considerations, including the employee's length of service and the fact that the conduct was considered to be careless rather than negligent. Reinstatement was then ordered.

The company appealed on the grounds that when an employee is found to have been dismissed for a valid reason relating to a serious safety breach it is inconceivable that the tribunal would conclude the termination of employment was harsh. It further submitted that it was patently unreasonable to reinstate an employee in circumstances such as those which gave rise to the dismissal.

The Full Bench granted leave to appeal on the basis that this case raised important questions about the respective rights and obligations of employees and employers in relation to safety requirements at the workplace. The Full Bench stated that the existence of a valid reason is a very important consideration in any unfair dismissal case. The absence of a valid reason will almost invariably render a termination unfair. Conversely, if a finding has been made that there is a valid reason for a dismissal based on serious misconduct, and procedural fairness has been afforded, a

conclusion of harshness will be open only if significant mitigating factors are present. In this case there were no such mitigating factors.

Accordingly, the decision was quashed and the unfair dismissal claim dismissed.

Applications by United Voice and another for a low-paid authorisation

Decision: Melbourne, 5 May 2011 [[2011] FWAFB 2633]

Full Bench: Justice Giudice, Vice President Watson, Commissioner Gay

This was the first decision regarding an application for a 'low-paid authorisation' under s.242 of the *Fair Work Act 2009*.

Applications were lodged by United Voice (formerly known as the Liquor, Hospitality and Miscellaneous Union) and the Queensland Branch of the Australian Workers' Union for low-paid authorisations in relation to the residential aged care sector. The applicants sought one authorisation which would permit the applicants to bargain for a multi-enterprise agreement covering a number of residential aged care providers funded by the Commonwealth.

The President directed, under s.615, that the applications be dealt with by a Full Bench.

The legislative policy underlying the low-paid authorisation provisions is that while bargaining on a single enterprise basis is the preferred approach, multi-enterprise bargaining is permitted 'to assist and encourage low-paid employees ... to make an enterprise agreement that meets their needs'.

After considering submissions the Full Bench concluded that a significant proportion of employees in aged care are low paid and have not had access to enterprise bargaining, or face difficulty in bargaining. These employees are paid at or around the award rate of pay and are at lower award classification levels. When enterprise agreements are in place, the wages are only about five per cent to 10 per cent above the award rate, and there are often negotiated alterations in other award conditions that have an offsetting effect on the agreement rates.

Funding plays a pervasive role in aged care. The Commonwealth is the dominant funder and thus has control over terms and conditions in the industry under s.243(3) (d). That fact favoured granting the application. The Full Bench concluded it was not appropriate, or possible, to say whether funding might increase if the authorisation was granted.

Granting the authorisation would provide a framework that would simplify the bargaining process and enable the bargaining representatives to make better use of their resources.

In light of the above, the Full Bench concluded that it was in the public interest to issue a low-paid authorisation. However, employers covered by an enterprise agreement were excluded from the authorisation on the grounds that, though their employees may be low paid, it would be difficult to analyse each such agreement to determine whether the authorisation should extend to the enterprise concerned.

The Australian Workers' Union and Roadworx Surfacing Pty Ltd

Decision: Melbourne, 10 May 2011 [[2011] FWAFB 1759]

Full Bench: Senior Deputy President Harrison, Senior Deputy President Richards, Commissioner Williams

This decision found that the written undertakings given by an employer regarding a proposed enterprise agreement did not comply with s.190 of the *Fair Work Act 2009* (Fair Work Act).

At first instance, the Australian Workers' Union (AWU) asserted that a proposed agreement under s.185 should not be approved because many of its terms were inferior to the relevant modern award. Notwithstanding this, the agreement was approved by the tribunal on the basis of various undertakings provided by the employer under s.190 of the Fair Work Act.

The AWU then appealed against the decision to approve the agreement.

After considering the evidence, the Full Bench concluded the tribunal was in error in accepting the undertakings because:

- the precise terms of the undertakings were unclear, inconsistent and contained typographical errors that would tend to give rise to interpretation disputes
- the undertaking regarding wage rates did not address how the rates would be sufficient to compensate for the loss of any penalties that would otherwise be payable under the modern award in order to satisfy the better off overall test
- the tribunal failed to seek the views of each bargaining representative regarding the proposed undertakings, as required by s.190(4)
- the undertakings were not signed by the employer, as required by s.190(5) of the Fair Work Act and Regulation 2.07 of the *Fair Work Regulations 2009*.

Accordingly, the appeal was upheld and the decision was quashed.

Equal Remuneration Case

Decision: Melbourne, 16 May 2011 [[2011] FWAFB 2700]

Full Bench: Justice Giudice, Vice President Watson, Senior Deputy President Acton, Commissioner Harrison, Commissioner Cargill

This decision concerned an application for an 'equal remuneration order' to address alleged pay discrimination against women in the social, community and disability services industry throughout Australia (the SACS industry).

The application was made under Part 2–7 of the *Fair Work Act 2009* (the Fair Work Act) by the Australian Municipal, Administrative, Clerical and Services Union (ASU), on its behalf and on behalf of a number of other unions, with respect to employees in the 'not for profit' SACS industry under the *Social, Community, Home Care and Disability Services Industry Award 2010*. The application sought higher wages and classifications similar to those provided for in the *Queensland Community Services and Crisis Assistance Award—State 2008*.

There were extensive submissions by unions, employer organisations, governments, and others. The Full Bench also considered evidence from academics, employees and others.

The Fair Work Act refers to work of 'equal or comparable value' whereas the former *Workplace Relations Act 1996* referred only to work of 'equal value'. Accordingly, the Full Bench considered precedents established under the former legislation on this issue may no longer be applicable.

The Full Bench found that there is not equal remuneration for men and women workers for work of equal or comparable value in the SACS industry by comparison with workers in state and local government employment. This disparity was partly gender-driven. It was necessary to identify the extent to which gender had inhibited wages growth, but it was not necessary to expressly establish discrimination against female employees.

The Full Bench stated that it had reached preliminary conclusions regarding possible orders. Pending additional hearings, it sought further submissions on a number of points. It also noted that if any equal remuneration order was issued, it would take the form of an addition to modern award rates. The addition could be a specific amount or a percentage. A percentage would recognise and preserve award relativities and result in ongoing adjustment whenever award rates changed, thus avoiding the need to review the amount.

The Full Bench noted that, while there was widespread reliance on government funding in the SACS industry, government submissions about cost implications arising from this matter were unsatisfactory. The Full Bench expected this deficiency to be remedied when further submissions were lodged.

Finally, the Full Bench noted that the provisions in the *Queensland Community Services and Crisis Assistance Award—State 2008* were based on considerations extraneous to the proper fixation of federal minimum rates. Accordingly, it was not appropriate to adopt the approach taken in that state award.

J. J. Richards & Sons Pty Ltd v Transport Workers' Union of Australia and Australian Mines and Metals Association Inc. v Transport Workers' Union of Australia

Decision: Melbourne, 1 June 2011 [[2011] FWAFB 3377]

Full Bench: Justice Giudice, Senior Deputy President Harrison, Commissioner Roberts

This decision considered whether a protected action ballot order may be issued before bargaining begins for a proposed enterprise agreement under s.443 of the *Fair Work Act 2009* (Fair Work Act).

At first instance the tribunal issued a ballot order in such circumstances to the Transport Workers' Union of Australia (TWU). The employer, J. J. Richards & Sons Pty Ltd, and the Australian Mines and Metals Association Inc. then appealed the decision on the grounds that:

- the TWU was not genuinely trying to reach agreement because the ballot order was sought before bargaining began
- the tribunal's approach was inconsistent with the legislative scheme set out in the Fair Work Act and its Explanatory Memorandum.

The Full Bench identified a conflict of authority on this issue that required clarification. Accordingly, leave to appeal was granted.

Section 443(1)(b) provides that the tribunal cannot issue a ballot order unless it is satisfied that the applicant is 'genuinely trying to reach an agreement'. This wording focuses attention on the conduct of the applicant, not the employer.

After considering the legislative scheme, the Full Bench concluded that:

- there is nothing in the legislation to indicate that a bargaining representative could not apply for a bargaining order unless bargaining had commenced
- there is nothing in the legislation to indicate that a union which is genuinely trying to reach an agreement (but cannot persuade the employer to agree to bargain) should not be able to organise protected action unless it has first obtained a majority support determination under s.237 to prove the majority of employees seek an agreement
- there is nothing in the legislation to indicate that a bargaining representative cannot apply for a ballot order unless the employer has given the employees notice of their representational rights under s.173 of the Fair Work Act.

These conclusions followed the 'ordinary meaning' of the legislation, thus recourse to the Explanatory Memorandum for a contrary construction was not appropriate under s.15AB of the *Acts Interpretation Act 1901*. Accordingly, if a bargaining representative legitimately requests an employer to bargain and the employer refuses, it will generally be found that the bargaining representative is genuinely trying to reach an agreement unless there is material to suggest that the request to bargain is a sham.

The appeals were therefore dismissed.

Annual Wage Review 2010–11

Decision: Melbourne, 3 June 2011 [[2011] FWAFB 3400]

Full Bench: Justice Giudice, Senior Deputy President Watson, Senior Deputy President Harrison, Commissioner Raffaelli, Mr Vines, Professor Richardson, Mr Dwyer

This was the second annual wage review by the Minimum Wage Panel of Fair Work Australia (the Panel) under the *Fair Work Act 2009* (Fair Work Act).

A large number of interested parties lodged written submissions and participated in the review. Public consultations were also held. In addition, the Minimum Wages and Research Branch of Fair Work Australia undertook or commissioned research projects.

Proposals submitted by the parties were in respect of an increase to modern award minimum wages and the national minimum wage. Some parties advocated a specific dollar quantum of increase, while others proposed a percentage increase.

- The ACTU, supported by various other employee organisations, recommended a two-tiered approach of a \$28 per week increase to the national minimum wage and for award-reliant employees up to the C10 tradespersons classification level, and a 4.2 per cent increase for award-reliant employees above the C10 level.
- The ACCI supported by various other employer organisations, proposed an increase to the national minimum wage and modern award wages of no more than \$9.50 per week.
- The Ai Group proposed that the national minimum wage and modern awards should increase by \$14 per week.
- The Australian Government, while not proposing a specific quantum increase, suggested that the approach to minimum wages should be both economically responsible and fair, and that low-income workers should be able to share fairly in Australia's growing prosperity.

The Panel in its 2010 decision observed that the awarding of flat dollar increases in annual minimum wage decisions over the past 20 years had compressed wage relativities and reduced gains from skills acquisition. Accordingly, in the present decision, the Panel determined that a percentage increase would be granted to ensure that the real value of minimum wages was maintained and that award relativities were not further compressed.

The Australian economy performed well over the previous 12 months, notwithstanding the negative impact of natural disasters such as Cyclone Yasi in Queensland and flooding in Queensland, New South Wales and Victoria. Labour productivity and employment are growing; profit share is high; unemployment is falling; and inflation is within the Reserve Bank's target. Global economic conditions have improved since the Global Financial Crisis and the short-term economic outlook is positive.

In light of these measures, a significant increase in minimum wages was appropriate to improve the real value of award wages and the living standards of the low paid.

Accordingly, the Panel granted a 3.4 per cent uniform percentage increase to modern award minimum wages. The increase will flow through to juniors, trainees, employees with disability and to piece rates. In addition, the national minimum weekly wage (based on a 38-hour week) was increased to \$589.30 per week or \$15.51 per hour, which constituted an increase of \$19.40 per week or 51 cents per hour.

A number of parties sought a delay in the operative date on the grounds of exceptional circumstances arising from the natural disasters referred to above. The Panel was conscious of the hardship that the disasters had placed on employers. However, it did not accede to this request as there was no mechanism to identify which employers were affected by such events. In addition, any such deferral would place a burden on the lowest paid.

The minimum wage adjustment will apply to all transitional instruments which form part of the award safety net, even where the instrument applies on an enterprise basis (with some exceptions) including all transitional APCs, state reference transitional awards and Division 2B State enterprise awards. Wages in Division 2B State awards relating to Queensland trainees and apprentices, and to employees subject to specific Queensland labour market programs, will be varied to achieve parity with minimum wages in the corresponding transitional APCs and state reference transitional awards.

The Panel also determined that:

- The casual loading for employees not covered by an award or agreement would be increased to 22 per cent.
- Junior employees not covered by an award or agreement will be paid on a percentage scale adopted from the *Miscellaneous Award 2010*, based on the minimum wage.
- Employees not covered by an award or agreement to whom training arrangements apply will be covered by the relevant wage provisions in the *Miscellaneous Award 2010*, including the apprentice provisions and the National Training Wage Schedule, and a provision that adult apprentices should not receive less than the adult minimum wage.
- Of employees with disability who are not covered by an award or agreement, those whose productivity is not affected will be covered by the minimum wage and those whose productivity is affected will be subject to the supported wage system.

The Panel foreshadowed that the research program for the annual wage review for 2011–12 would address the effects of minimum wage increases on gender. In addition, as there is a lack of consensus about how to measure and assess the needs of the low paid, a report may also be prepared on this issue under s.290 of the Fair Work Act.

Pietraszek v Transpacific Industries Pty Ltd trading as Transpacific Cleanaway

Decision: Perth, 28 June 2011 [[2011] FWA 3698]
Member: Commissioner Williams

This was the first decision to examine the right of an employee, under the NES as set out in s.114 of the *Fair Work Act 2009* (Fair Work Act), to refuse to work on a public holiday.

An employee was summarily dismissed when he failed to work on Christmas Day and Boxing Day. The former employee then lodged an unfair dismissal application under s.394. The chief ground of the application was that there was no valid reason for the dismissal, because the employer's request that he attend work on those public holidays was unreasonable in light of the employee's family responsibilities.

The respondent submitted there was a valid reason for the termination on the grounds that its business provided services 365 days a year, which necessitated some work on public holidays. Hence the employee's refusal to work on such days

was a failure to follow a reasonable and lawful direction that amounted to serious misconduct.

Section 114 of the Fair Work Act focuses on whether a request, or a refusal of a request, to work on a public holiday is reasonable.

The tribunal was satisfied, given the nature of the employer's business, that it was reasonable for the employer to request the employee to work on the public holidays.

The employee also had 'good reasons' to refuse to work on those days, including his family responsibilities and a genuinely held belief that he was not required to work on those days. However, the applicant did not adequately explain those reasons to the employer. When an employee does have good reasons for refusing a request to work, but does not explain those reasons to the employer it cannot be said that the refusal to work is 'reasonable'.

Hence, from the perspective of the respondent at the time, the refusal to work seemed to be a valid reason for the dismissal. However, in determining an unfair dismissal application under s.394, the test is not whether the respondent had such a belief, but rather whether on the evidence before the tribunal it is shown that there was a valid reason.

After considering all of the evidence the tribunal found that the employee did have good reasons for his refusal to work and thus there was not a valid reason for the dismissal.

2.9 Members' external activities

2.9.1 Heads of tribunals meetings

Section 649 of the Fair Work Act permits the President to invite heads of state industrial authorities to meet him to exchange information and to discuss matters of mutual interest. During the reporting period meetings took place in September 2010 and May 2011.

2.9.2 Tribunal members: other activities

Overseas

Justice Giudice attended a meeting of international dispute resolution agencies in Washington DC in October 2010.

In September 2010, Justice Boulton attended the Asian Regional Congress of the International Labour and Employment Relations Association, along with Deputy President Sams and Commissioner Ryan, and chaired two sessions of the Congress. In October 2010 Justice Boulton assisted the International Labour Organization (ILO) to deliver training courses in mediation and conciliation for officials of the Labour Departments of Hong Kong and Macao. In January 2011, the Judge was invited by the Industrial Relations Court of Indonesia and the ILO to give a series

of presentations in Jakarta to assist in the development of a training curriculum for judges of the court.

In May 2011 Deputy President Harrison visited Botswana at the invitation of the Government of Botswana. While there he conducted a one-day workshop for conciliators and mediators appointed pursuant to the *Botswana Trades Disputes Act 2004* and addressed a high level Symposium on Managing Unionised Public Service Issues and Challenges.

Commissioner Gay visited the Arbitration Council of Cambodia in September 2010, continuing the professional development liaison between Fair Work Australia and the Cambodian tribunal. In June 2011 Commissioner Gay participated in a series of developmental activities with the Commission for Mediation and Arbitration of Tanzania, the Industrial Court and Dispute Handling Tribunal of Zanzibar, and with employer and employee bodies, as part of an ILO program of technical assistance in improving labour law compliance.

Domestic

Justice Giudice spoke at a number of events during the reporting period. These included addresses to the Industrial Relations Society of Tasmania and the Australian Labour Law Association Tasmania conference in November 2010 and to a Journal of Industrial Relations Colloquium held in conjunction with the University of Sydney in February 2011. Justice Giudice is the Patron of the Industrial Relations Society of Victoria and is a member of the University of Melbourne Archives Advisory Board.

Vice President Watson gave addresses to the Salvos Legal 2010 Inaugural Lecture Series in September 2010 and to the Australian Institute of Human Resources' National Convention in June 2011. The Vice President is the consultant to Thomson Reuters regarding the publication of the Industrial Reports, which contain tribunal decisions.

Justice Boulton was the keynote speaker at the 5th Annual Industrial and Workplace Relations National Conference 2011 held by LexisNexis in June 2011 and at the Annual Employment and Industrial Law Seminar conducted by NSW Young Lawyers in February 2011. Justice Boulton is a member of the Advisory Board of the Centre for Employment and Labour Relations Law at the University of Melbourne.

Senior Deputy President Watson is Chairman of the Pharmaceutical Benefits Remuneration Tribunal.

Senior Deputy President Acton is a member of the Advisory Board to the Centre for Employment and Labour Relations Law at the University of Melbourne and a member of the editorial committee of the *Australian Journal of Labour Law*. The Senior Deputy President spoke at a number of events and to a number of groups in 2010–11, including the Industrial Relations Society of Victoria in July 2010, the Legal Services Commission of South Australia in August 2010, the 10th National Mediation Conference and an Australian Labour Law Association—Victorian Chapter Seminar in September 2010, the Air Conditioning and Mechanical Contractors' Association, the Australian Labour Law Association National Conference 2010, the 9th Annual Workforce Conference and the Industrial Relations Society of Queensland in

November 2010, the Journal of Industrial Relations Colloquium in February 2011, and the Australian Council of Trade Unions Industrial Conference in March 2011.

Senior Deputy President Drake is a panel member of the Judiciary and Conduct Panel for the South Sydney Junior Rugby League Club, and Grievance Officer for the Maroubra Surf Club.

Senior Deputy President Richards spoke at the McCullough Robertson Annual Conference in July 2010 and addressed the Ai Group Member Conference on the topic of Agreement Making in August 2010. In September 2010 the Senior Deputy President was the keynote speaker at the Australian Institute of Human Resources and gave the opening address at the Queensland Hospitality Association Annual Conference in June 2011.

Deputy President Harrison is the Chairman of the University of Newcastle Employee Relations/Human Resources Management Industry Advisory Committee.

Commissioner Lewin is Chairman of the Deakin University Human Resources Management Advisory Board and Chairman of the RMIT University School of Management Advisory Committee. In July 2010 the Commissioner conducted an unfair dismissal workshop and moot for Deakin University Master of Business Administration students.

Commissioner Blair spoke in early November 2010 to the Australian Institute of Human Resources.

Commissioner Cargill is co-convenor of the 'Advocacy in the tribunals' course run by the Workplace Research Centre at the University of Sydney.

Commissioner Bissett is a member of the Advisory Board for the Australian Centre for Research in Employment and Work at Monash University.

Commissioner Hampton is National Vice President of the Australian Labour and Employment Relations Association (formerly the Industrial Relations Society of Australia) and past president of the Industrial Relations Society of South Australia (IRSSA). He was on the organising committee of the Australian Labour Law Association National Convention held at Glenelg in November 2010. The Commissioner spoke at a number of events during the reporting period. These included the Law Society of South Australia and Law Council of Australia Industrial Law Committee Seminar, and the SA Equal Opportunity Commission Conciliators, both in August 2010, and the Australian Labour Law Association National Conference in November 2010. In March 2011 the Commissioner spoke at the Anglicare National Human Resources Conference about the national system and to the IRSSA and Civil Contractors Federation of South Australia about enterprise agreements under the Fair Work Act in April and May 2011.



A delegation from the Department of Labour and Industrial Relations, Papua New Guinea, during a visit to the Melbourne office of Fair Work Australia.

2.10 Education and information services

Fair Work Australia undertakes a number of activities designed to help those who use its services and to promote a greater public understanding of the tribunal and its work.

2.10.1 Educational activities

Briefings

Fair Work Australia members and staff provide briefings on the role and functions of the tribunal to interested groups upon request. The groups include those from:

- the workplace relations community, such as union delegates, human resources practitioners and lawyers
- educational institutions such as primary and secondary schools, universities and Tertiary and Further Education (TAFE).

The tribunal also provides briefings to overseas visitors with an interest in Australian workplace relations. In 2010–11 briefings were presented to delegations and study groups from:

- China
- Korea
- Papua New Guinea
- South Africa.

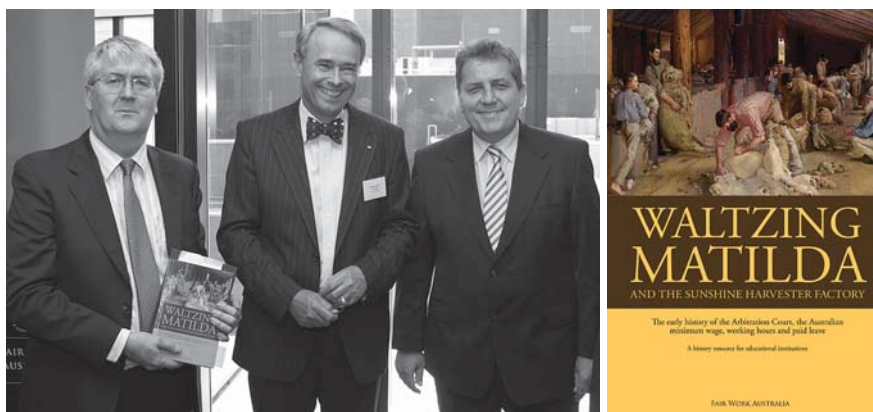
Fair Work Australia was visited by individuals from:

- New Zealand (Department of Labour)
- Northern Ireland (Labour Relations Agency)
- Hokusei Gakuen University, Sapporo, Japan.

Sir Richard Kirby Archives

Fair Work Australia's predecessor, the Australian Industrial Relations Commission, established an archive in 2002 as a means of preserving historical materials and promoting a greater public understanding of the role and contribution of the national tribunal. The Sir Richard Kirby Archives is based in the tribunal's Melbourne premises and is overseen by the Archives Committee, which is chaired by Senior Deputy President Watson and comprises Fair Work Australia members and staff.

The committee's role includes ensuring the maintenance and development of the archives collection and overseeing an exhibition program and an oral history project. In addition, the committee has responsibility for the briefings program and other educational activities. In May 2011, the committee coordinated Fair Work Australia's participation in Law Week. The tribunal hosted open days in its Sydney premises on 17 May and its Melbourne premises on 21 May. The open days involved behind-the-scenes tours hosted by tribunal members. This was the first time the tribunal had presented a public open day in Sydney and only the second time it had participated in Law Week.



The Honourable Deputy President Reg Hamilton, the Honourable Justice Geoffrey Giudice, President, and Senator the Honourable Christopher Evans, Minister for Tertiary Education, Skills, Jobs and Workplace Relations.

Waltzing Matilda and the Sunshine Harvester Factory

On 25 February 2011 Justice Giudice hosted the public launch of *Waltzing Matilda and the Sunshine Harvester Factory*. This is a book about the Arbitration Court—the Commonwealth Court of Conciliation and Arbitration—why it was established, what it did, and the influence it had on Australia's social, economic and political history.

The book was published by Fair Work Australia as a history resource for educational institutions, to support a new national curriculum being developed for Australian schools.

The book was launched by Senator the Honourable Christopher Evans, Minister for Tertiary Education, Skills, Jobs and Workplace Relations. Mr Peter Anderson, Chief Executive, Australian Chamber of Commerce and Industry, Mr Jeff Lawrence, Secretary, Australian Council of Trade Unions, and the Honourable Reg Hamilton, also spoke at the launch.

Written by Deputy President Reg Hamilton, the book discusses the way in which key labour standards contained in awards were established by the court and later commission. These include the Australian minimum wage, working hours and paid leave:

1. the reasons why the Australian Parliament established the Commonwealth Court of Conciliation and Arbitration in 1904
2. the establishment by the court of a minimum wage, beginning with the Harvester decision of 1907 that seven shillings a day for an unskilled labourer was 'fair and reasonable wages'
3. the later change in the 1960s and 1970s to equal award pay for women and Aboriginal stockmen, and the development of special lower minimum wages for adolescents and apprentices
4. the gradual development of sick leave, annual leave, maternity and paternity leave in the 1930s–1990s.

The book is supported by a dedicated website, which includes draft lessons and student activities to assist teachers and lecturers; copies of the court judgments and other materials dealt with in the book; and copies of recipes in use in Australia in 1907, when the Harvester decision was handed down. The Harvester decision became the basis of the Australian minimum wage. The recipes include the cost of each dish, and enable students to discuss the buying power of the original Harvester minimum wage.

2.10.2 Information services

Fair Work Australia provides a range of information services to help those involved in cases or considering taking action in the tribunal. These services include:

- online and telephone inquiry services provided by the Fair Work Australia Help Line
- provision of tribunal documents and general information, including fact sheets and guides, through the Fair Work Australia website and associated online subscription services
- provision of fact sheets and guides to help those using the tribunal's public counter services in all states and territories
- provision of a dedicated workplace relations library, based in Melbourne
- provision of a media liaison service.

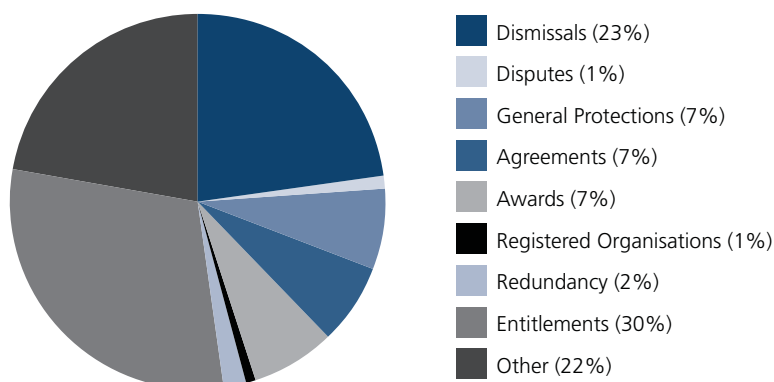
Help line

In late March 2011 the Fair Work Australia Help Line began using a new PC-based telephone system. Two call queues are now displayed on each help line team member's PC—an 'incoming calls' queue and a 'call back' queue. Staff can take incoming calls or make a call back. When all the lines are busy, clients can either stay on hold or request a call back by keying in their phone number using the keypad on their phone. The new system also diverts callers seeking information on wages and entitlements to the Fair Work Ombudsman.

The system also provides a range of reports that assist in managing resources by accurately identifying busy times of the day, the number of abandoned calls, the length of time callers are on hold, the number of callers who use the call back feature and how long it takes to return calls.

Inquiries received by the service increased by 31 per cent in 2010–11 (193 068 inquiries, compared with 147 012 in 2009–10). Of the total number of inquiries received, 63 per cent were from employees, 24 per cent from employers and 14 per cent from other individuals and groups (such as students). The primary method of contact was telephone (83 per cent), followed by live chat through the Fair Work Australia website (13 per cent) and email (5 per cent). The following chart shows the reasons for contacting the help line.

Chart 3: Reasons for contacting Fair Work Australia Help Line



Website visitors

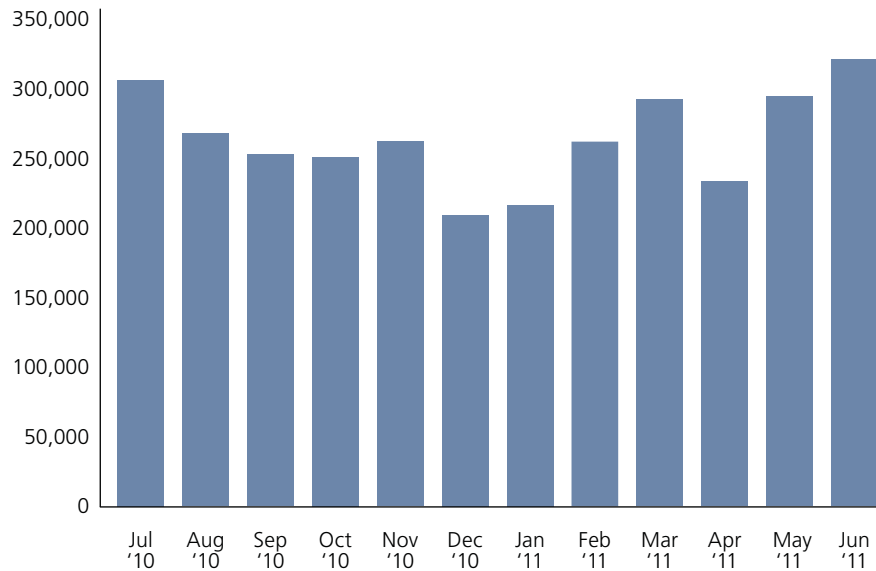
The total number of visitors to the Fair Work Australia website during 2010–11 was 3 009 276—an average of 8245 visitors per day or 57 870 per week. The most popular pages of the Fair Work Australia website (excluding the home page) for 2010–11 were 'Find an award' (over 3 000 000 hits) and 'Find an agreement' (over 2 400 000 hits). Peak activity for the website occurred in June 2011, with visits to the website at 70 000 to 75 000 per week. This peak coincided with annual wage review activity including the publication of the *Annual Wage Review 2010–11 decision* and updated wage rates in modern awards.

WORK OF THE TRIBUNAL



Home page of the Fair Work Australia website, www.fwa.gov.au.

Chart 4: Fair Work Australia website—visitors by month



Website content

Almost 28 300 unique documents were published on the Fair Work Australia website during 2010–11, including:

- 11 330 Fair Work Australia decisions and orders (including documents related to awards and agreements)
- 14 708 publication updates (including approvals and applications for enterprise agreements, and pre-modern award consolidations)
- 264 General Manager's and delegates' decisions
- 52 editions of the Fair Work Australia Bulletin (including decision summaries)
- 502 results of protected action ballots (following an order by Fair Work Australia), and
- 1440 public transcripts of Fair Work Australia matters.

The volume of documents posted to the website continued to increase in 2010–11, with the total number of documents published increasing by around 25 per cent when compared to 2009–10. Changes in volume were most prominent for publication updates (an increase of 37 per cent) and decisions and orders (up 18 per cent). Targets for posting documents to the website within 24 hours of receipt were generally met.

Subscriptions

At 30 June 2011, the electronic subscription services had around 22 800 subscribers, an increase of 41 per cent when compared to 30 June 2010 (16 200 subscribers). Increases were experienced across all subscription services over the reporting period, with the most significant increases in the awards updates service (an increase of 113 per cent) and the annual wage review service (an increase of 98 per cent). The services most subscribed to were the award updates and significant decisions. Details of available services and how to subscribe appear in Appendix H.

2.10.3 Liaison with the Fair Work Ombudsman

A memorandum of understanding for cooperative service delivery has been in place between Fair Work Australia and the Fair Work Ombudsman since 13 October 2009.

The memorandum applies when services to a particular client cross the boundaries of Fair Work Australia and the Fair Work Ombudsman. The aim is to provide seamless or coordinated service delivery for clients, regardless of their initial point of contact.

Areas of cooperation between Fair Work Australia and the Fair Work Ombudsman under the memorandum include public counter services, website information and help line services.

2.11 Client research

In 2010–11 Fair Work Australia commissioned independent client research in two areas:

- the conciliation process for unfair dismissal applications
- overall client satisfaction.

2.11.1 Unfair dismissal conciliation research

The research examined the experiences of applicants, respondents and their representatives with the tribunal's administration of unfair dismissal applications, from the making of an application through to the conclusion of the new conciliation process conducted by Fair Work Australia conciliators.

The key changes in the conciliation process, introduced from 1 July 2009, were the use of a dedicated team of qualified staff to conduct the conciliations and the use of telephone conferences in most cases.

The research principally comprised a national telephone survey drawn from the 5423 applicants, respondents and representatives who had dealt with an unfair dismissal application between 1 February and 20 July 2010 and who had previously consented to take part in the research.

A total of 1100 telephone interviews were completed involving 500 applicants, 500 respondents and 100 representatives, with interviews on average lasting approximately 16 minutes.

The independent research showed that broad satisfaction with Fair Work Australia's administration of unfair dismissal applications was high, with 86 per cent of applicants, 82 per cent of respondents and 87 per cent of representatives reporting they were satisfied or extremely satisfied with the service provided.

The new conciliation process was well received by most participants. Some 78 per cent of applicants, 81 per cent of respondents and 58 per cent of representatives agreed or strongly agreed the conciliation of an unfair dismissal application by telephone conference worked well.

Further, some 86 per cent of applicants and 88 per cent of respondents considered that having the conciliation over the telephone was convenient and cost effective, while 72 per cent of applicants and 59 per cent of respondents reported that telephone conciliation was more comfortable than being in the same room with the other party.

The full report is available on the Fair Work Australia website at <http://www.fwa.gov.au/documents/dismissals/report.pdf>.

2.11.2 Client satisfaction

Fair Work Australia conducted its first client satisfaction survey in June 2011. The online survey was sent to a sample of clients who used the tribunal's services between 1 July 2010 and 31 March 2011. The survey requested feedback on Fair

Work Australia's performance in the areas of information services, organisational facilities and general customer service. It took an average of 11 minutes to complete.

A total of 1762 clients responded to the survey, representing a response rate of 25 per cent. Of these, 35 per cent were classified as business, 29 per cent as employees and 35 per cent as registered organisations and representatives.

When measured on overall satisfaction, a significant number of respondents (76 per cent) responded that they were satisfied to extremely satisfied with the services provided by Fair Work Australia, with 10 per cent rating their experience as neutral and 14 per cent indicating that their expectations were not met.

In assessing Fair Work Australia's website, clients were asked to rate its accuracy, completeness of information, ease of understanding, navigation, printing and design. About 70 per cent of respondents ranked the website as good and very good, with 22 per cent rating it as satisfactory and six per cent rating it as poor.

In measuring public counter services, Fair Work Australia based its questions on staff professionalism, efficiency and accuracy of information given to its clients. An average of 78 per cent of respondents rated staff good and very good, with 16 per cent rating satisfactory and four per cent rating poor.

3.1 Corporate governance

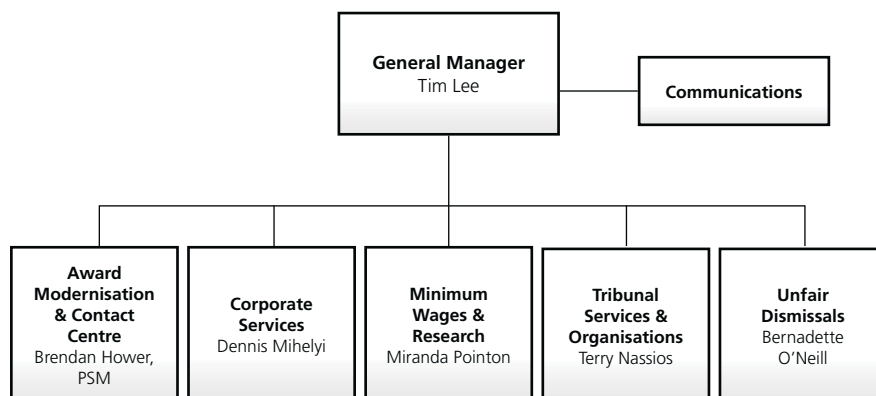
3.1.1 Senior executive and their responsibilities

The General Manager of Fair Work Australia is a statutory appointee who assists the President of Fair Work Australia and oversees the administration of tribunal staff. Together the General Manager and staff constitute a statutory agency in the Australian Public Service (APS) with the General Manager the head of the agency. The General Manager's functions and powers are broadly defined at ss 653–653A and 657–658 of the *Fair Work Act 2009* (Fair Work Act).

Mr Tim Lee (right) was appointed General Manager of Fair Work Australia pursuant to s.660(1) of the Fair Work Act from 27 July 2009 for a period of up to five years. He is assisted in his duties by an executive comprising the five branch directors.



General Manager, Tim Lee.



3.1.2 Senior management committees and their roles

Fair Work Australia's Executive comprises the most senior managers in Fair Work Australia's administration. It is chaired by the General Manager and meets weekly to discuss strategic and operational issues.

A Procurement Committee comprising the Director, Corporate Services and four senior managers has a pivotal role in managing the activities and processes involved in acquisition of goods and services. All contracts and procurement actions of more than \$50 000 need to be referred to the Procurement Committee. See section 3.4 for further details.

The Audit Committee consists of three members appointed by the General Manager and is chaired by an external independent member. It meets at least four times per year. The Committee provides independent assurance and assistance to the General Manager on Fair Work Australia's risk, control and compliance framework, and its external accountability responsibilities.

Other staff-based governance committees include the Intranet Committee and the CMS+ Working Group Committee.

3.1.3 Corporate and operational planning and associated performance reporting

In 2010–11, Fair Work Australia's performance was guided by a strategic plan, in which the overarching goal was to ensure Fair Work Australia delivers highly regarded, independent, efficient, client-focused workplace relations services to the Australian public.

The strategic plan comprises three key results areas:

- ensure that Fair Work Australia can perform its functions and exercise its powers under the Fair Work legislation
- establish Fair Work Australia as a values-driven organisation with best-practice human resources initiatives that assist Fair Work Australia in working collaboratively
- ensure Fair Work Australia services are modern and accessible, with an emphasis on client service.

The strategic plan lists objectives under each key area, and is complemented by business plans detailing related actions and tasks.

Consistent with legislative requirements, Fair Work Australia has a service charter; health and safety management arrangements (HSMA) consistent with s.16(3) of the *Occupational Health and Safety Act 1991* (OHS Act), and a financial management framework implementing the requirements of the *Financial Management and Accountability Act 1997* (FMA Act). A range of strategies relating to operational considerations such as information management and technology, learning and development, and workforce planning are also employed by Fair Work Australia.

In 2010–11 Fair Work Australia developed a comprehensive three-year strategy to encourage a high-performance culture. It also conducted its first client satisfaction survey. Further information on the people strategy can be found in section 3.3 of this report and details of the survey are in section 2.12.2.

Performance at a corporate level was reported through prescribed annual report and State of the Service reporting requirements, other external reports such as the portfolio budget statements, central agency surveys, Australian National Audit Office (ANAO) surveys and performance audits, and through responses to parliamentary questions.

3.1.4 Internal audit arrangements

PKF Chartered Accountants undertake internal audit activities for Fair Work Australia and reports are presented to the Executive and the Audit Committee. In 2010–11 internal audit reviews were undertaken of fraud control, processes surrounding the production and publication of the Minimum Wage Decision and compliance certification.

3.1.5 Fraud control

In accordance with guideline 5.8 of the *Commonwealth Fraud Control Guidelines 2011*, issued by the Minister for Home Affairs pursuant to regulation 16A of the *Financial Management and Accountability Regulations 1997*, Fair Work Australia:

- has prepared fraud risk assessments and has in place a fraud control plan
- has appropriate fraud prevention, detection and investigation and reporting procedures and data collection processes in place
- has taken all reasonable measures to minimise the incidence of fraud in Fair Work Australia and to investigate and recover the proceeds of fraud against Fair Work Australia.

3.1.6 Ethical standards

Fair Work Australia's ethical standards are governed by the broad legislative framework including the:

- *Public Service Act 1999* (Public Service Act)
- *Public Service Regulations 1999* (Public Service Regulations)
- *Public Service Commissioner's Directions 1999*, and
- *Financial Management and Accountability Act 1997* (FMA Act).

The ethics of the organisation are also governed by the performance, reputation and organisational qualities deriving from the *Strategic Plan*, internal policy and procedural advices and guidelines, including the *Procedures for Determining Breaches of the APS Code of Conduct*; the *Policy for the Use of Email and Internet Systems*; and a *Receipt of Gifts and Other Benefits Policy*; and the specific requirement to address such matters in any team plan and in each IPP.

In 2010–11, following a consultative process, Fair Work Australia adopted a set of values to complement the Australian Public Service Values. The aim of the Fair Work Australia Values is to guide staff in their daily work and interactions with colleagues and the public. The values will also be embedded in recruitment, reward and recognition, and performance management processes.

3.1.7 Senior executive service remuneration

Fair Work Australia has three senior executive service (SES) employees. Conditions related to their employment, including remuneration, are contained in individual Public Service Act s.24(1) determinations. The individual arrangements are comprehensive documents covering each employee's terms and conditions. Further information on remuneration is contained in Note 12 of the financial statements, which deals with both SES and non-SES senior executives.

3.2 External scrutiny

External audits of personnel/payroll management arrangements showed that Fair Work Australia met APS-related legislative and other requirements.

3.2.1 Judicial decisions and administrative review

There were no judicial or administrative decisions or findings that affected operations during the reporting period.

3.2.2 Reports on operations

Fair Work Australia participated in the Development and Implementation of Key Performance Indicators to Support the Outcomes and Programs Framework audit undertaken by the ANAO. The report was published in September 2011.

Fair Work Australia has made use of the better practice guides issued by the ANAO in reviewing relevant policies and practices.

3.3 Management of human resources

In 2010–11 Fair Work Australia developed a comprehensive three-year strategy to encourage a high-performance culture.

The Performance Through People Strategy was released on 8 December 2010. It identified four outcomes:

1. Strengthened, visible leadership.
2. A more capable workforce.
3. A more efficient and effective human resources function.
4. A unified culture.

Some of the first year objectives included:

- defining Fair Work Australia's values and core skills
- more visible leadership from the Executive and re-establishing a managers' forum
- introducing mechanisms for knowledge-sharing and staff feedback
- developing an improved performance management framework
- establishing a suite of professional development activities to increase skills and expertise
- building the human resources technology and capability to bring about these changes.

3.3.1 2010 Fair Work Australia staff survey

Fair Work Australia conducted its first staff survey between 6 and 22 December 2010. A total of 233 staff participated, giving a response rate of 79 per cent.

The survey provided a positive overall view of Fair Work Australia's work environment, with more than three-quarters of staff indicating they were satisfied with the tribunal as an employer (78 per cent) and with their current job (79 per cent). In addition, 85 per cent of staff indicated they were proud to tell others that they worked for Fair Work Australia.

Staff were generally positive about most aspects of working at Fair Work Australia. In particular, the tribunal's results were above the APS average in several areas, including staff engagement, loyalty/commitment to Fair Work Australia, autonomy and empowerment, change management, performance feedback, supervisor performance and team performance and relationships. Compared to other APS agencies, the result for overall satisfaction with the tribunal as an employer was the third highest of 17 medium-sized agencies and the result for overall job satisfaction was the fourth highest of 17 medium-sized agencies.

There were several areas with scope for improvement, including internal communication (particularly between different parts of Fair Work Australia and between leaders and other staff), learning and development, systems support and aspects of agency culture.

3.3.2 Workforce planning, staff retention and turnover

Fair Work Australia had a total of 318 staff as at 30 June 2011, having begun the year with 301 employees on 1 July 2010. This represents an increase of 17 staff (up 5.6 per cent).

Overall, 62 new employees (either ongoing or non-ongoing) commenced employment during 2010–11 and 45 left Fair Work Australia. The 62 new employees and 45 departures during 2010–11 represent a 35.5 per cent turnover of the 301 employees as at 1 July 2010.

Additional employees in 2010–11 were primarily in the following areas:

- a total of nine ongoing and non-ongoing employees at the APS Levels 4–6 in the Unfair Dismissals Administration Team in Melbourne
- five ongoing employees and one non-ongoing employee at APS Level 3 to Executive Level 1 in the Finance and Workforce Development teams within the Corporate Services Branch
- seven non-ongoing law graduates—five in Melbourne and two in Sydney at APS Level 3
- a total of four ongoing and non-ongoing conciliators—two in Brisbane, one in both Melbourne and Sydney at Executive Level 2 in the Unfair Dismissals Branch.

Recruitment activity during 2010–11 was in the following areas:

- 22 ongoing actions—13 in Victoria, four in Queensland, three in Western Australia, one in both New South Wales and the Northern Territory
- two temporary moves from other agencies—one in each of Victoria and Queensland
- a total of 38 non-ongoing actions occurring in all locations except the Northern Territory, South Australia and Western Australia—nine graduate positions and 29 other vacancies.

Additionally, there were a number of extensions of non-ongoing engagements consistent with the provisions of the Public Service Act and Public Service Regulations.

Table 9: Employment status and gender by APS level

Classification	Salary range (\$) (as applicable from FWAEA)	Ongoing full-time		Ongoing part-time		Non-ongoing ¹		Total ²
		Men	Women	Men	Women	Men	Women	
SES Band 1	Individual	1	2	0	0	0	0	3
Executive Level 2	106 245–124 342	16	22	1	2	1	1	43
Executive Level 1	92 146–99 473	2	12	1	2	1	1	20
APS Level 6	72 384–83 264	30	56	1	9	0	0	96
APS Level 5	66 834–72 348	7	29	0	2	5	10	53
APS Level 4	59 950–65 058	19	26	1	5	4	10	65
APS Level 3	53 845–58 064	5	12	0	0	6	5	28
APS Level 2	47 849–52 401	2	6	0	1	0	0	9
Total		82	165	4	21	18	27	317

(1) Two non-ongoing employees work part time.

(2) Does not include the General Manager (a statutory appointment under the Fair Work Act).

Table 10: Location and gender by APS level

Classification	Melbourne		Sydney		Other locations ¹		Total employees ²		Total
	Men	Women	Men	Women	Men	Women	Men	Women	
SES Band 1	1	2	0	0	0	0	1	2	3
Executive Level 2	10	15	4	4	4	6	18	25	43
Executive Level 1	4	12	1	0	0	3	5	15	20
APS Level 6	26	39	5	16	0	10	31	65	96
APS Level 5	8	27	2	7	2	7	12	41	53
APS Level 4	17	35	5	4	2	2	24	41	65
APS Level 3	8	8	3	3	0	6	11	17	28
APS Level 2	2	6	0	1	0	0	2	7	9
Total	76	144	20	35	8	34	104	213	317
		(220)		(55)		(42)		(317)	

(1) Includes Adelaide, Brisbane, Canberra, Darwin, Hobart and Perth, but not Newcastle and Wollongong.

(2) Does not include the General Manager (a statutory appointment under the Fair Work Act).

Table 11: Geographic deployment of staff

Location	30 June 2010	30 June 2011
Melbourne	207	221
Sydney	55	55
Other locations ¹	39	42
Total	301²	318³

(1) Includes Adelaide, Brisbane, Canberra, Darwin, Hobart and Perth, but not Newcastle and Wollongong.

(2) Includes the General Manager (a statutory appointment under the Fair Work Act), 12 employees on long-term leave with or without pay and two ongoing employees on temporary moves to other APS agencies.

(3) Includes the General Manager (a statutory appointment under the Fair Work Act), 14 employees on long-term leave with or without pay and eight ongoing employees on temporary moves to other APS agencies.

Fair Work Australia has offices in each capital city as well as Newcastle and Wollongong. A list of addresses and contact details is in Appendix A.

Separations

During 2010–11 a total of 45 employees left Fair Work Australia—18 ongoing employees and 27 non-ongoing employees. The reasons for separation were:

- resignation—11 ongoing employees (24.5 per cent) and six non-ongoing (13.3 per cent)
- age retirement—four ongoing employees (8.9 per cent)

- ongoing move to another APS agency—one ongoing employee (2.2 per cent)
- termination of employment—one ongoing employee (2.2 per cent)
- cessation of non-ongoing engagement—21 non-ongoing employees (46.7 per cent)
- other—one ongoing employee (2.2 per cent).

Part-time work

Twenty-seven Fair Work Australia employees were undertaking part-time work (25 ongoing and two non-ongoing; seven men and 20 women) as at 30 June 2011 (8.5 per cent of total staff).

Home-based work

During 2010–11, six employees had home-based work agreements—arrangements seek to combine ongoing work commitments with parental responsibilities or personal circumstances. The agreements were made consistent with the provisions and complied with all of the requirements of a related Fair Work Australia policy and procedural advice, particularly the occupational health and safety (OHS) and security requirements.

Long-term leave

Thirteen ongoing and one non-ongoing (total of 14) employees on long-term leave with or without pay as at 30 June 2011 (4.4 per cent of total employees) were either attending to parental and family responsibilities or were on leave due to temporary incapacity or for personal reasons—11 in Victoria and three in New South Wales.

Graduate program

In 2011 Fair Work Australia recruited 10 participants to its Graduate Program (seven in Melbourne and three in Sydney). The Graduate Program provides for the employment of law graduates with an interest in labour law and related fields for a non-ongoing term of up to 12 months.

In 2011 the program was expanded to include an economics and an information and communications technology (ICT) graduate in addition to the law graduates. The law graduates are exposed to different facets of Fair Work Australia, from processing of applications to assisting with the provision of associate services. The ICT and economics graduates are provided with a range of placements and projects within the Information Technology Team and the Minimum Wages and Research Branch respectively.

3.3.3 Collective and individual agreements

In 2010–11 Fair Work Australia operated under the FWAEA, which has a nominal expiry date of 30 June 2011.

The FWAEA directly supports the Fair Work Australia Strategic Plan and the overarching strategy, objectives, key actions and tasks identified in that plan regarding the work, organisation and performance of Fair Work Australia. The FWAEA complements our performance planning and management arrangements, which further articulate improvements at the Fair Work Australia, team and individual levels.

Fair Work Australia commenced bargaining in June 2011 for a new enterprise agreement in line with the Australian Public Service Bargaining Framework.

Non-salary benefits

Non-salary benefits are available to employees through the FWAEA, individual arrangements and other Fair Work Australia initiatives. They include:

- time off instead of payment e.g. for overtime or, as granted by managers in recognition of outstanding service
- access to annual train, tram, bus and ferry tickets for which Fair Work Australia pays the up-front cost and the employee then repays the amount fortnightly over a 12-month period
- healthy lifestyle initiatives such as subsidised Pilates and yoga classes
- payments for professional association memberships, road tolls and occasional car parking at Fair Work Australia premises.

All non-SES employees (314) are covered by the FWAEA. The three SES employees each have an individual Public Service Act s.24(1) determination. Fair Work Australia has no employees covered by Australian Workplace Agreements.

Performance pay

Fair Work Australia does not have performance pay arrangements.

Paypoint progression through the broadbanded classification arrangements is, however, contingent upon satisfactory performance through a performance assessment process against an agreed IPP.

3.3.4 Training and development

Building a more capable workforce is a key objective of the Performance Through People Strategy. Under the strategy, a calendar of learning options is being developed based on the following skill groups:

- people management and leadership
- communications

- legislation
- technology
- administration
- project/program management.

In the meantime, learning and development opportunities continue to be taken up by staff including:

- tertiary studies for professional development
- in-house training programs
- external training programs
- short courses
- on-the-job learning
- participation in in-house and external conferences and
- peer learning activities.

Learning and development activities undertaken by staff range from technical IT-related training, understanding developments in workplace law to opportunities focusing on management and leadership.

Financial assistance and paid leave to encourage formal skills development and further education was provided to 27 employees during 2010–11 (nine per cent of employees as at 30 June 2011). The FWAEA provides significant financial support for study relevant to Fair Work Australia of up to 50 per cent of fees. Law and employment law; business, commerce and management; and information technology studies are the primary areas of formal study.

During 2011 two Executive Level 2 employees are undertaking an Executive Master in Public Administration with the Australia and New Zealand School of Government and two Executive Level 2 employees participated in the APS Commission Career Development Assessment Centre.

3.4 Financial management

As part of the overall governance arrangements to meet obligations under the FMA Act, Fair Work Australia introduced a new financial management framework which includes chief executive instructions, delegations and authorisations, resource management policies and associated practical guides.

In 2010–11, Fair Work Australia recorded a deficit of \$1.233 million on a comprehensive income basis. At 30 June 2011, Fair Work Australia had net assets of \$54.156 million (inclusive of assets and liabilities assumed from the Australian Industrial Registry and the Australian Fair Pay Commission Secretariat in 2009–10), as reflected in the audited financial statements, which appear in Appendix I.

In accordance with the provisions of s.57 of the FMA Act, Fair Work Australia is required to publish a copy of the audited financial statements, which are prepared in accordance with the prescribed Finance Minister's Orders and the Auditor-General's report thereon.

An agency resource statement table providing information about funding sources drawn upon by the agency is in Appendix J of this report.

A summary table of resources for outcome, including total administered expenses, revenue from Government (appropriations) for outputs and the total price of outputs, can be found in Appendix K.

3.4.1 Assets management

Fair Work Australia's main asset types are leasehold improvements and computer equipment (details can be found in the financial statements in Appendix I). Asset management is not considered to be a significant aspect of core business, therefore an assessment of the effectiveness of asset management is not reported.

3.4.2 Purchasing

Fair Work Australia purchasing policies are outlined in the *Chief Executive Instructions*, the *Resource Management Policies* and *Procurement and the Contract Management practical guide* which reflect the principles of the *Commonwealth Procurement Guidelines*. The following criteria are applied to all procurement activities:

- value for money
- efficiency and effectiveness
- contestability and competitive neutrality
- accountability and transparent reporting, and
- ethics.

The procurement policy requires that all major procurement proposals (\$50 000 and over) be submitted to the Procurement Committee for approval. Procurements with a value over \$80 000 are subject to an open approach to the market in line with the mandatory requirements of the *Commonwealth Procurement Guidelines*. All open approaches are advertised on both the AusTender and Fair Work Australia website. Details are recorded in the financial management information system and the Contracts Register. All purchases with a value of \$10 000 or more are reported in the Commonwealth Gazette Publishing System.

3.4.3 Procurement plan

Fair Work Australia published annual procurement plans outlining expected procurement opportunities during 2010–11 on the AusTender and Fair Work Australia websites.

3.4.4 List of contracts

Fair Work Australia lists on the Fair Work Australia website all contracts valued at \$100 000 and over which have not been fully performed or which have been entered into during the previous 12 months in accordance with the Senate Order of 20 June 2001. Information on expenditure on contracts and consultancies is also available on the AusTender website (www.tenders.gov.au).

Significant contracts approved by the Procurement Committee during the year included:

- research services to support the annual wage review, including award reliance research
- process and incentives for bargaining research
- conduct of pilot surveys of employers and employees to inform the General Manager's reporting requirements under the Fair Work Act
- development of Fair Work Australia internet case portal
- implementation of electronic document and records management system (EDRMS)
- design and project management of Darwin fit-out
- fit-out construction for Darwin office
- freight and courier services
- off-site records storage and retrieval services.

3.4.5 Consultants

The policy on the selection and engagement of consultants is to receive value for money on the basis of competitive quotations.

When it is recognised that a requirement cannot be met utilising internal resources, the decision is made to engage the services of a contractor. The task to be undertaken is thoroughly defined, the specifications documented and a tender let in accordance with procurement policies.

During 2010–11 Fair Work Australia entered into three new consultancy contracts (with a value of \$10 000 or greater) at a total value of \$572 755 and six ongoing consultancies were active during 2010–11. Expenditure during 2010–11 on all active consultancies totalled \$174 622.

Table 12: New consultancy contracts in 2010–11

Name	Description/purpose	Value of consultancy (\$) ¹	Selection process ²	Justification ³
Kapish	Design and implementation of electronic document and records management system	189 664	Open tender	B
McGirrs Information Technology	Design and implementation of Fair Work Australia case portal	309 855	Open tender	B
Daryl Jackson Architects	Brisbane office design development	49 799	Direct sourcing	B
Interiors Australia	Darwin office design development	23 436	Direct sourcing	B
Total		572 755		

(1) GST inclusive.

(2) Explanation of selection process terms drawn from the Commonwealth Procurement Guidelines (December 2008):

Open tender: A procurement procedure in which a request for tender is published inviting all businesses that satisfy the conditions for participation to submit tenders. Public tenders are generally sought from the Australian Government AusTender internet site.

Select tender: A procurement procedure in which the procuring agency selects which potential suppliers are invited to submit tenders (this includes tenders submitted through Multi-Use Lists). This procurement process may only be used under certain defined circumstances.

Direct sourcing: A form of restricted tendering, available only under certain defined circumstances, with a single potential supplier or suppliers being invited to bid because of their unique expertise and/or their special ability to supply the goods and/or services sought.

Panel: An arrangement under which a number of suppliers, initially selected through an open tender process, may each supply property or services to an agency as specified in the panel arrangements. Quotes are sought from suppliers that have prequalified on the agency panels to supply to the government. This category includes standing offers and supplier panels where the supply of goods and services may be provided for a predetermined length of time, usually at a prearranged price.

(3) Justification for decision to use consultancy:

A—skills currently unavailable within agency

B—need for specialised or professional skills

C—need for independent research or assessment.

Table 13: Expenditure on consultancy contracts

	2009–10	2010–11
Number of active consultancies	7	6
Total expenditure for all active consultancies¹	\$281 527	\$174 622

(1) GST inclusive.

Annual reports contain information about actual expenditure on contracts for consultancies. Information on the value of contracts and consultancies is available on the AusTender website (www.tenders.gov.au).

Competitive tendering and contracting

At 30 June 2011 there were no active contracts relating to the outsourcing of government activities under the Commonwealth's competitive tendering and contracting policy.

3.4.6 Australian National Audit Office clauses

Fair Work Australia had no contracts let during the year that did not provide for the Auditor-General to have access to the contractor's premises.

3.4.7 Exempt contracts

Fair Work Australia had no contracts valued in excess of \$10 000 that were exempted from reporting on AusTender.

3.5 Other mandatory information

The *Requirements for Departmental Annual Reports* published by the Department of Prime Minister and Cabinet specify that annual reports must contain one or more appendices with information required by certain legislation relating to:

- occupational health and safety
- freedom of information
- advertising and market research
- ecologically sustainable development
- grant programs
- disability reporting
- any corrections to previous annual reports.

This information is contained in Appendix L.

3.6 Information management and technology

Fair Work Australia's activities in information management (IM) and information and communications technology (ICT) is guided by an IM and ICT Strategic Plan which is reviewed annually.

The plan aims to ensure:

- the needs of internal and external clients are met and Fair Work Australia's statutory responsibilities are supported
- emerging government IM and ICT requirements are anticipated and incorporated in planning and operational processes
- innovative and appropriate IM and ICT solutions are developed, which provide value for money.

In 2010–11 significant projects included:

- the implementation of a hosted IP telephony system for Fair Work Australia's Help Line and Unfair Dismissal Team conciliators in Melbourne
- continuing development of the case management system (CMS+), for example the integration of CMS+ with Outlook
- an information security review and the development of a 12-month action plan
- a review of business continuity plans
- a Portfolio, Programme and Project Management Maturity Model (P3M3) assessment of Fair Work Australia's capability to commission, manage and realise benefits from ICT and the development of an improvement plan
- the commencement of the Fair Work Australia Portal Project, which will replace the electronic filing (eFiling) system and provide improved client access to case information
- installation of public access wi-fi at Fair Work Australia's Exhibition Street, Melbourne office during the Equal Remuneration Case in January 2011.

Records management

In July 2010 Fair Work Australia commenced a project to sentence approximately 16 000 boxes of files currently held in offsite storage, using the Records Authorities approved in March 2010.

As at June 2011, under our records authorities:

- 6824 files (1.18 lineal kilometres) had been transferred to National Archives of Australia
- 19 834 files had been destroyed.

In 2011 Fair Work Australia began to implement an electronic document and records management system, TRIM 7.1, to improve business efficiency and records management compliance. At June 2011, configuration and testing had begun on the system, which will be rolled out to the organisation late in 2011.

3.7 General Manager's reporting requirements

The General Manager of Fair Work Australia is required to provide a number of reports under:

- section 653 of the Fair Work Act
- item 20A, Part 4, Schedule 18 of the Transitional Act.

Under the Fair Work Act the General Manager must report on:

- developments in agreement making
- the extent to which individual flexibility arrangements under modern awards and enterprise agreements are being agreed to, and the content of those arrangements
- the operation of the provisions of the NES relating to employee requests.

Under the Transitional Act the General Manager must:

- prepare a written report on the first three years of operation of the unfair dismissal system under the Fair Work Act.

To meet the reporting obligations the General Manager in 2010–11 consulted key stakeholders over 2010 and 2011 on research options to inform the reports. These stakeholders included the:

- Australian Government and state and territory governments
- Australian Chamber of Commerce and Industry
- ACTU
- Ai Group
- Council of Small Business Organisations of Australia
- National Farmers' Federation.

Key areas of research to inform the reporting requirements include:

- agreement making—research will include quantitative analysis of the Department of Education, Employment and Workplace Relations' Workplace Agreements Database and a review of relevant literature
- individual flexibility arrangements and the NES—pilot surveys of employers and employees surveys have been conducted to determine the extent to which explicit data, as required by the legislation, can be obtained. Informed by the pilot surveys, two further surveys will be run in 2012
- operation of the unfair dismissals system—research will include external research on unfair dismissal conciliations undertaken by Fair Work Australia (available on the website) and administrative data collected by the tribunal.

Fair Work Australia has also entered into three research partnerships to inform the second round of s.653 reporting requirements:

- the Centre for Work+Life, University of South Australia is undertaking a study into 'Work, Life and Flexibility: A Qualitative Study of Requests for Flexibility'
- the research team of Associate Professor Anthony Forsyth and Associate Professor Peter Gahan (Monash University) and Associate Professor John Howe (University of Melbourne) are undertaking a study into 'Fair Work Australia's Influence in the Enterprise Bargaining Process'
- Fair Work Australia, in partnership with the University of Sydney and Chief Investigators Professor Breen Creighton (RMIT University), Professor Richard Johnstone (Griffith University) and Dr Shae McCrystal (Sydney University), will apply to the Australian Research Council for a Linkage Project grant for research into 'Protected Action Ballots and Protected Industrial Action under the Fair Work Act: The Impact of Ballot Procedures on Enterprise Bargaining Processes'.

Appendix A: List of Fair Work Australia addresses

Australian Capital Territory

Level 2, CML Building, 17–21 University Avenue, Canberra
GPO Box 539, Canberra City ACT 2601

Tel: (02) 6209 2400 Fax: (02) 6247 9774 Email: canberra@fwa.gov.au

New South Wales

Sydney: Level 8, Terrace Tower, 80 William Street, East Sydney NSW 2011

Tel: (02) 8374 6666 Fax: (02) 9380 6990 Email: sydney@fwa.gov.au

Newcastle: Level 3, 237 Wharf Road, Newcastle NSW 2300

Wollongong: Level 6, 90 Crown Street, Wollongong NSW 2500

Northern Territory

Level 10, Northern Territory House, 22 Mitchell Street, Darwin
GPO Box 969, Darwin NT 0801

Tel: (08) 8936 2800 Fax: (08) 8936 2820 Email: darwin@fwa.gov.au

Queensland

Level 14, Central Plaza Two, 66 Eagle Street, Brisbane
PO Box 5713, Central Plaza, Brisbane QLD 4001

Tel: (07) 3000 0399 Fax: (07) 3000 0388 Email: brisbane@fwa.gov.au

South Australia

Level 6, Riverside Centre, North Terrace, Adelaide
PO Box 8072, Station Arcade, Adelaide SA 5000

Tel: (08) 8308 9863 Fax: (08) 8308 9864 Email: adelaide@fwa.gov.au

Tasmania

Level 1, Edward Braddon Commonwealth Law Courts Building,
39–41 Davey Street, Hobart
GPO Box 1232M, Hobart TAS 7001

Tel: (03) 6214 0200 Fax: (03) 6214 0202 Email: hobart@fwa.gov.au



Victoria

Level 4, 11 Exhibition Street, Melbourne
GPO Box 1994, Melbourne VIC 3001

Tel: (03) 8661 7777 Fax: (03) 9655 0401 Email: melbourne@fwa.gov.au

Western Australia

Level 12, 111 St Georges Terrace, Perth
GPO Box X2206, Perth WA 6001

Tel: (08) 9464 5172 Fax: (08) 9464 5171 Email: perth@fwa.gov.au

Appendix B: Documents relating to the work of the tribunal

Major documents contributing to an understanding of the work of Fair Work Australia are:

- *Fair Work Act 2009*
- *Fair Work (Registered Organisations) Act 2009*
- *Fair Work Regulations 2009*
- *Fair Work (Registered Organisations) Regulations 2009*
- *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*
- *Fair Work (State Referral and Consequential and Other Amendments) Act 2009*
- *Fair Work (Transitional Provisions and Consequential Amendments) Regulations 2009*
- *Fair Work (State Referral and Consequential and Other Amendments) Regulations 2009*
- *Fair Work Australia Rules 2009* (as amended)
- Fair Work Australia service charter
- Fair Work Australia Annual Report 2009–10
- Small Business Fair Dismissal Code
- *Fair Work (State Declarations—employers not to be national system employers) Endorsement 2009*
- *Fair Work (State Declarations—employer not to be national system employer) Endorsement (No. 1)*
- *Fair Work (State Declarations—employer not to be national system employer) Endorsement 2010 (No. 2)*
- Education, Employment and Workplace Relations Portfolio Budget Statements 2010–11
- Fair Work Australia fact sheets and guides
- *Financial Management and Accountability Act 1997*
- *Financial Management and Accountability Regulations 1997*
- Finance Minister's Orders
- *Freedom of Information Act 1982*
- *Privacy Act 1988*
- *Workplace Relations Act 1996* (as amended)
- *Workplace Relations Amendment (Transition to Forward with Fairness) Act 2008*



APPENDICES

- *Workplace Relations Regulations 2006* (as amended)
- *Independent Contractors Act 2006*
- *Workplace Relations (Registration and Accountability of Organisations) Amendment Regulations 2009 (No. 1)*
- *Public Service Act 1999*
- *Public Service Regulations 1999*
- Public Service Commissioner's Directions 1999

Appendix C: Key performance indicators

Table C1: Key performance indicators—budget target and actual results

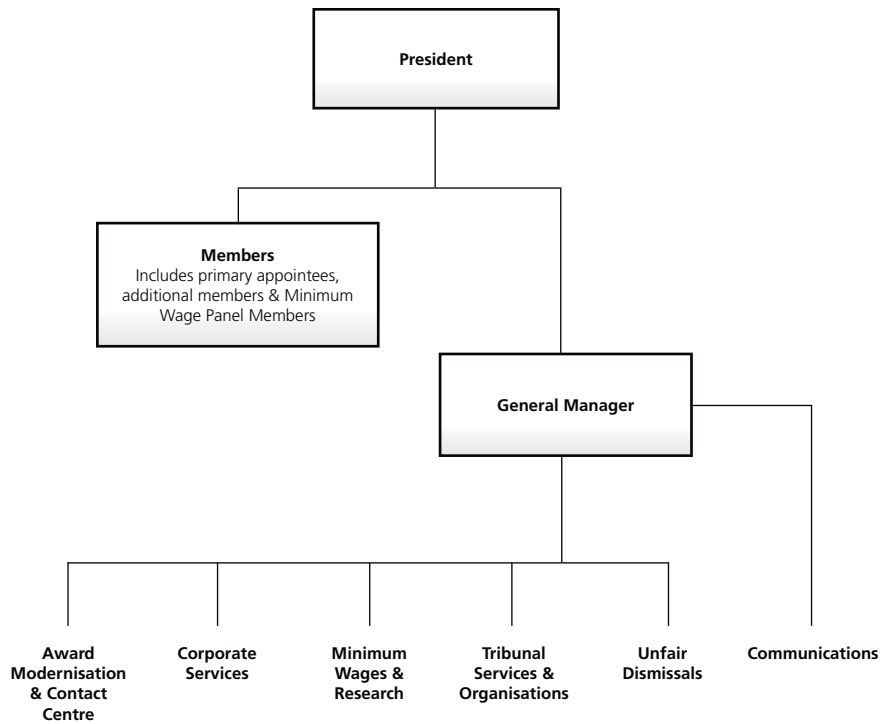
Key performance indicators	2010–11 budget target	Actual 2010–11 results	Number
Improve or maintain the time elapsed from lodging applications to finalising conciliations in unfair dismissal applications	Median time of 34 days	Median time taken was 28 days	10 073 finalised conciliations
Improve or maintain average ¹ time taken to list applications relating to industrial action	Median time of 3 days	Median time taken was 3 days	806 applications
Improve or maintain the average ¹ agreement approval time	Median time of 32 days ²	Median time taken was 21 days	7287 agreements
Completion of annual wage review	By 30 June 2011	3 June 2011	n/a

(1) Measured as median number of days

(2) Target specified in 2011–12 Portfolio Budget Statement

Appendix D: Organisation structure

Chart D1: Fair Work Australia organisation structure



Appendix E: List of members

List of Fair Work Australia members as at 30 June 2011

	Additional appointments
President	
Justice GM Giudice AO (M)	
Deputy Presidents	
Vice President MJ Lawler (M)	
Vice President GR Watson (S)	
Justice AJ Boulton AO, Senior Deputy President (S)	
Senior Deputy President IR Watson (M)	
Senior Deputy President AM Harrison (S)	Deputy President, SAIRC
Senior Deputy President JM Acton (M)	
Senior Deputy President LEC Drake (S)	
Senior Deputy President MG O'Callaghan (A)	
Senior Deputy President L Kaufman (M)	
Senior Deputy President JM Hamberger (S)	
Senior Deputy President PJ Richards (B)	Senior Deputy President, QIRC
Deputy President KB Ives (M)	
Deputy President RS Hamilton (M)	
Deputy President BP McCarthy (P)	
Deputy President PL Leary (H)	President, TIC
Deputy President PD Hannon (A)	President, SAIRC
Deputy President RW Harrison (N)	Deputy President, IRCNSW
Deputy President PJ Sams AM (S)	Deputy President, IRCNSW
Deputy President DA Swan (B)	Deputy President, QIRC
Deputy President KM Bartel (A)	Deputy President, SAIRC
Commissioners	
Commissioner GR Smith AM (M)	
Commissioner JCW Lewin (M)	Commissioner, SAIRC
Commissioner GJ Harrison (S)	Commissioner, QIRC
Commissioner MAG Gay (M)	Commissioner, TIC

Additional appointments

Commissioners (continued)

Commissioner WD Blair (M)	
Commissioner AL Cribb (M)	
Commissioner HM Cargill (S)	
Commissioner B Deegan (C)	Commissioner, TIC
Commissioner FJ Raffaelli (S)	
Commissioner PJ Spencer (B)	Commissioner, QIRC
Commissioner MG Roberts (S)	
Commissioner CW Thatcher (S)	
Commissioner BD Williams (P)	
Commissioner D Steel (A)	Commissioner, SAIRC
Commissioner PJ Connor (W)	Commissioner, IRCNSW
Commissioner DS McKenna (S)	Commissioner, IRCNSW
Commissioner IW Cambridge (S)	
Commissioner AW Macdonald (S)	Commissioner, IRCNSW
Commissioner JD Stanton (N)	Commissioner, IRCNSW
Commissioner IC Asbury (B)	Commissioner, QIRC
Commissioner DJ Cloghan (P)	
Commissioner A Gooley (M)	
Commissioner JF Ryan (M)	
Commissioner PJ Hampton (A)	
Commissioner J Roe (M)	
Commissioner MP Bissett (M)	
Commissioner CF Simpson (B)	

Minimum Wage Panel Members

Mr J Vines
 Professor S Richardson
 Mr P Dwyer

Based in: (A) Adelaide, (B) Brisbane, (C) Canberra, (H) Hobart, (M) Melbourne, (N) Newcastle, (P) Perth, (S) Sydney, (W) Wollongong.
Additional appointments: (IRCNSW) Industrial Relations Commission of New South Wales, (QIRC) Queensland Industrial Relations Commission, (SAIRC) South Australian Industrial Relations Commission, (TIC) Tasmanian Industrial Commission.

Appendix F: Panel assignments

List of panel assignments as at 30 June 2011

President, Justice Giudice

The President was responsible for allocating all panel assignments during the reporting period.



Panel head, Vice President Lawler

Panel members

Drake SDP	Spencer C
Hamilton DP	Roberts C
Sams DP	Cloghan C*
Smith C	Roe C
Deegan C	Steel C



Industries

Banking finance and insurance industry	Pharmaceutical industry
Coal industry	Pharmacy operations
Commonwealth employment	Postal services
Corrections and detentions	Scientific services
Educational services	State and territory government administration
Federal police operations	Sugar industry
Fire fighting services	Technical services
Local government administration	Telecommunications services
Meat industry	Water, sewerage and drainage services
Northern Territory	

**Indicates the member is on more than one industry panel.*

Panel head, Vice President Watson

Panel members

Kaufman SDP	McKenna C
Swan DP*	Cloghan C*
Cribb C	Gooley C
Raffaelli C*	Hampton C
Thatcher C	Simpson C



Industries

Aged care industry	Marine tourism and charter vessels
Airline operations	Maritime industry
Airport operations	Market and business consultancy services
Ambulance and patient transport	Nursery industry
Children's services	Pet food manufacturing
Clerical industry	Port authorities
Clothing industry	Poultry processing
Coal export terminals	Restaurants
Commercial sales	Retail industry
Contract call centre industry	Seafood processing
Dredging industry	Social, community, home care and disability services
Dry cleaning and laundry services	Stevedoring industry
Fast food industry	Textile industry
Food, beverages and tobacco manufacturing industry	Tourism industry
Grain handling industry	Wine industry
Health and welfare services	Wool storage, sampling and testing industry
Hospitality industry	
Licensed and registered clubs	

**Indicates the member is on more than one industry panel.*

Panel head, Senior Deputy President Watson

Panel members

Boulton J	Gay C
Acton SDP	Blair C
O'Callaghan SDP	Cargill C
Richards SDP	Raffaelli C*
McCarthy DP	Ryan C
Swan DP*	



Industries

Asphalt industry
Building, metal and civil construction industries
Cement and concrete products
Electrical contracting industry
Manufacturing and associated industries
Plumbing industry
Rubber, plastic and cable making industry
Timber and paper products industry
Vehicle industry

**Indicates the member is on more than one industry panel.*

Panel head, Senior Deputy President Harrison

Panel members

Hamberger SDP	Williams C
Ives DP	Cambridge C
Bartel DP	Asbury C
Lewin C	Bissett C
Harrison C	



Industries

Agricultural industry	Journalism
Aluminium industry	Live performance industry
Amusement, events and recreation industry	Mannequins and modelling industry
Animal care and veterinary services	Mining industry
Aquaculture	Miscellaneous
Broadcasting and recorded entertainment industry	Oil and gas industry
Building services	Passenger vehicle transport (non-rail) industry
Business equipment industry	Publishing industry
Cemetery operations	Quarrying industry
Christmas Island	Racing industry
Cleaning services	Rail industry
Cocos (Keeling) Islands	Real estate industry
Diving services	Road transport industry
Electrical power industry	Salt industry
Funeral directing	Security services
Gardening services	Sporting organisations
Graphic arts	Storage services
Hair and beauty	Uranium mining (including construction)
Indigenous organisations and services	Waste management industry

Termination of Employment— Senior Deputy President Acton

Most members of the tribunal deal with termination of employment applications under arrangements administered by the head of the Termination Of Employment Panel, Senior Deputy President Acton.



Organisations Panel— Vice President Watson

This panel has responsibility for matters relating to registered organisations. The panel head is Vice President Watson. The other members of the panel are:

Kaufman SDP
Hamberger SDP
Richards SDP

Minimum Wage Panel— President, Justice Giudice

The Minimum Wage Panel is constituted by the President and carries out the minimum wage functions in Part 2-6 of the *Fair Work Act 2009*. The panel head is Justice Giudice, President, and current members of the panel are:

Watson SDP
Harrison SDP
Raffaelli C
Mr Vines
Professor Richardson
Mr Dwyer

Appendix G: Lodgment and caseload statistics

Table G1: Lodgment of all matters by location

Location	2009–10	2010–11	% annual variation
Adelaide	2395	2477	3
Brisbane	6644	5122	-23
Canberra	3329	1472	-56
Darwin	325	264	-19
Hobart	848	929	10
Melbourne	14 449	14 169	-2
Newcastle	0	22	
Perth	5365	3362	-37
Sydney	11 365	9431	-17
Wollongong	0	14	
Total	44 720	37 262	-17

Table G2: Breakdown of matters by selected categories¹ (other than registered organisation matters) by location

Location	AG	AM ²	B	BOR	C	D	DR	EM	RE	TERM ³	Total
Adelaide	1251	12	90	12	108	0	25	0	3	976	2477
Brisbane	1840	5	156	11	322	3	100	1	3	2674	5115
Canberra	1129	0	32	0	49	0	7	0	0	254	1471
Darwin	57	0	6	0	12	0	0	0	0	187	262
Hobart	428	1	69	0	46	1	25	0	2	324	896
Melbourne	4128	1487	623	188	1079	14	214	3	24	4973	12 733
Newcastle	1	0	0	0	6	0	0	0	0	15	22
Perth	1848	2	104	0	178	0	15	0	5	1203	3355
Sydney	3283	28	354	10	509	9	107	8	26	4285	8619
Wollongong	3	0	2	0	3	0	0	0	0	6	14
Total	13 968	1535	1436	221	2312	27	493	12	63	14 897	34 964

(1) Categories—AG: Agreements, AM: Modern awards, B: Protected action ballots, BOR: Board of Reference, C: General matters including appeals, D: Demarcation, DR: Dispute resolution, EM: Modern enterprise awards, RE: Right of entry, TERM: Termination of employment (including general protections matters). For more detailed explanations please see the glossary in Appendix M.

(2) Includes applications under Sch. 5, item 3—Variation and termination of certain transitional instruments etc. to take account of Part 10A award modernisation process—to the Fair Work (Transitional Provisions and Consequential Amendments) Act 2009.

(3) Includes applications under s.643 of the Workplace Relations Act 1996 and ss 394, 365 and 773 of the Fair Work Act 2009.

Table G3: Lodgment of registered organisation matters¹ by location

Location	AR	E	FR	R	RE	Total
Adelaide	0	0	0	0	0	0
Brisbane	0	0	0	0	7	7
Canberra	0	0	0	0	1	1
Darwin	0	0	0	0	2	2
Hobart	0	0	0	1	32	33
Melbourne	187	152	282	155	660	1436
Newcastle	0	0	0	0	0	0
Perth	1	0	0	0	6	7
Sydney	32	52	112	66	550	812
Wollongong	0	0	0	0	0	0
Total	220	204	394	222	1258	2298

(1) Matter types—AR: Annual returns, E: Elections, FR: Financial returns, R: Rules matters, RE: Right of entry permits.

Table G4: Number of hearings and conferences by location¹

Location	Number
Adelaide	400
Brisbane	1342
Canberra	170
Darwin	74
Hobart	126
Melbourne	3033
Newcastle	108
Perth	540
Sydney	2234
Wollongong	134
Other places	324
In chambers	3553
Telephone	11 296
Video	844
Total	24 178

(1) Figures in the above table include unfair dismissal conciliations.

Table G5: Nature of proceedings

Nature of proceedings	No.
Fair Work Act 2009	
Award grievance procedure	2
Request for a Board of Reference	221
s.120—Application to vary redundancy pay for other employment or incapacity to pay	39
s.157—FWA may vary etc. modern awards if necessary to achieve modern awards objective	1
s.158—Application to vary or revoke a modern award	145
s.160—Application to vary a modern award to remove ambiguity or uncertainty or correct error	50
s.185—Application for approval of a greenfields agreement	534
s.185—Application for approval of a multi-enterprise agreement	54
s.185—Application for approval of a single-enterprise agreement	6493
s.210—Application for approval of a variation of an enterprise agreement	93
s.217—Application to vary an agreement to remove an ambiguity or uncertainty	50
s.217A—Application to deal with a dispute about variations	1
s.222—Application for approval of a termination of an enterprise agreement	19
s.225—Application for termination of an enterprise agreement after its nominal expiry date	64
s.229—Application for a bargaining order	96
s.236—Application for a majority support determination	93
s.238—Application for a scope order	31
s.240—Application to deal with a bargaining dispute	221
s.242—Application for a low-paid authorisation	1
s.248—Application for a single-interest employer authorisation	22
s.285—Annual wage review	1
s.318—Application for an order relating to instruments covering new employer and transferring employees in agreements	59
s.318—Application for an order relating to instruments covering new employer and transferring employees in awards	2
s.319—Application for an order re instruments covering new employer and non-transferring employees in agreements	9
s.320—Application to vary a transferable instrument an agreement	8
s.365—Application to deal with contraventions involving dismissal	1871
s.372—Application to deal with other contravention disputes	504

Table G5: Nature of proceedings (continued)

Nature of proceedings	No.
s.394—Application for unfair dismissal remedy	12840
s.418—Application for an order that industrial action by employees or employers stop etc.	175
s.423—Application to suspend or terminate protected industrial action significant economic harm etc	8
s.424—Application to suspend or terminate protected industrial action endangering life etc.	17
s.425—Application to suspend protected industrial action, cooling off	11
s.426—Application to suspend protected industrial action, significant harm to a third party	3
s.437—Application for a protected action ballot order	759
s.447—Application for variation of protected action ballot order	9
s.448—Application for revocation of protected action ballot order	61
s.459—Application to extend the 30-day period in which industrial action is authorised by protected action ballot	97
s.472—Application for an order relating to certain partial work bans	4
s.483AA—Application for an order to access non-member records	7
s.505—Application to deal with a right of entry dispute	40
s.507—Application for action to be taken against permit holder	4
s.508—Application to restrict rights if organisation or official has misused permit rights	1
s.510—Upon referral, revoke or suspend an entry permit	8
s.512—Application for a right of entry permit	1257
s.519—Application for an exemption certificate	3
s.526—Application to deal with a dispute involving stand down	15
s.576(2)(ca)—Proceeding referred to Fair Work Australia for mediation	3
s.602—Application to correct obvious error(s) etc. in relation to Fair Work Australia's decision	3
s.603—Application for varying and revoking Fair Work Australia decisions	1
s.604—Appeal of decisions	168
s.699—Application to FWA to have a dispute resolution process conducted (Div 3)	25
s.709—Application to FWA to have a dispute resolution process conducted (Div 5)	468
s.739—Application to deal with a dispute	902
s.739—Application to deal with a dispute in relation to flexible working arrangements	33
s.740(1)—Application for permit to enter premises and inspect records	1

Table G5: Nature of proceedings (continued)

Nature of proceedings	No.
s.773—Application to deal with an unlawful termination dispute	174
Fair Work (Registered Organisations) Act 2009	
Sch. 1, Cl. 2—Application for transitional recognition	6
Sch. 2, Cl. 1—Application for recognition of state registered association	1
s.13(1)(b)—Advice and assistance to organisations	116
s.133(2)—Application to vary an order	1
s.137A—Orders about representation rights of organisations of employees	2
s.156—Determination of alterations of rules	1
s.158(1)—Application for alteration of eligibility rules	10
s.158(1)—Application for change of name of organisation	2
s.159(1)—Notification of alterations of other rules	88
s.18(a)—Application for registration by an association of employers	6
s.18(b)—Application for registration by an association of employees	1
s.18(c)—Application for registration by an enterprise union	1
s.180—Conscientious objection to membership of organisations	4
s.189(1)—Notification of elections for office	204
s.233(1)—Annual obligation to lodge information	220
s.235(1)—Authority to access certain records	2
s.246(1)—Application for determination of reporting units	4
s.268—Financial return	394
s.30(1)(a)—Application by organisation for cancellation of registration	3
s.30(1)(b)—Application for cancellation of registration of organisation	1
s.30(1)(c)—Cancellation of registration on Fair Work Australia's own motion	2
Fair Work (Transitional Provisions & Consequential Amendments) Act 2009	
Sch. 18, Item 11—Workplace Authority transferred function	1
Sch. 3, Item 10—Application to vary transitional instrument to remove ambiguity (agreement)	32
Sch. 3, Item 10—Application to vary transitional instrument to remove ambiguity (award)	5
Sch. 3, Item 12—Application to vary pre-reform or transitional award	53
Sch. 3, Item 15—Application by agreement to terminate collective agreement-based transitional instrument	33
Sch. 3, Item 16—Application to terminate collective agreement-based transitional instrument	77

Table G5: Nature of proceedings (continued)

Nature of proceedings	No.
Sch. 3, Item 17—Application by agreement to terminate individual agreement-based transitional instrument	5393
Sch. 3, Item 18—Application for conditional termination of individual agreement based transitional instrument	16
Sch. 3, Item 19—Declaration for unilateral termination with Fair Work Australia approval to terminate individual agreement	1027
Sch. 3, Item 26—Application to resolve an issue between a transitional instrument and the National Employment Standard (agreement)	3
Sch. 3, Item 26—Application to resolve an issue between a transitional instrument and the National Employment Standard (award)	1
Sch. 3A, Items 29 & 30—Fair Work Australia to consider varying modern awards etc.	8
Sch. 5, Item 3—Variation & termination of certain transitional instruments etc. to take account of Part10A award modern process	1331
Sch. 5, Item 9—Application for an order remedying reduction in take-home pay resulting from a modern award	57
Sch. 6, Item 4—Application to make a modern award to replace an enterprise instrument.	1
Sch. 6, Item 5—Application to terminate an enterprise instrument a preserved collective State agreement	1
Sch. 6, Item 5—Application to terminate an enterprise instrument an award	9
Sch. 7, Item 7—Application for determination of designated award for purpose of no-disadvantage test	1
Occupational Health and Safety Act 1991	
OH&S Review Authority	1
Pre-reform Workplace Relations Act 1996	
s.170LW—Application for settlement of dispute (certified agreement)	342
s.170MH—Application to terminate agreement (public interest)	1
Workplace Relations Act 1996	
s.120—Appeal to full bench	7
s.643—Application for relief re (harsh, unjust or unreasonable) termination of employment	4
s.643—Application for relief re (unlawful and harsh, unjust or unreasonable) termination of employment	4
s.643—Application for relief re (unlawful) termination of employment	4
Total	37 262

Table G6 contains time-based caseload measures for selected applications. Each measure indicates the time taken to complete 85 per cent of the applications of that type. It is not an average. For example, the first line of the table shows that 85 per cent of enterprise agreements were finalised within 86 days of lodgment in 2009–10 and within 80 days of lodgment in 2010–11.

Table G6: Caseload measures

Nature of proceeding	Event	No. of cases %	Days from lodgment				
			2006-07	2007-08	2008-09	2009-10	2010-11
Enterprise agreement ¹	Finalisation	85	–	–	–	86	80
Dispute resolution ²	First hearing (conciliation)	85	28	22	23	31	36
Order in relation to industrial action ³	First hearing	85	1	2	2	2	2
Termination of employment ⁴	First conciliation	85	46	47	54	40	37
Termination of employment ⁵	Finalisation	85	102	94	106	87	80

(1) This measure is the number of days between lodgment and finalisation of applications under s.185, whether by the approval of the agreement or by refusal, withdrawal, or discontinuance of the application.

(2) This measure is the number of days between lodgment of the matter and the first hearing and includes applications under ss 372 and 739 of the Fair Work Act and applications under ss 699 and 709 of the Workplace Relations Act by virtue of Schedule 19 to the Transitional Act.

(3) This measure is the number of days between lodgment of the matter and the first hearing and includes applications under s.418 of the Fair Work Act.

(4) This measure is the number of days between lodgment of the matter and the first conciliation for applications under ss 365, 394 and 773 of the Fair Work Act and s.643 of the Workplace Relations Act by virtue of items 11 and 12, Schedule 2 to the Transitional Act.

(5) This measure is the number of days between lodgment and finalisation of the application, whether by conciliation or a decision of Fair Work Australia for applications under ss 365, 394 and 773 of the Fair Work Act and s.643 of the Workplace Relations Act by virtue of items 11 and 12, Schedule 2 or item 11, Schedule 18 to the Transitional Act.

Table G7: Registered organisation matters finalised

Matter	Number finalised				% finalised within 28 days			
	2007-08	2008-09	2009-10	2010-11	2007-08	2008-09	2009-10	2010-11
Certification of alterations to rules other than eligibility rules	77	74	76	82	65	71	59	59
Arrangements for the conduct of an election by the Australian Electoral Commission	183	162	211	209	92	93	92	88
Lodgment of annual returns	162	175	300	224	67	59	62	80

Table G7: Registered organisation matters finalised (continued)

Matter	Number finalised				% finalised within 28 days			
	2007-08	2008-09	2009-10	2010-11	2007-08	2008-09	2009-10	2010-11
Lodgment of details of loans, grants and donations	73	73	99	57	100	100	100	100
Certificate exempting reporting unit from financial reporting requirements	47	33	29	65	100	100	100	98
Lodgment of financial documents	399	379	400	345	56	55	43	54
Right of entry permits	847	1463	1765	1241	89	86	82	91
Certificate as to membership of an organisation	7	5	2	4	86	100	100	100
Application for transitional recognition	13	18	1	4	70	40	0	50

Appendix H: Subscription services

Fair Work Australia offers electronic subscriptions to many of its documents, as well as to information and materials associated with significant cases before the tribunal. The service notifies subscribers by email as updates to nominated publications become available. Each email contains links to documents downloadable from the Fair Work Australia website.

Awards—updates only: This covers documents affecting nominated awards (including orders, determinations and decisions) and consolidated versions of awards. Subscribers are notified by email within 48 hours of the document being posted on the website. Awards can be added or removed at any time and there is no limit to the number of subscriptions.

Award matters: This notifies subscribers by email when an application to vary a modern award has been lodged and when any associated material is issued or received, including information about proceedings, submissions, hearing details and decisions. Emails are sent as changes are posted to the 'Modern award variation applications' web page. Modern awards can be added or removed at any time and there is no limit to the number of subscriptions.

Award modernisation general announcements: An email containing brief details of changes or updates to award modernisation information and links to amended and new pages is sent when changes are posted to the Fair Work Australia website.

Fair Work Australia Bulletin: This provides summaries of Fair Work Australia decisions and industrial judgments of the High Court of Australia, the Federal Court of Australia and federal and state jurisdictions, as well as information about tribunal services. A weekly email links to the latest and previous editions of the Fair Work Australia Bulletin (in PDF and HTML formats).

All decisions: An email containing brief details of all recently issued Fair Work Australia decisions, with links to the complete decisions and to the 'All decisions' page on the website, is sent up to twice daily.

Significant decisions: An email giving brief details of recently issued Full Bench decisions, and other significant decisions, with links to the complete decisions and the 'Full Bench' and 'All decisions' pages on the Fair Work Australia website, is sent when decisions are posted to the website.

Enterprise agreement decisions: An email giving brief details of recently issued enterprise agreement approval, termination and variation decisions, with links to the complete decisions and to the 'Enterprise agreement decisions' page on the Fair Work Australia website, is sent up to twice daily.

Annual wage review: This provides information about the review process and how to participate in it. As changes are posted to the 'Annual wage review' website, an email is sent containing links to relevant materials, including statements and decisions, the timetable, research, submissions, the procedure for lodging submissions, and any additional material.

Equal Remuneration Case: This provides information about the case and how to participate in it. As changes are posted to the 'Equal Remuneration Case' website, an email is sent containing links to relevant materials, including statements and decisions, the timetable, submissions, correspondence, transcripts, the procedure for lodging submissions, and any additional material.

Division 2B State awards: This provides information about the process pursuant to Item 29 of Schedule 3A of the Transitional Act. As changes are posted to the website, an email is sent containing links to information about proceedings, including links to applications to vary modern awards to give effect to Division 2B State awards, statements and decisions, and any additional material.

Termination of instruments: This provides information about the process to be undertaken pursuant to Item 3 of Schedule 5 of the Transitional Act. As changes are posted to the website, an email is sent containing links to information about proceedings, including to submissions, statements and decisions, and any additional material.

Gazette notices: This provides details of applications by registered organisations that are published in the Commonwealth of Australia Gazette. When the notice and the application have been posted to the Fair Work Australia website, an email is sent containing the name of the organisation or association lodging the application, the type of application lodged, and a link to the 'Gazette notices' page.

Announcements: This low-volume service includes details of administrative and general announcements about changes to Fair Work Australia practices and procedures, changes to rules and forms, and information about subscriptions.

Subscribing

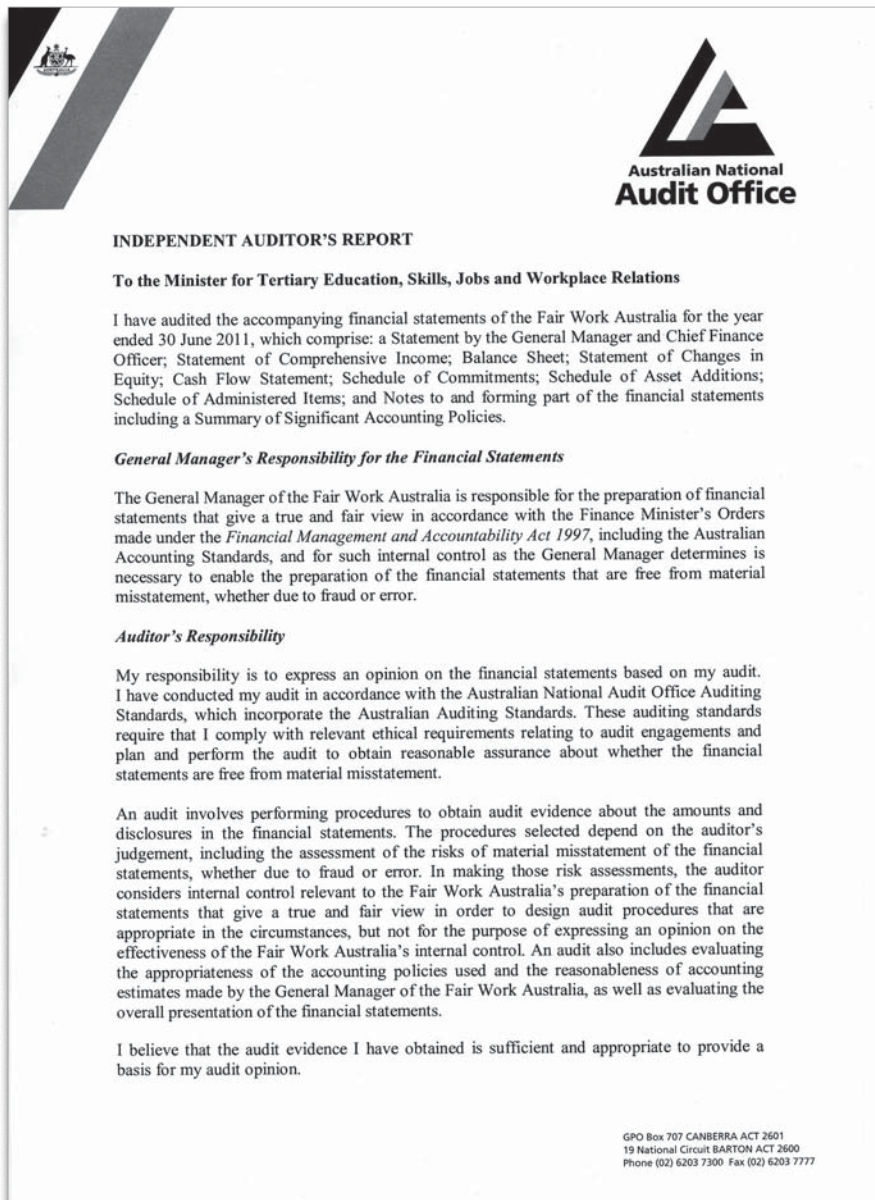
To subscribe to any of the services, sign up on the 'Subscribe to updates' page on the Fair Work Australia website, then log in and select any services required. There is no cost and publications can be added or removed at any time.



Appendix I: Financial statements

Contents

Independent auditor's report	89
Statement by the General Manager and Chief Finance Officer	91
Statement of comprehensive income	92
Balance sheet	93
Statement of changes in equity.....	94
Cash flow statement.....	95
Schedule of commitments	97
Schedule of asset additions.....	99
Schedule of administered items	100
Notes to and forming part of the financial statements	102





Independence

In conducting my audit, I have followed the independence requirements of the Australian National Audit Office, which incorporate the requirements of the Australian accounting profession.

Opinion

In my opinion, the financial statements of the Fair Work Australia:

- (a) have been prepared in accordance with the Finance Minister's Orders made under the *Financial Management and Accountability Act 1997*, including the Australian Accounting Standards; and
- (b) give a true and fair view of the matters required by the Finance Minister's Orders including the Fair Work Australia's financial position as at 30 June 2011 and of its financial performance and cash flows for the year then ended.

Australian National Audit Office

Rebecca Reilly
Executive Director

Delegate of the Auditor-General

Canberra
30 August 2011

STATEMENT BY THE GENERAL MANAGER AND THE CHIEF FINANCE OFFICER

In our opinion, the attached financial statements for the year ended 30 June 2011 are based on properly maintained financial records and give a true and fair view of the matters required by the Finance Minister's Orders made under the *Financial Management and Accountability Act 1997*, as amended.



Signed
Tim Lee
General Manager Fair Work Australia

30 August 2011



Signed
Dennis Mihelyi
Chief Finance Officer

30 August 2011

Statement of comprehensive income

for the period ended 30 June 2011

	Notes	2011 \$'000	2010 \$'000
EXPENSES			
Employee benefits	3A	43,694	38,100
Supplier	3B	28,276	27,141
Depreciation and amortisation	3C	2,097	1,393
Finance costs	3D	175	11
Write-down and impairment of assets	3E	107	61
Losses from asset sales	3F	-	2
Total expenses		74,349	66,708
LESS:			
OWN-SOURCE INCOME			
Own-source revenue			
Sale of goods and rendering of services	4A	412	6,679
Rental income	4B	1,165	1,160
Other	4C	19	21
Total own-source revenue		1,596	7,860
Gains			
Other	4D	58	58
Total gains		58	58
Total own-source income		1,654	7,918
Net cost of services		72,695	58,790
Revenue from Government	4E	71,462	69,723
Surplus/(Deficit)		(1,233)	10,933
Other comprehensive income		-	-
Total comprehensive income		(1,233)	10,933

The above statement should be read in conjunction with the accompanying notes.

Balance sheet

as at 30 June 2011

	Notes	2011 \$'000	2010 \$'000
ASSETS			
Financial assets			
Cash and cash equivalents	5A	452	730
Trade and other receivables	5B	70,563	63,463
Total financial assets		71,015	64,193
Non-Financial Assets			
Leasehold improvements	6A	3,402	3,692
Property, plant and equipment	6B	1,759	1,889
Intangibles	6D	1,093	1,341
Other	6F	1,858	1,748
Total non-financial assets		8,112	8,670
Total assets		79,127	72,863
LIABILITIES			
Payables			
Suppliers	7A	1,309	648
Other	7B	6,482	6,138
Total payables		7,791	6,786
Provisions			
Employee provisions	8A	14,332	13,563
Other	8B	2,848	2,293
Total provisions		17,180	15,856
Total liabilities		24,971	22,642
NET ASSETS		54,156	50,221
EQUITY			
Contributed equity		44,456	39,288
Retained surplus		9,700	10,933
Total equity		54,156	50,221

The above statement should be read in conjunction with the accompanying notes.

Statement of changes in equity

for the period ended 30 June 2011

	Retained earning		Contributed equity		Total equity	
	2011 \$'000	2010 \$'000	2011 \$'000	2010 \$'000	2011 \$'000	2010 \$'000
Opening balance						
Balance carried forward from previous period	10,933	-	39,288	-	50,221	-
Adjustment for errors	-	-	-	-	-	-
Adjusted opening balance	10,933	-	39,288	-	50,221	-
Comprehensive income						
Adjustment to equity	-	-	-	231	-	231
Surplus/(Deficit) for the period	(1,233)	10,933	-	-	(1,233)	10,933
Total comprehensive income	9,700	10,933	39,288	231	48,988	11,164
Transactions with owners						
Contributions by owners						
Equity injection	-	-	1,000	2,250	1,000	2,250
Departmental capital budget	-	-	4,168	-	4,168	-
Restructuring (see Note 9)	-	-	-	36,807	-	36,807
Sub-total transactions with owners	-	-	5,168	39,057	5,168	39,057
Closing balance as at 30 June	9,700	10,933	44,456	39,288	54,156	50,221

An error in the recording of the Equity Injection received from the Government in the 2009–2010 financial year has been identified. The amount of \$2,250,000 was incorrectly recorded against Revenue from Government. This amount has now been recorded against Contributed Equity in the Balance Sheet.

The above statement should be read in conjunction with the accompanying notes.

Cash flow statement

for the period ended 30 June 2011

	Notes	2011 \$'000	2010 \$'000
OPERATING ACTIVITIES			
Cash received			
Goods and services		1,633	7,860
Appropriations		68,637	58,520
Net GST received		3,058	2,560
Total cash received		73,328	68,940
Cash used			
Employees		(42,925)	(37,034)
Suppliers		(30,271)	(30,572)
Total cash used		(73,196)	(67,606)
Net cash flows from (used by) operating activities	10	132	1,334
INVESTING ACTIVITIES			
Cash received			
Proceeds from sale of property, plant and equipment		-	-
Total cash received		-	-
Cash used			
Purchase of property, plant and equipment		(996)	(1,694)
Purchase of intangibles		(134)	(656)
Total cash used		(1,130)	(2,350)
Net cash (used by) investing activities		(1,130)	(2,350)

	Notes	2011 \$'000	2010 \$'000
FINANCING ACTIVITIES			
Cash received			
Equity injection		289	1,346
Departmental capital budget		431	-
Other		-	400
Total cash received		720	1,746
Cash used			
Other		-	-
Total cash used		-	-
Net cash flows from financing activities		720	1,746
Net increase in cash held		(278)	730
Cash and cash equivalents at the beginning of the reporting period		730	-
Cash and cash equivalent at the end of the reporting period	5A	452	730

The above statement should be read in conjunction with the accompanying notes.

Schedule of commitments

as at 30 June 2011

	2011 \$'000	2010 \$'000
BY TYPE		
Commitments receivable		
Sublease rental income	(1,387)	(1,339)
Net GST recoverable on commitments	(8,332)	(8,847)
Total commitments receivable	(9,719)	(10,186)
Commitments payable		
Operating leases	90,052	95,270
Other	3,271	3,523
Total commitments payable	93,323	98,793
Net commitments by type	83,604	88,607
BY MATURITY		
Commitments receivable		
Operating lease income		
One year or less	(836)	(668)
From one to five years	(551)	(671)
Total operating lease income	(1,387)	(1,339)
Other commitments receivable		
One year or less	(1,546)	(1,573)
From one to five years	(5,050)	(5,259)
Over five years	(1,736)	(2,015)
Total other commitments receivable	(8,332)	(8,847)
Commitments payable		
Operating lease commitments		
One year or less	16,017	15,488
From one to five years	54,938	57,614
Over five years	19,097	22,168
Total operating lease commitments	90,052	95,270

	2011	2010
	\$'000	\$'000
Other commitments		
One year or less	1,910	2,545
From one to five years	1,361	978
Total other commitments	3,271	3,523
Net commitments by maturity	83,604	88,607

NB: All commitments are GST inclusive where relevant.

Nature of lease	General description of leasing arrangement
Leases for office accommodation	<p>Lease payments are subject to either increase in accordance with fixed amounts in the lease agreement or market rental reviews.</p> <p>Fair Work Australia may exercise option clauses in accordance with the terms of the leases.</p>
Sub-lease of office accommodation	<p>Fair Work Australia has agreed to sub-let its 595 Collins Street Melbourne premises to the Department of Education, Employment and Workplace Relations until the end of the current lease or until an agreed end date. The lease expires in February 2016.</p> <p>Fair Work Australia has agreed to sub-let part of the Melbourne premises (11 Exhibition Street) to Calliden Group Ltd for a five year period with an option for a further term of four years and eight months. The sub-lease has one year and nine months remaining.</p>
Agreements for the provision of motor vehicles to senior executive officers and members of Fair Work Australia	Leases are part of an operating lease and there are no purchase options available to Fair Work Australia.
Lease in relation to office equipment	<p>The lessors provide office equipment in accordance with the lease agreements.</p> <p>Fair Work Australia may negotiate extensions at expiration.</p>

The above schedule should be read in conjunction with the accompanying notes.

Schedule of asset additions

for the period ended 30 June 2011

The following non-financial non-current assets were added in 2010–11:

	Leasehold improvements	Plant and equipment	Intangibles	Total
	\$'000	\$'000	\$'000	\$'000
Additions funded in the current year				
By purchases—appropriation ordinary annual services				
Departmental capital budget	409	–	–	409
Ordinary operating costs	–	298	134	432
By purchases—appropriation other services				
Equity injections	–	289	–	289
Total additions	409	587	134	1,130

The following non-financial non-current assets were added in 2009–10:

	Leasehold improvements	Plant and equipment	Intangibles	Total
	\$'000	\$'000	\$'000	\$'000
By purchases—appropriation ordinary annual services				
Ordinary operating costs	443	89	470	1,002
By purchases—appropriation other services				
Equity injections	–	1,162	186	1,348
From acquisition of entities or operations (including restructuring)	4,187	974	971	6,132
Total additions	4630	2225	1627	8,482

The above schedule should be read in conjunction with the accompanying notes.

Schedule of administered items

for the period ended 30 June 2011

	2011 \$	2010 \$
Income administered on behalf of Government for the period ended 30 June 2011		
Revenue		
Non-taxation revenue		
Termination of employment lodgment fees	788,253	643,631
Less refunds of termination of employment lodgment fees	(368,421)	(214,757)
Total non-taxation revenue	419,832	428,874
Total revenues administered on behalf of Government	419,832	428,874

No expenses, assets or liabilities were administered on behalf of the Government for 2009–10 and 2010–11.

Administered cash flows for the period ended 30 June 2011		
OPERATING ACTIVITIES		
Cash received		
Other taxes, fees and fines	788,253	643,631
Total cash received	788,253	643,631
Cash used		
Other refunds	(368,421)	(214,757)
Total cash used	(368,421)	(214,757)
Net cash flows from operating activities	419,832	428,874
Net Increase in cash held	419,832	428,874
Cash and cash equivalents at the beginning of the reporting period	–	–
Cash to Official Public Account for:		
Other	(419,832)	(428,874)
	(419,832)	(428,874)
Cash and cash equivalents at the end of the reporting period	–	–



The administered activity that Fair Work Australia performs on behalf of the Australian Government is the collection of termination of employment lodgment fees.

The above schedule should be read in conjunction with the accompanying notes.

Notes to and forming part of the financial statements

for the period ended 30 June 2011

Index to the notes of the financial statements

Note 1	Summary of significant accounting policies
Note 2	Events after the reporting period
Note 3	Expenses
Note 4	Income
Note 5	Financial assets
Note 6	Non-financial assets
Note 7	Payables
Note 8	Provisions
Note 9	Restructuring
Note 10	Cash flow reconciliation
Note 11	Contingent liabilities and assets
Note 12	Senior executive remuneration
Note 13	Remuneration of auditors
Note 14	Financial instruments
Note 15	Administered reconciliation table
Note 16	Administered contingent liabilities and assets
Note 17	Appropriations
Note 18	Compensation and debt relief
Note 19	Reporting of outcomes
Note 20	Comprehensive income (loss) attributable to Fair Work Australia

Note 1 Summary of significant accounting policies

1.1 Objectives of Fair Work Australia

Fair Work Australia was established by the Fair Work Act and commenced operations on 1 July 2009. Fair Work Australia was one of two institutions established to administer the provisions of the Fair Work Act and to provide a balanced framework for cooperative and productive workplace relations that promote economic prosperity and social inclusion. Fair Work Australia is an Australian Government controlled entity.

Fair Work Australia is responsible for a single outcome. Outcome 1 'Simple, fair and flexible workplace relations for employees and employers through the exercise of powers to set and vary minimum wages and modern awards, facilitate collective bargaining, approve agreements and deal with disputes'.

The continued existence of the entity in its present form and with its present programs is dependent on Government policy and on continuing funding by Parliament for the entity's administration and programs.

Fair Work Australia activities contributing toward the outcome are classified as either departmental or administered. Departmental activities involve the use of assets, liabilities, income and expenses controlled or incurred by Fair Work Australia in its own right. Administered activities involve the management or oversight by Fair Work Australia, on behalf of the Government, of items controlled or incurred by the Government.

Departmental activities are identified under one program.

- Program 1 Dispute resolution, minimum wages, orders and approval of agreements.

Fair Work Australia conducts the following administered activities:

- the collection of termination of employment lodgment fees; and
- payment of pensions to former presidential members of Fair Work Australia and its preceding bodies or their spouses under the *Judges Pension Act 1968* drawn down from the Department of Finance and Deregulation.

Fair Work Australia consists of a President, Deputy Presidents, Commissioners and Minimum Wage Panel Members. Fair Work Australia also has a General Manager and administrative staff who exercise powers and functions under the Fair Work Act.

Fair Work Australia has the power to vary awards, make minimum wage orders, approve agreements, resolve workplace and other disputes, determine unfair dismissal claims and make orders in relation to such things as good faith bargaining and industrial action.

1.2 Basis of preparation of the financial statements

The Financial Statements are required by s.49 of the *Financial Management and Accountability Act 1997* and are general purpose financial statements.

The Financial Statements and notes have been prepared in accordance with:

- Finance Minister's Orders (or FMO's) for reporting periods ending on or after 1 July 2010; and
- Australian Accounting Standards and Interpretations issued by the Australian Accounting Standards Board (AASB) that apply for the reporting period.

The Financial Statements have been prepared on an accrual basis and in accordance with the historical cost convention, except for certain assets and liabilities at fair value. Except where stated, no allowance is made for the effect of changing prices on the results or the financial position.

The Financial Statements are presented in Australian dollars and values are rounded to the nearest thousand dollars unless otherwise specified.

Unless an alternative treatment is specifically required by an Accounting Standard or the FMOs, assets and liabilities are recognised in the Balance Sheet when and only when it is probable that future economic benefits will flow to Fair Work Australia or a future sacrifice of economic benefits will be required and the amounts of the assets or liabilities can be reliably measured. However, assets and liabilities arising under executor contracts are not recognised unless required by an Accounting Standard. Liabilities and assets that are unrecognised are reported in the Schedule of Commitments or Note 11: Contingent Liabilities and Assets.

Unless alternative treatment is specifically required by an Accounting Standard, income and expenses are recognised in the Statement of Comprehensive Income when and only when the flow, consumption or loss of economic benefits has occurred and can be reliably measured.

Administered revenues, expenses, assets and liabilities and cash flows reported in the Schedule of Administered Items and related notes are accounted for on the same basis and using the same policies as for departmental items, except where otherwise stated at **Note 1.18**.

1.3 Significant accounting judgements and estimates

In the process of applying the accounting policies listed in this note, Fair Work Australia has not made any judgments that have a significant impact on the amounts recorded in the financial statements.

Fair Work Australia has not made any accounting assumptions or estimates that have a significant risk of causing a material adjustment to carrying amounts of assets and liabilities within the next accounting period.

1.4 New Australian Accounting Standards

Adoption of New Australian Accounting Standard requirements

No accounting standard has been adopted earlier than the application date as stated in the standard. Of the new standards, amendments to standards or interpretations issued prior to the signoff date, none have a material financial impact on Fair Work Australia.

Future Australian Accounting Standards requirements

Of the new standards, amendments to standards or interpretations issued prior to the signoff date, none have had a material financial impact on Fair Work Australia.

1.5 Revenue

(a) Revenue from Government

Amounts appropriated for departmental appropriations for the year (adjusted for any formal additions and reductions) are recognised as Revenue from Government when Fair Work Australia gains control of the appropriation, except for certain amounts that relate to activities that are reciprocal in nature, in which case revenue is recognised only when it has been earned.

Appropriations receivable are recognised at their nominal amounts.

(b) Other types of revenue

Fair Work Australia received rental income from the sub-leasing of space within the Sydney office and two of the Melbourne offices during the 2010–11 financial year. Revenue from rendering of services is recognised by reference to the stage of completion of contracts at the reporting date. The revenue is recognised when the amount of revenue, stage of completion and transaction costs incurred can be reliably measured, and when probable economic benefits associated with the transaction will flow to Fair Work Australia.

The stage of completion of contracts at the reporting date is determined by reference to the proportion that costs incurred to date bear to the estimated total costs of the transaction.

Receivables for goods and services, which have 30 day terms, are recognised at the nominal amounts due less any impairment allowance account. Collectability of debts is reviewed at end of reporting period. Allowances are made when collectability of the debt is no longer probable.

1.6 Gains

(a) Resources received free of charge

Resources received free of charge are recognised as gains when, and only when, a fair value can be reliably determined and the services would have been purchased if they had not been donated. Use of those resources is recognised as an expense.

Contributions of assets at no cost of acquisition or for nominal consideration are recognised at their fair value when the asset qualifies for recognition, unless received from another Government entity as a consequence of a restructuring of administrative arrangements (refer to **Note 1.7**).

Resources received free of charge are recorded as either revenue or gains depending on their nature.

Sale of Assets

Gains from disposal of assets are recognised when control of the asset has passed to the buyer.

1.7 Transactions with the Government as owner

(a) Equity injections

Amounts appropriated which are designated as 'equity injections' for a year (less any formal reductions) and Departmental Capital Budget (DCBs) are recognised directly in contributed equity in that year.

(b) Restructuring of administrative arrangements

Net assets received from or relinquished to another Australian Government entity under a restructuring of administrative arrangements are adjusted at their book value directly against contributed equity.

1.8 Employee benefits

Employee benefits includes benefits paid to Presidential members, Commissioners and Fair Work Australia staff.

Liabilities for services rendered by employees are recognised at the reporting date to the extent that they have not been settled.

Liabilities for 'short-term employee benefits' (as defined in AASB 119 Employee Benefits) and termination benefits due within 12 months of the end of the reporting period are measured at their nominal amounts. The nominal amount is calculated with regard to the rates expected to be paid on settlement of the liability.

Other long term employee benefit liabilities are measured as the net total of the present value of the defined benefit obligation at the end of the reporting period minus the fair value at the end of the reporting period of plan assets (if any) out of which the obligations are to be settled directly.

(a) Leave

The liability for employee benefits includes provision for annual leave and long service leave. No provision has been made for sick leave as all sick leave is non-vesting and the average sick leave taken in future years by employees of Fair Work Australia is estimated to be less than the annual entitlement for sick leave.

The leave liabilities are calculated on the basis of employees' remuneration at the estimated salary rates that applied at the time the leave is taken, including Fair Work Australia employer superannuation contribution rates to the extent that the leave is likely to be taken during service rather than paid out on termination.

The liability for long service leave is based on Fair Work Australia estimated liability at reporting date of the long service leave entitlements of its employees. Eligible employees (including Commissioners) accrue three months' long service leave after 10 years service, and progressively thereafter on a proportional basis. The non-current portion of the liability for long service leave is recognised and measured at the present value of the estimated future cash flows to be made in respect of all employees at 30 June 2011. The liability for long service leave is measured at the present value of estimated future cash outflows using market yields as at the reporting date on 'national government bonds' and takes into account attrition rates and pay increases through promotion and inflation.

Presidential members accrue six months' long leave after five years of service as a presidential member. In recognition of the nature of presidential members' tenure, a provision is accrued from the first year of service.

Separation and redundancies

Provision is made for separation and redundancy benefit payments. Fair Work Australia recognises a provision for termination when it has developed a detailed formal plan for the terminations and has informed those employees affected that it will carry out the terminations.

(b) Superannuation

Staff of Fair Work Australia and commissioners of Fair Work Australia are members of the Commonwealth Superannuation Scheme (CSS), the Public Sector Superannuation Scheme (PSS) or the PSS Accumulation Plan (PSSap). The CSS and PSS are defined benefit schemes for the Australian Government. The PSSap is a defined contribution scheme. The liability for defined benefits is recognised in the financial statements of the Australian Government and is settled by the Australian Government in due course. The liability is reported by the Department of Finance and Deregulation as an administered item.

Fair Work Australia makes employer contributions to the employee's superannuation scheme at rates determined by an actuary to be sufficient to meet the current cost to the Government. Fair Work Australia accounts for the contributions as if they were contributions to defined contribution plans.

The liability for superannuation recognised as at 30 June 2011 represents the outstanding contributions for the final fortnight of the year.

(c) Judges' pensions

Presidential members of Fair Work Australia are members of the Judges' Pension Scheme under the *Judges' Pensions Act 1968*. The fund, as at 30 June 2011, was carrying liabilities for members' benefits which exceeded the scheme's assets. The liability and payments are recorded as part of the Department of Finance and Deregulation financial statements. The Department of Finance and Deregulation has given Fair Work Australia drawing rights for this financial year in relation to the special appropriation made under the *Judges' Pensions Act 1968*. Fair Work Australia makes pension payments directly to former presidential members of Fair Work Australia and its preceding bodies (refer to **Note 17, Table C**).

1.9 Leases

A distinction is made between finance leases and operating leases. Finance leases effectively transfer from the lessor to the lessee substantially all the risks and rewards incidental to ownership of leased assets. An operating lease is a lease that is not a finance lease. In operating leases, the lessor effectively retains substantially all such risks and benefits.

Operating lease payments are expensed on a straight-line basis which is representative of the pattern of benefits derived from the leased assets.

Lease incentives taking the form of 'free' leasehold improvements and rent holidays are recognised as liabilities. These liabilities are reduced by allocating lease payments between rental expense and reduction of the liability.

1.10 Cash

Cash and cash equivalents includes cash on hand, cash held with outsiders, demand deposits in bank accounts with an original maturity of three months or less that are readily convertible to known amounts of cash and subject to insignificant risk of changes in value. Cash is recognised at its nominal amount.

1.11 Financial assets

Fair Work Australia classifies its financial assets in the following categories:

- financial assets at fair value through profit or loss
- held-to-maturity investments
- available-for-sale financial assets
- loans and receivables.

The classification depends on the nature and purpose of the financial assets and is determined at the time of initial recognition. Financial assets are recognised and derecognised upon 'trade date'. Fair Work Australia only holds financial assets classified as loans and receivables.

Effective interest method

The effective interest method is a method of calculating the amortised cost of a financial asset and of allocating interest income over the relevant period. The effective interest rate is the rate that exactly discounts estimated future cash receipts through the expected life of the financial asset, or, when appropriate, a shorter period.

Income is recognised on an effective interest rate basis except for financial assets that are recognised at fair value through profit or loss.

Loans and receivables

Trade receivables, loans and other receivables that have fixed or determinable payments that are not quoted in an active market are classified as 'loans and receivables'. They are included in current assets. Loans and receivables are measured at amortised cost using the effective interest method less impairment. Interest is recognised by applying the effective interest rate.

Impairment of financial assets

Financial assets are assessed for impairment at the end of each reporting period.

Financial assets held at amortised cost—If there is objective evidence that an impairment loss has been incurred for loans and receivables held at amortised cost, the amount of the loss is measured as the difference between the asset's carrying amount and the present value of estimated future cash flows discounted at the asset's original effective interest rate. The carrying amount is reduced by way of an allowance account. The loss is recognised in the Statement of Comprehensive Income.

1.12 Financial liabilities

Financial liabilities are classified as either financial liabilities 'at fair value through profit or loss' or other financial liabilities. Financial liabilities are recognised and derecognised upon 'trade date'.

Suppliers and other payables

Suppliers and other payables are recognised at amortised cost. Liabilities are recognised to the extent that the goods or services have been received (and irrespective of having been invoiced).

1.13 Contingent liabilities and contingent assets

Contingent liabilities and contingent assets are not recognised in the Balance Sheet but are reported in the relevant schedules and notes. They may arise from uncertainty as to the existence of a liability or asset or represent an existing liability or asset in respect of which the amount cannot be reliably measured. Contingent assets are disclosed when settlement is probable but not virtually certain, and contingent

liabilities are disclosed when settlement is greater than remote (refer to **Note 11** and **Note 16**).

1.14 Acquisition of assets

Assets are recorded at cost on acquisition except as stated below. The cost of acquisition includes the fair value of assets transferred in exchange and liabilities undertaken. Financial assets are initially measured at their fair value plus transaction costs where appropriate.

Assets acquired at no cost, or for nominal consideration, are initially recognised as assets and income at their fair value at the date of acquisition, unless acquired as a consequence of restructuring of administrative arrangements. In the latter case, assets are initially recognised as contributions by owners at the amounts at which they were recognised in the transferor accounts immediately prior to the restructuring.

1.15 Property, plant and equipment

(a) Asset recognition threshold

Purchases of property, plant and equipment are recognised initially at cost in the Balance Sheet, except for purchases costing less than \$2000, which are expensed in the year of acquisition (other than where they form part of a group of similar items which are significant in total).

The initial cost of an asset includes an estimate of the cost of dismantling and removing the item and restoring the site on which it is located. This is particularly relevant to 'make-good' provisions in property leases taken up by Fair Work Australia where there exists an obligation to restore the property to its original condition. These costs are included in the value of Fair Work Australia's leasehold improvements with a corresponding provision for the 'make-good' recognised.

(b) Revaluations

Fair value for each class of asset are determined as shown below:

Asset class	Fair value measured at
Leasehold improvement	Depreciated replacement cost
Property, plant and equipment	Market selling price

Following initial recognition at cost, property, plant and equipment are carried at fair value less subsequent accumulated depreciation and accumulated impairment losses. Valuations are conducted with sufficient frequency to ensure that the carrying amount of assets do not differ materially from the assets' fair values as at the reporting date. It is expected that the independent valuations will be undertaken once every three to five years. All valuations are conducted by an independent qualified valuer.

Revaluation adjustments are made on a class basis. Any revaluation increment is credited to equity under the heading of asset revaluation reserve except to the extent that it reverses a previous revaluation decrement of the same asset class that was previously recognised in the surplus/deficit. Revaluation decrements for a class of assets are recognised directly in the surplus/deficit except to the extent that they reverse a previous revaluation increment for that class.

Any accumulated depreciation as at the revaluation date is eliminated against the gross carrying amount of the asset and the asset restated to the revalued amount.

(c) Depreciation

Depreciable property, plant and equipment assets are written-off to their estimated residual values over their estimated useful life to Fair Work Australia using, in all cases, the straight-line method of depreciation. Leasehold improvements are depreciated on a straight-line basis over the lesser of the estimated useful life of the improvements or the unexpired period of the lease.

Depreciation rates (useful lives), residual values and methods are reviewed at each reporting date and necessary adjustments are recognised in the current, or current and future reporting periods, as appropriate.

Depreciation rates applying to each class of depreciable asset are based on the following useful lives:

	2011	2010
Leasehold improvements	Lease term	Lease term
Property, plant and equipment	3 to 10 years	3 to 10 years

Impairment

All assets were assessed for impairment at 30 June 2011. Where indications of impairment exist, the asset's recoverable amount is estimated and an impairment adjustment made if the asset's recoverable amount is less than its carrying amount.

The recoverable amount of an asset is the higher of its fair value less costs to sell and its value in use. Value in use is the present value of the future cash flows expected to be derived from the asset. Where the future economic benefit of an asset is not primarily dependent on the asset's ability to generate future cash flows, and the asset would be replaced if Fair Work Australia were deprived of the asset, its value in use is taken to be its depreciated replacement cost.

Derecognition

An item of property, plant and equipment is derecognised upon disposal or when no further future economic benefits are expected from its use or disposal.

1.16 Intangibles

Fair Work Australia's intangibles comprise internally developed and externally purchased computer software for internal use. These assets are carried at cost less accumulated amortisation and accumulated impairment losses.

Software is amortised on a straight-line basis over its anticipated useful life. The useful lives of Fair Work Australia's software are:

	2011	2010
Intangibles—computer software	3 to 10 years	3 to 10 years

All software assets were assessed for indications of impairment as at 30 June 2011.

1.17 Taxation

Fair Work Australia is exempt from all forms of taxation except Fringe Benefits Tax (FBT) and the Goods and Services Tax (GST).

Revenues, expenses and assets are recognised net of GST except:

- where the amount of GST incurred is not recoverable from the Australian Taxation Office; and
- for receivables and payables.

1.18 Reporting of administered activities

Administered revenues, expenses, assets, liabilities and cash flows are disclosed in the Schedule of Administered Items and related Notes.

Except where otherwise stated below, administered items are accounted for on the same basis and using the same policies as for departmental items, including the application of Australian Accounting Standards.

Fair Work Australia has been granted authority and drawing rights by the Department of Finance and Deregulation to make payments to former Presidential Members of Fair Work Australia and its preceding bodies under the *Judges' Pensions Act 1968* (**Note 17, Table C**).

(a) Administered cash transfers to and from Official Public Account

Revenue collected by Fair Work Australia for use by the Government rather than Fair Work Australia is Administered Revenue. Collections are transferred to the Official Public Account (OPA) maintained by the Department of Finance and Deregulation. Conversely, cash is drawn from the OPA to make payments under Parliamentary appropriation on behalf of Government. These transfers to and from the OPA are adjustments to the administered cash held by Fair Work Australia on behalf of the Government and reported as such in the Statement of Cash Flows in the Schedule of Administered Items and in the Administered Reconciliation Table in **Note 15**. The Schedule of Administered Items largely reflects the Government's transactions, through Fair Work Australia, with parties outside the Government.

(b) Revenue

All administered revenues are revenues relating to course of ordinary activities performed by Fair Work Australia on behalf of the Australian Government. Fair Work Australia receives revenue from fees charged for lodgment of unlawful dismissals. Administered revenue is recognised when the lodgment is processed.

Note 2 Events after the reporting period

There were no events that occurred after 30 June 2011, or prior to the signing of the financial statements, that would affect the ongoing structure and financial activities of Fair Work Australia.

Note 3 Expenses

	2011	2010
	\$'000	\$'000
Note 3A: Employee benefits		
Wages and salaries	34,545	29,672
Superannuation		
Defined benefit plans	1,677	1,733
Defined contribution plans	2,515	1,883
Leave and other entitlements	4,283	4,033
Separation and redundancies	–	135
Other employee expenses	674	644
Total employee benefits	43,694	38,100

Note 3B: Suppliers

	2011 \$'000	2010 \$'000
Goods and services		
Court/member services	5,077	4,356
Information communications technology	2,548	2,397
Property expenses	2,592	2,609
Office expense	1,879	1,596
Contractors	2,771	3,086
Other	488	1,070
Total goods and services	15,355	15,114
Goods and services are made up of:		
Provision of goods—external parties	1,466	2,045
Rendering of services—related entities	1,846	1,144
Rendering of services—external parties	12,043	11,925
Total goods and services	15,355	15,114
Other supplier expenses		
Operating lease rentals—external parties:		
Minimum lease payments	12,825	11,933
Workers compensation premium	96	94
Total other supplier expenses	12,921	12,027
Total supplier expenses	28,276	27,141

Note 3C: Depreciation and amortisation

Depreciation		
Leasehold improvements	1,105	834
Plant and equipment	640	334
Total depreciation	1,745	1,168
Amortisation		
Intangibles:		
Computer software	352	225
Total amortisation	352	225
Total depreciation and amortisation	2,097	1,393

	2011 \$'000	2010 \$'000
Note 3D: Finance costs		
Unwinding of discount	175	11
Total finance costs	175	11
Note 3E: Write-down and impairment of assets		
Asset write-downs and impairment from	77	–
Write-down of intangibles	30	61
Total write-down and impairment of assets	107	61
Note 3F: Losses from assets sales		
Plant and equipment		
Carrying value of asset sold	–	2
Proceeds from sale	–	–
Total losses from assets sales	–	2
Note 4 Income		
Revenue		
Note 4A: Sale of goods and rendering of services		
Rendering of services—external parties	412	134
Rendering of services—related entities	–	6,545
Total sale of goods and rendering of services	412	6,679
Note 4B: Rental income		
Operating lease:		
Sub-lease of property	1,165	1,160
Total rental income	1,165	1,160
Note 4C: Other revenues		
Other	19	21
Total other revenue	19	21

	2011	2010
	\$'000	\$'000
Gains		
Note 4D: Other gains		
Resources received free of charge	58	58
Total other gains	58	58
Revenue from Government		
Note 4E: Revenue from Government		
Appropriations:		
Departmental appropriations	71,462	69,723
Total revenue from Government	71,462	69,723
Note 5 Financial assets		
Note 5A: Cash and cash equivalents		
Cash on hand or on deposit	452	730
Total cash and cash equivalents	452	730
Note 5B: Trade and other receivables		
Goods and services:		
Goods and services—external parties	6	44
Goods and services—related entities	17	16
Total receivables for goods and services	23	60
Appropriations receivable:		
for existing outputs	70,171	60,778
for additional outputs	–	2,120
Total appropriations receivable	70,171	62,898
Other receivables:		
GST receivable from the Australian Taxation Office	369	505
Total other receivables	369	505

	2011 \$'000	2010 \$'000
Total trade and other receivables	70,563	63,463

Receivables are expected to be recovered in:

No more than 12 months	70,563	63,463
More than 12 months	—	—
Total trade and other receivables	70,563	63,463

Receivables are aged as follows:

Not overdue	70,563	63,463
Total receivables	70,563	63,463

No indicators of impairment were noted for receivables.

Note 6 Non-financial assets

Note 6A: Leasehold improvements

Leasehold improvements

—fair value	16,526	15,774
—accumulated depreciation	(13,124)	(12,082)
Total leasehold improvements	3,402	3,692

No leasehold improvement revaluations were undertaken during the period ended 30 June 2011 (2010: nil).

No indicators of impairment were found for leasehold improvements.

No leasehold improvements are expected to be sold or disposed of within the next 12 months.

Note 6B: Property, plant and equipment

Property, plant and equipment:

—at fair value	3,201	3,261
—accumulated depreciation	(1,442)	(1,372)
Total property, plant and equipment	1,759	1,889

No property, plant and equipment revaluations were undertaken during the period ended 30 June 2011 (2010: nil).

No indicators of impairment were found for property, plant and equipment.

No property, plant and equipment is expected to be sold or disposed of within the next 12 months.

Note 6C: Analysis of property, plant and equipment

Reconciliation of the opening and closing balances of property, plant and equipment (2010–11)

	Leasehold improvements \$'000	Property, plant and equipment \$'000	Total \$'000
As at 1 July 2010			
Gross book value	15,774	3,261	19,035
Accumulated depreciation and impairment	(12,082)	(1,372)	(13,454)
Net book value 1 July 2010	3,692	1,889	5,581
Additions:			
by purchase—Department capital budget	409	–	409
by purchase—Ordinary operating cost	–	298	298
by purchase—Equity injections	–	289	289
Depreciation expense	(1,105)	(640)	(1,745)
Other movement—make-good	406	–	406
Disposals/write-downs	–	(77)	(77)
Net book value 30 June 2011	3,402	1,759	5,161
Net book value as of 30 June 2011 represented by:			
Gross book value	16,526	3,201	19,727
Accumulated depreciation and impairment	(13,124)	(1,442)	(14,566)
	3,402	1,759	5,161

Reconciliation of the opening and closing balances of property, plant and equipment (2009–10)

	Leasehold improvements \$'000	Property, plant and equipment \$'000	Total \$'000
As at 1 July 2009			
Gross book value	–	–	–
Accumulated depreciation and impairment	–	–	–
Net book value 1 July 2009	–	–	–
Additions:			
by purchase—Ordinary operating costs	443	89	532
by purchase—Equity injection	–	1,162	1,162
from acquisition of entities or operations (including restructuring)—fair value	15,435	2,015	17,450
from acquisition of entities or operations (including restructuring)—accumulated depreciation	(11,248)	(1,041)	(12,289)
Depreciation expense	(834)	(334)	(1,168)
Other movement—make-good	(104)	–	(104)
Disposals/write-downs	–	(2)	(2)
Net book value 30 June 2010	3,692	1,889	5,581
Net book value as of 30 June 2010 represented by:			
Gross book value	15,774	3,261	19,035
Accumulated depreciation and impairment	(12,082)	(1,372)	(13,454)
	3,692	1,889	5,581

	2011	2010
	\$'000	\$'000
Note 6D: Intangibles		
Computer software at cost:		
Internally developed—in use	950	950
Purchased	1,007	1,153
Accumulated amortisation	(864)	(762)
Total intangibles	1,093	1,341

No indicators of impairments were found for intangible assets.

No intangibles are expected to be sold or disposed of within the next 12 months.

Note 6E: Analysis of intangibles

Reconciliation of the opening and closing balances of intangibles (2010–11)

	Intangibles	Total
	\$'000	\$'000
As at 1 July 2010		
Gross book value	2,103	2,103
Accumulated amortisation and impairment	(762)	(762)
Net book value 1 July 2010	1,341	1,341
Additions:		
by purchase—Ordinary operating costs	134	134
Amortisation	(352)	(352)
Disposals/write-downs	(30)	(30)
Net book value 30 June 2011	1,093	1,093
Net book value as of 30 June 2011 represented by:		
Gross book value	1,957	1,957
Accumulated amortisation and impairment	(864)	(864)
	1,093	1,093

Reconciliation of the opening and closing balances of intangibles (2009–10)

	Intangibles \$'000	Total \$'000
As at 1 July 2009		
Gross book value	–	–
Accumulated amortisation and impairment	–	–
Net book value 1 July 2009	–	–
Additions:		
by purchase—Ordinary operating costs	470	470
by purchase—Equity injections	186	186
from acquisitions of entities or operations (including restructuring)—fair value	1,533	1,533
from acquisitions of entities or operations (including restructuring)—accumulated depreciation	(562)	(562)
Amortisation	(225)	(225)
Disposals/write-downs	(61)	(61)
Net book value 30 June 2010	1,341	1,341
Net book value as of 30 June 2010 represented by:		
Gross book value	2,103	2,103
Accumulated amortisation and impairment	(762)	(762)
	1,341	1,341

	2011 \$'000	2010 \$'000
Note 6F: Other non-financial assets		
Prepayments	1,538	1,596
Lease incentive	320	152
Total other non-financial assets	1,858	1,748

No indicators of impairment were found for other non-financial assets.

Total other non-financial assets are expected to be recovered in:

No more than 12 months	1,633	1,651
More than 12 months	225	97
Total other non-financial assets	1,858	1,748

	2011 \$'000	2010 \$'000
Note 7 Payables		
Note 7A: Suppliers		
Trade creditors and accruals	1,309	648
Total supplier payables	1,309	648
Supplier payables expected to be settled within 12 months:		
Related entities	1,309	648
Total supplier payables	1,309	648
Settlement is usually made within 30 days.		
Note 7B: Other payables		
Salaries and wages	728	624
Superannuation	97	76
Lease payable	3,256	2,585
Lease incentives	2,401	2,853
Total other payables	6,482	6,138
Total other payables are expected to be settled in:		
No more than 12 months	1,460	1,256
More than 12 months	5,022	4,882
Total other payables	6,482	6,138
Note 8 Provisions		
Note 8A: Employee provisions		
Leave	14,332	13,563
Total employee provisions	14,332	13,563
Employee provisions are expected to be settled in:		
No more than 12 months	3,623	2,381
More than 12 months	10,709	11,182
Total employee provisions	14,332	13,563

	2011	2010
	\$'000	\$'000
Note 8B: Other provisions		
Provision for restoration obligations	2,848	2,293
Total other provisions	2,848	2,293
Other provisions are expected to be settled in:		
More than 12 months	2,848	2,293
Total other provisions	2,848	2,293
	Leasehold	Total
	make-good	\$'000
	\$'000	\$'000
Carrying amount 1 July 2010	2,293	2,293
Amount received due to restructuring	405	405
Amounts used	(25)	(25)
Unwinding of discount or change in discount rate	175	175
Closing balance 30 June 2011	2,848	2,848

Fair Work Australia currently has two agreements for the leasing of premises which have provisions requiring Fair Work Australia to restore the premises to their original condition at the conclusion of the lease. Fair Work Australia has made a provision to reflect the present value of this obligation.

Note 9 Restructuring

Departmental restructuring

In accordance with the provisions of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*, all of the Australia Industrial Registry and the Australian Fair Pay Commission Secretariat's assets and liabilities transferred to Fair Work Australia on 1 July 2009. (Refer Note 1.1).

In respect of functions assumed, the net book values of assets and liabilities transferred to Fair Work Australia for no consideration and recognised as at the date of transfer were:

	2011	2010
	\$'000	\$'000
Australian Industrial Registry		
Assets recognised		
Cash and cash equivalents	–	400
Goods and services receivable	–	22
Appropriation receivable	–	44,617 ¹
GST receivable from the Australian Taxation Office	–	318
Leasehold improvements—fair value	–	13,058
Leasehold improvements—accumulated depreciation		(9887)
Plant and equipment—fair value	–	1,864
Plant and equipment— accumulated depreciation	–	(936)
Intangibles—fair value	–	1,527
Intangibles—accumulated depreciation	–	(557)
Prepayments	–	1,258
Lease incentive	–	207
Total asset recognised	–	51,891
Liabilities recognised		
Trade creditors	–	1,908
Unearned revenue	–	77
Salaries and wages	–	326
Superannuation	–	41
Lease payable	–	1,970
Lease incentive	–	2,668
Employee provisions—leave	–	11,022



APPENDICES

Other provisions—leasehold make-good	-	2,387
Total liabilities recognised	-	20,399
Net assets/(liabilities) assumed	-	31,492

(1) This amount includes the reduction of appropriation due to the Finance Minister's determination of 13 May 2010 to extinguish unspent depreciation funding of \$5,504,000.

	2011	2010
	\$'000	\$'000
Australian Fair Pay Commission Secretariat		
Assets recognised		
Goods and services receivable	-	39
Appropriation receivable	-	6,231
GST receivable from the Australian Taxation Office	-	50
Leasehold improvements—fair value	-	2,377
Leasehold improvements—accumulated depreciation	-	(1,361)
Plant and equipment—fair value	-	151
Plant and equipment—accumulated depreciation		(105)
Intangibles—fair value	-	6
Intangibles—accumulated depreciation	-	(5)
Prepayments	-	60
Total asset recognised	-	7,443
Liabilities recognised		
Trade creditors	-	124
Salaries and wages	-	284
Superannuation	-	7
Lease payable	-	231
Lease incentive	-	740
Employee provisions—leave	-	742
Total liabilities assumed	-	2,128
Net assets/(liabilities) assumed	-	5,315
Net assets/(liabilities) assumed from all entities	-	36,807

Note 10 Cash flow reconciliation

	2011 \$'000	2010 \$'000
Reconciliation of cash and cash equivalents as per balance sheet to cash flow statement:		
Cash and cash equivalents as per:		
Cash flow statement	452	730
Balance sheet	452	730
<i>Difference</i>	<u><u>-</u></u>	<u><u>-</u></u>
Reconciliation of net cost of services to net cash from operating activities:		
Net cost of service	(72,695)	(58,790)
Add Revenue from Government	71,462	69,723
Adjustments for non-cash items		
Depreciation/amortisation	2,097	1,393
Net write-down of non-financial assets	(299)	165
Loss on disposal of assets	-	2
Contributed equity (excluding non-financial assets)	-	30,506
Changes in assets/liabilities		
(Increase) in net receivables	(2,652)	(63,463)
(Increase) in other non-financial assets	(168)	(152)
Decrease/(increase) in prepayments	58	(1,596)
Increase in supplier payables	661	648
Increase in other payables	344	6,138
Increase in employee provisions	769	13,563
Increase in other provisions	555	2,293
<i>Net cash from operating activities</i>	<u><u>132</u></u>	<u><u>2,680</u></u>

Note 11 Contingent liabilities and assets

Quantifiable contingencies

There were no quantifiable contingent liabilities or assets requiring disclosure for the period ended 30 June 2011 (2010: \$0).

Unquantifiable contingencies

There were no unquantifiable contingent liabilities or assets requiring disclosure for the period ended 30 June 2011 (2010: \$0).

Significant remote contingencies

There were no significant remote contingent liabilities or assets requiring disclosure for the period ended 30 June 2011 (2010: \$0).

Note 12 Senior executive remuneration

Note 12A: Senior executive remuneration expense for the reporting period

	2011 \$	2010 \$
Short-term employee benefits¹		
Salary (including annual leave taken)	1,136,635	1,113,918
Annual leave accrued	7,981	19,644
Performance bonus ²	-	26,600
Other ³	82,255	58,822
Total short-term employee benefits	1,226,871	1,218,984
Post-employment benefits		
Superannuation	165,755	150,928
Total post-employment benefits	165,755	150,928
Other long-term benefits		
Long service leave	27,798	24,492
Total other long-term benefits	27,798	24,492
Termination benefits	-	127,917
Total	1,420,424	1,522,321

Notes

- Note 12A excludes acting arrangements and part-year service where remuneration expensed was less than \$150,000.
- Note 12A was prepared on an accrual basis (so the performance bonus expenses disclosed above differ from the cash 'Bonus paid' in Note 12B).
- 'Other' includes motor vehicle allowances and other allowances.



Note 12B: Average annual remuneration packages and bonus paid for substantive senior executives as at the end of the reporting period

Fixed elements and bonus paid ¹	As at 30 June 2011				As at 30 June 2010			
	Senior executives No.	Fixed elements		Bonus paid ² \$	Senior executives No.	Fixed elements		Bonus paid ² \$
		Salary \$	Allowances \$			Salary \$	Allowances \$	
		Total \$		Total \$		Total \$		
Total remuneration (including part-time arrangements):								
less than \$150,000	1	136,977	–	136,977	2	115,791	–	231,582
\$150,000 to \$179,999	3	167,075	–	501,225	3	163,350	–	490,050
\$180,000 to \$209,999	1	187,773	–	187,773	–	–	–	–
\$270,000 to \$299,999	1	290,274	–	290,274	1	289,133	–	289,133
Total	6				6			

1. This table reports on substantive senior executives who are employed by Fair Work Australia as at the end of the reporting period. Fixed elements are based on the employment agreement of each individual—each row represents an average annualised figure (based on headcount) for the individuals in the remuneration package band (i.e. the 'Total' column).

2. Represents average actual bonuses paid during the reporting period. The 'Bonus paid' is excluded from the 'Total' calculation, (for the purpose of determining remuneration package bands). The 'Bonus paid' within a particular band may vary between financial years due to factors such as individuals commencing with or leaving Fair Work Australia during the financial year.

Variable elements:

With the exception of performance bonuses, variable elements are not included in the 'Fixed Elements and Bonus Paid' table above. The following variable elements are available as part of senior executives' remuneration package:

(a) On average senior executives are entitled to the following leave entitlements:

- Annual Leave (AL): entitled to 20 days (2010: 20 days) each full year worked (pro-rata for part-time senior executives)
- Personal Leave (PL): entitled to 20 days (2010: 20 days) or part-time equivalent
- Long Service Leave (LSL): in accordance with *Long Service Leave (Commonwealth Employees) Act 1976*.

(b) Senior executives are members of one of the following superannuations funds:

- Commonwealth Superannuation Scheme (CSS): this scheme is closed to new members, and employer contributions currently average 19 per cent (2010: 21.3 per cent) (including productivity component). More information on CSS can be found at <http://www.css.gov.au>
- Public Sector Superannuation Scheme (PSS): this scheme is closed to new members, with current employer contributions set at 13.4 per cent (2010: 13.3 per cent) (including productivity component). More information on PSS can be found at <http://www.pss.gov.au>
- Public Sector Superannuation Accumulation Plan (PSSap): employer contribution is set at 15.4 per cent (2010: 13.3 per cent), and the fund has been in operations since July 2005. More information on PSSap can be found at <http://www.pssap.gov.au>
- Other: this is usually for senior executive who have made their own superannuation arrangements (employer contribution are set at 15.4 per cent (2010: 15.4 per cent)) these groups include employees who self manage their superannuation.

(c) Others

- Various arrangements are available to senior executives including motor vehicle allowance and payment of fringe benefits.

Note 12C: Other highly paid staff

During the reporting period, there were no employees whose salary plus performance bonus were \$150,000 or more.

2011 2010
\$'000 \$'000

Note 13 Remuneration of auditors

Financial statement audit services were provided free of charge to Fair Work Australia.

The fair value of the services provided was:

	58	58
	58	58

No other services were provided by the auditors of the financial statements.

Note 14 Financial instruments

Note 14A: Categories of financial instruments

Financial assets

Loans and receivables:

Cash and cash equivalents	452	730
Trade receivables	23	60

Total	475	790
--------------	------------	-----

<i>Carrying amount of financial assets</i>	475	790
---	------------	-----

Financial liabilities

At amortised cost

Payables—suppliers	1,309	648
--------------------	-------	-----

Total	1,309	648
--------------	--------------	-----

<i>Carrying amount of financial liabilities</i>	1,309	648
--	--------------	-----

Note 14B: Net income and expense from financial assets

There is no income or expense from financial assets—loans and receivables in the period ending 30 June 2011 (2010: \$0).

Note 14C: Net income and expense from financial liabilities

There is no income or expense from financial liabilities—payables in the period ending 30 June 2011 (2010: \$0).

Note 14D: Fair value of financial instruments

There are no financial instruments held at 30 June 2010 or 30 June 2011 where the carrying amount is not a reasonable approximation of fair value.

Note 14E: Credit risk

Fair Work Australia is exposed to minimal credit risk as loans and receivables are trade receivables. The maximum exposure to credit risk is the risk that arises from potential default of a debtor. This is equal to the total of trade receivables (2011: \$23,773; 2010: \$60,277). Fair Work Australia's debtors are generally limited to other Commonwealth Government agencies and Fair Work Australia employees. Fair Work Australia has policies and procedures that guide the recovery of employee debts.

Fair Work Australia has no significant exposure to any concentrations of credit risk.

All figures for credit risk referred to do not take into account the value of any collateral or other security.

Credit quality of financial instruments not past due or individually determined as impaired.

	Not past due nor impaired	Not past due nor impaired	Past due or impaired	Past due or impaired
	2011	2010	2011	2010
	\$'000	\$'000	\$'000	\$'000
Loans and receivables				
Trade receivables	23	60	-	-
Total	23	60	-	-

Note 14F: Liquidity risk

Fair Work Australia's financial liabilities are payables. The exposure to liquidity risk is based on the notion that Fair Work Australia will encounter difficulty in meeting its obligations associated with financial liabilities. This is highly unlikely due to appropriation funding and mechanisms available to Fair Work Australia (e.g. Advance to the Finance Minister) and internal policies and procedures put in place to ensure there are appropriate resources to meet its financial obligations.

Fair Work Australia is appropriated funding from the Australian Government. Fair Work Australia manages its budgeted funds to ensure it has adequate funds to meet payments as they fall due. In addition, Fair Work Australia has policies in place to ensure timely payments are made when due and has no past experience of default.

The following tables illustrate the maturities for non-derivative financial liabilities.

	On demand 2010–2011 \$'000	within 1 year 2010–2011 \$'000	1 to 5 years 2010–2011 \$'000	> 5 years 2010–2011 \$'000	Total 2010–2011 \$'000
Other liabilities					
Payables—Suppliers	-	1,309	-	-	1,309
Total	-	1,309	-	-	1,309

	On demand 2009–2010 \$'000	within 1 year 2009–2010 \$'000	1 to 5 years 2009–2010 \$'000	> 5 years 2009–2010 \$'000	Total 2009–2010 \$'000
Other liabilities					
Payables—suppliers	-	648	-	-	648
Total	-	648	-	-	648

Fair Work Australia has no derivative financial liabilities in both current and prior year.

Note 14G: Market risk

Fair Work Australia holds basic financial instruments that do not expose Fair Work Australia to certain market risks.

Fair Work Australia is not exposed to currency risk, other price risk or interest rate risk.

Note 15 Administered reconciliation table

	2011	2010
	\$	\$
<i>Opening administered assets less administered liabilities as at 1 July</i>		–
Plus: Administered revenues	419,832	428,874
Less: Transfers to OPA	(419,832)	(428,874)
Closing administered assets less administered liabilities as at 30 June	–	–

Note 16 Administered contingent liabilities and assets

As at 30 June 2011 there were no unrecognised or contingent assets or liabilities requiring disclosure (2010: \$0).



Note 17 Appropriations

Table A: Annual appropriations ('recoverable GST exclusive')

	2011 Appropriations							Appropriation applied in 2011 (current and prior years) \$'000	Variance \$'000
	Appropriations Act		FMA Act			Total appropriation \$'000	Appropriation \$'000		
	Annual Appropriation \$'000	Appropriations reduced ^(a) \$'000	AFM ^(b) \$'000	Section 30 \$'000	Section 31 \$'000				
DEPARTMENTAL									
Ordinary annual services	77,750	-	-	-	1,596	-	79,346	70,844	8,462
Other services									
Equity	1,000	-	-	-	-	-	1,000	289	711
Previous years' outputs	-	-	-	-	-	-	-	-	-
Total departmental	78,750	-	-	-	1,596	-	80,346	71,173	9,173

	2010 Appropriations							Appropriation applied in 2010 (current and prior years) \$'000	Variance \$'000
	Appropriations Act		FMA Act			Total appropriation \$'000	Appropriation applied in 2010 (current and prior years) \$'000		
	Annual Appropriation \$'000	Appropriations reduced ^(a) \$'000	AFM ^(b) \$'000	Section 30 \$'000	Section 31 \$'000				
DEPARTMENTAL									
Ordinary annual services	67,603	-	-	-	7,860	42,047	117,510	65,717	51,793
Other services									
Equity	2,250	-	-	-	-	8,802	11,052	1,348	9,704
Previous years' outputs	-	-	-	-	-	-	-	-	-
Total departmental	69,853	-	-	-	7,860	50,849	128,562	67,065	61,497

(a) Departmental and non-operating appropriations do not lapse at financial year end. However, the responsible Minister may decide that part of all of a departmental appropriation is not required and request the Finance Minister to reduce that appropriation. The reduction in the appropriation is effected by the Finance Minister's determination and is disallowable by Parliament.

(b) Advance to the Finance Minister (AFM)—Appropriation Acts (No. 1,3,5) 2010–11: section 13 and Appropriation Acts (No. 2,4,6) 2010–11: section 15.

Table B: Unspent departmental annual appropriations ('recoverable GST exclusive')

	2011 \$'000	2010 \$'000
Authority		
Appropriation Act (No. 4) 2005–06	2,125	2,125
Appropriation Act (No. 4) 2006–07	6,677	6,677
Appropriation Act (No. 1) 2008–09	34,337	34,337
Appropriation Act (No. 1) 2009–10	18,856	18,856
Appropriation Act (No. 2) 2009–10	614	903
Appropriation Act (No.1) 2010–11	6,562	–
Appropriation Act (No. 2) 2010–11	1,000	–
Total	70,171	62,898

Table C: Disclosure by agent in relation to annual and special appropriations ('recoverable GST exclusive')

During the year Fair Work Australia was granted authority and drawing rights by the Department of Finance and Deregulation to make payments under the *Judges' Pensions Act 1968*. Fair Work Australia makes pension payments directly to former presidential members of Fair Work Australia and its preceding bodies.

Department of Finance and Deregulation—to make payments to former presidential members of Fair Work Australia and its preceding bodies

2011	\$'000
Total receipts	3,875
Total payments	(3,875)

Department of Finance and Deregulation—to make payments to former presidential members of Fair Work Australia and its preceding bodies

2010	\$'000
Total receipts	3,559
Total payments	(3,559)

Note 18 Compensation and debt relief

	2011	2010
	\$'000	\$'000
Administered		
No 'Act of Grace' expenses were incurred during the reporting period (2010: Nil).	–	–
No waivers of amounts owing to the Australian Government were made pursuant to subsection 34(1) of the <i>Financial Management and Accountability Act 1997</i> (2010: Nil).	–	–
No ex-gratia payments were made during the reporting period (2010: Nil).	–	–
No payments were provided under the Compensation for Detriment caused by 'Defective Administration Scheme' during the reporting period (2010: Nil).	–	–
No payments were made under s.73 of the <i>Public Service Act 1999</i> during the reporting period (2010: Nil).	–	–
Departmental		
No 'Act of Grace' expenses were incurred during the reporting period (2010: Nil).	–	–
No waivers of amounts owing to the Australian Government were made pursuant to subsection 34(1) of the <i>Financial Management and Accountability Act 1997</i> (2010: Nil).	–	–
No ex-gratia payments were made during the reporting period (2010: Nil).	–	–
No payments were provided under the Compensation for Detriment caused by 'Defective Administration Scheme' during the reporting period (2010: Nil).	–	–
No payments were made under s.73 of the <i>Public Service Act 1999</i> during the reporting period (2010: Nil).	–	–

Note 19 Reporting of outcome

Fair Work Australia determines the attribution of its shared items based on a survey of employee time spent on each activity and the salary paid to these employees. The basis of attribution in the table is consistent with the basis used for the 2010–11 budget.

Note 19A: Net cost of outcome delivery

	2011	2010
	\$'000	\$'000
Expenses		
Administered	–	–
Departmental	74,349	66,708
Total	74,349	66,708
Income from non-government sector		
Administered	–	–
Departmental	930	667
Total	930	667
Other own-source income		
Administered		
Other taxes, fees and fines	420	429
Total Administered	420	429
Departmental	666	7,193
Total	1,086	7,622
Net cost of outcome delivery	72,333	58,419

The Outcome is described in **Note 1.1**. Net costs shown include intra-governmental costs that are eliminated in calculating the actual Budget Outcome.

Note 19B: Major classes of departmental expenses, income, assets and liabilities by outcomes

Outcome 1	Program 1		Total	
	2011 \$'000	2010 \$'000	2011 \$'000	2010 \$'000
Departmental expenses				
Employees	43,694	38,100	43,694	38,100
Suppliers	28,276	27,141	28,276	27,141
Depreciation and amortisation	2,097	1,393	2,097	1,393
Other expenses	282	74	282	74
Total	74,349	66,708	74,349	66,708
Departmental income				
Revenue from Government	71,462	69,723	71,462	69,723
Sale of goods and services	412	6,679	412	6,679
Other non-taxation revenues	1,184	1,181	1,184	1,181
Gains	58	58	58	58
Total	73,116	77,641	73,116	77,641
Departmental assets				
Cash & cash equivalents	452	730	452	730
Trade & other receivables	70,563	63,463	70,563	63,463
Buildings & leasehold improvements	3,402	3,692	3,402	3,692
Property, plant and equipment	1,759	1,889	1,759	1,889
Intangibles	1,093	1,341	1,093	1,341
Other	1,858	1,748	1,858	1,748
Total	79,127	72,863	79,127	72,863
Departmental liabilities				
Suppliers	1,309	648	1,309	648
Other payables	6,482	6,138	6,482	6,138
Employee provisions	14,332	13,563	14,332	13,563
Other provisions	2,848	2,293	2,848	2,293
Total	24,971	22,642	24,971	22,642

Outcome 1 is described in Note 1.1. Net costs shown include intra-government costs that are eliminated in calculating the actual budget outcome.

Note 19C: Major classes of administered income by outcome

	Actual 2011 \$	Actual 2010 \$
Administered income		
Other non-taxation revenues	419,832	428,874
Total	419,832	428,874

The outcome is described in **Note 1.1**.

Note 20: Comprehensive income (loss) attributable to Fair Work Australia

	2011 \$'000	2010 \$'000
Total comprehensive income (loss) attributable to Fair Work Australia		
Total comprehensive income (loss)*	(1,233)	10,933
Plus: non-appropriated expenses		
Depreciation and amortisation expenses	2,097	1,393
Total comprehensive income (loss) attributable to Fair Work Australia	864	12,326

* As per the Statement of Comprehensive Income.

Appendix J: Agency resource statement

Table J1 shows the total resources from all origins. The table summarises how resources will be applied by outcome and by administered and departmental classification.

Table J1: Fair Work Australia resource statement 2010–11

	Actual available appropriation for 2010–11 \$'000	Payments made 2010–11 \$'000	Balance remaining 2010–11 \$'000
	(a)	(b)	(a) – (b)
Ordinary annual services			
Departmental appropriation ¹	75,630	69,248	6,382
s31A relevant agency receipts	1,596	1,596	–
Total	77,226	70,844	6,382
Departmental non-operating			
Equity injections	1,000	289	711
Previous years' outputs	65,018	–	65,018
Total	66,018	289	65,279
Total available annual appropriations and payments	143,244	71,133	72,111
Total net resourcing for Fair Work Australia	143,244	71,133	72,111

(1) Appropriation Bill (No.1) 2010–11 and Appropriation Bill (No.3) 2010–11.

Appendix K: Expenses and resources for outcome

Table K1: Expenses and resources for outcome

	Budget ¹	Actual expenses	Variation
	2010–11 \$'000	2010–11 \$'000	2010–11 \$'000
	(a)	(b)	((a) – (b))
Outcome 1: Simple, fair and flexible workplace relations for employees and employers through the exercise of powers to set and vary minimum wages and modern awards, facilitate collective bargaining, approve agreements and deal with disputes.			
Program 1: Dispute resolution, minimum wages, orders and approval of agreements.			
Departmental expenses			
Ordinary Annual Services (Appropriation Bill No. 1)	71,462	70,656	806
Revenue from independent sources (section 31)	99	1,596	(1,497)
Expenses not requiring appropriation in the budget year	2,079	2,097	(18)
Total for Program 1	73,640	74,349	(709)
Total expenses for outcome	73,640	74,349	(709)
	2009–10	2010–11	
Average staffing level	297	321	

(1) Full-year budget, including any subsequent adjustment made to the 2010–11 Budget

Appendix L: Information on specific statutory requirements

L.1 Occupational health and safety

L.1.1 Management arrangements

Fair Work Australia has health and safety management arrangements (HMSA) made consistent with paragraph 16(2)(d) of the *Occupational Health and Safety Act 1991* (OHS Act).

Under these HMSA there is a statement of commitment, an Occupational Health and Safety (OHS) policy, consultation arrangements, agreed employer/employee responsibilities and OHS structures and arrangements. There are also provisions relating to workplace inspections, training and information and emergency procedures. There are six designated work groups (DWGs) in Fair Work Australia, six Health and Safety Representatives (HSRs), and a national Health and Safety Committee, which met twice in 2010–11. Each team at Fair Work Australia submits quarterly occupational health and safety reports.

L.1.2 Initiatives taken during the year

In 2010–11 the most significant OHS initiatives were associated with:

- selection and training of HSRs
- workplace inspections by HSRs
- ergonomic advice and assessments for employees
- relocation of staff to new premises at 1 Collins Street, Melbourne
- emergency and evacuation planning across all premises
- reconsideration of related national risk management framework protocols and procedures, and related business continuity and disaster planning
- healthy lifestyle initiatives for staff, including Pilates and volleyball team
- a health assessment program and an annual influenza vaccination program for all staff
- assessing impact of flooding on Brisbane premises and subsequent re-establishment of premises.

L.1.3 Health and safety outcomes

In 2010–11 there were four new compensation claims—two slips/trips, one workplace strain and one instance of jammed fingers. One of these claims has some ongoing costs into 2011–12.

Fair Work Australia closely monitors its compensation exposure and internal rehabilitation programs against broader APS considerations of compensation costs,

the increasing incidence of longer-term injuries and more problematic claims, including those of a psychological nature.

In 2010–11:

- Fair Work Australia's Comcare premium rate as a percentage of total payroll was 0.45 per cent as compared to the overall average premium rate for All Agencies of 1.2 per cent
- Fair Work Australia's claim frequency was around 22 per cent less than All Agencies claims.

L.1.4 Reportable accidents and occurrences

Under s.68 of the OHS Act, Fair Work Australia is required to notify Comcare Australia of any notifiable accidents or dangerous occurrences arising out of work undertaken by any of its employees. There were no such accidents or occurrences in 2010–11.

L.1.5 Investigations

Under s.74(1)(f) of the OHS Act, Fair Work Australia is required to report any investigations conducted during the year into any of its undertakings. No investigations were conducted in 2010–11.

L.1.6 Other matters

Under s.29 of the OHS Act, HSRs are entitled to issue provisional improvement notices to address immediate risks to improve health and safety performance. No such notices were issued in 2010–11.

L.2 Freedom of Information

L.2.1 Overview

In 2010–11 substantial amendments to the *Freedom of Information Act 1982* (FOI Act) came into force, including a major change to the publication requirements. Under what is known as the Information Publication Scheme (see Part II of the FOI Act), agencies are now required to publish information on their websites. This has replaced the previous requirement on publishing of information under s.8 of the FOI Act, which applied until 30 April 2011.

Fair Work Australia, under its publication plan, is meeting the requirements of the scheme by publishing online the following:

- details of the structure of the organisation
- details of functions, including decision-making powers and other powers affecting members of the public
- details of statutory appointments
- annual reports and quarterly statistical reports

- details of arrangements for members of the public to comment, where appropriate, including how (and to whom) those comments may be made
- information which Fair Work Australia routinely or regularly releases in response to freedom of information requests
- information which Fair Work Australia routinely provides to the Australian Parliament in response to requests and orders
- details of officers who can be contacted about access to information or documents under the FOI Act
- operational information assisting Fair Work Australia to exercise its functions and powers in making decisions or recommendations which affect members of the public, including any rules, guidelines, practices or precedents relating to those decisions or recommendations.

In accordance with the amended FOI Act, this annual report contains a statement under s.8 of the FOI Act for the period up to 30 April 2011.

As part of the establishment of the Information Publication Scheme, s.8 of the FOI Act was amended with effect from 1 May 2011.

The former s.8 of the FOI Act requires publication of certain information concerning the functions and documents of Commonwealth agencies. The following statement has been prepared in accordance with this requirement for the period 1 July 2010 to 30 April 2011.

L.2.2 Statement under section 8 of the Freedom of Information Act 1982

Information on the establishment, organisation, functions and powers of Fair Work Australia is contained throughout this report.

The following lists the categories of documents maintained by Fair Work Australia, Fair Work Australia's facilities for public access and the freedom of information procedures and relevant contacts for inquiries.

Categories of documents

Fair Work Australia maintains the following categories of documents:

- documents relating to matters heard by, or applications or appeals lodged with, Fair Work Australia including applications, exhibits, transcripts and decisions
- documents relating to registered organisations
- documents concerning the administrative and financial aspects of Fair Work Australia's operations
- procedural manuals
- statistical information
- documents concerning staff matters
- internal working documents and correspondence.

Fair Work Australia's case management system, CMS+, contains details of Fair Work Australia matters dealt with since 1 July 2009, as well as matters its predecessor, the Australian Industrial Relations Commission, dealt with since 2001.

The following categories of documents are open to public access according to an enactment (other than the FOI Act) free of charge:

- decisions (other than for matters which are conducted in private)
- awards
- agreements
- transcript (other than for matters conducted in private)
- financial returns and lists of office bearers of registered organisations.

The following categories of documents are open to public access according to an enactment (other than the FOI Act) free of charge on request:

- documents filed in proceedings (other than those which are conducted in private)
- daily hearing lists (maintained for up to three months on the internet).

Photocopies of documents will be made available on payment of a prescribed fee.

FOI procedures and initial contact points

Many of the documents of Fair Work Australia and its predecessors, which are prepared or held under provisions of the Fair Work Act or the Workplace Relations Act, are available on the Fair Work Australia website, can be viewed or inspected, or copied on payment of prescribed fee, at any of the offices listed in Appendix A. General inquiries may therefore be directed to any of those offices.

Requests for access to documents under the FOI Act should be made in writing and delivered or posted to the General Manager, Level 4, 11 Exhibition Street, Melbourne, Victoria 3000 or General Manager, GPO Box 1994, Melbourne, Victoria 3001. Reading facilities can be made available at any Fair Work Australia location by arrangement.

Freedom of Information requests

No requests under the FOI Act were received during the reporting period.

L.3 Advertising and market research

In accordance with s.311A of the *Commonwealth Electoral Act 1918*, the principal officer of every Commonwealth agency is required to include a statement in the annual report setting out particulars of all amounts paid by, or on behalf of, the agency during the reporting period to:

- advertising agencies
- market research organisations
- direct mail organisations

- media advertising agencies
- persons or organisations to whom those amounts were paid.

Fair Work Australia spent \$98 382 on advertising and \$340 708 on research surveys during the 2010–11 reporting period. Expenditure items exceeding \$11 200 are detailed in the following table:

Table L1: Advertising and market research expenditure in 2010–11 (over \$11 200)

Supplier	Amount \$ ¹	Purpose
Aldcorp	72 424	Statutory requirements arising from the Fair Work Act in relation to registered organisations and common rules in territories, annual wage review submissions and consultation, recruitment and other advertising.
Department of Education, Employment and Workplace Relations	20 285	Recruitment advertising for commissioners
Taylor Nelson Sofres	84 040	Conduct of stakeholder survey
Wallis Consulting	252 103	Conduct of stakeholder research survey
Total	428 852	

(1) GST inclusive.

L.4 Legal services expenditure

In compliance with the requirements of the Legal Services Directions 2005, Fair Work Australia reports that total legal services expenditure for 2010–11 was \$213 504 (GST included). The amount relates solely to external legal services. Details are available on the Fair Work Australia website.

Fair Work Australia had no internal legal services expenditure.

L.5 Ecologically sustainable development

Australian Government agencies are required to report on their performance regarding the environment and ecologically sustainable development in line with s.516A of the *Environment Protection and Biodiversity Conservation Act 1999*.

Fair Work Australia endeavours to utilise energy resources as efficiently as practicable in the context of a working tribunal and that it maintains a healthy working environment for the staff and the public.

Fair Work Australia's procurement decisions have regard to environmental management requirements, including assessing energy ratings in the purchasing of equipment, buying locally produced recycled paper and other environmentally friendly stationery items.

Programs are in place for the recycling of paper, packaging, batteries, toner, equipment and other materials where possible to reduce the carbon footprint generated by Fair Work Australia. A number of offices have separate bins to manage waste, including organic, recycling and general waste in conjunction with building managers. Low sodium and low phosphate detergents are supplied for use in kitchens.

All copying and printing equipment have duplex capabilities to reduce paper usage.

The Melbourne offices have sensor lighting installed in court, conference, meeting rooms and offices which have a timer mechanism to automatically switch lighting off when the rooms are not occupied. Low-energy downlights have also been installed. Shower timers have been installed in all showers.

Green vehicle options are promoted to executive vehicle scheme participants, with a number of hybrid and diesel-powered vehicles being leased.

Fair Work Australia participated in and supported Earth Hour 2011—a campaign to create awareness of global warming and encourage people to take on better energy conservation habits by turning lights, appliances and desktop computers off in all offices for Earth Hour on 26 March 2011.

L.6 Discretionary grants and grant programs

Fair Work Australia did not administer any government grants during 2010–11.

However, in 2010–11, Fair Work Australia awarded research partnerships after seeking submissions from academics and academic institutions to undertake a partnership research project to advance the understanding of issues that will inform one or more of the areas of the reporting requirements outlined in s.653 of the Fair Work Act.

Information on research partnerships awarded during the period 1 July 2010 to 30 June 2011 is available on the Fair Work Australia website.

L.7 Corrections to previous annual report

- L.7.1** In Table 2: Historical table of common caseload categories, of the *2009–10 Annual Report* of Fair Work Australia, the number of Australian Industrial Relations Commission agreements (approved, extended, varied and terminated) for 2007–08 should read 182, and the number of Australian Industrial Relations Commission Full Bench matters (including appeals) for 2007–08 should read 146.
- L.7.2** In Appendix C: Portfolio structure as at 30 June 2010, of the *2009–10 Annual Report* of Fair Work Australia, the text in the box headed Fair Work Australia should read:
- Outcome: Simple, fair, flexible workplace relations for employees **and employers** through the exercise of powers to set and vary minimum wages and modern awards, facilitate collective bargaining, approve agreements and deal with disputes.
- L.7.3** In Appendix H: Lodgment and caseload statistics, of the *2009–10 Annual Report* of Fair Work Australia, footnote (4) under Table H6, the words 'and includes applications lodged under s 418 of the Fair Work Act' should not be included.
- L.7.4** In Appendix G: Panel assignments as at 30 June 2010, of the *2009–10 Annual Report* of Fair Work Australia, under Vice President Watson's panel, the reference to Whelan C should not be included.

L.8 Commonwealth Disability Strategy

The following table provides an assessment of Fair Work Australia's performance in implementing the Commonwealth Disability Strategy in the terms set out in the Guide to the Performance Reporting Framework (<http://www.facsia.gov.au/disability/cds>).

Performance indicator	Performance measure
Regulator role	
Publicly available information on regulations and quasi-regulations is available in accessible formats for people with disabilities.	100% of publicly available information on regulations and quasi-regulations and compliance reporting provided in electronic formats on the Fair Work Australia website.
Publicly available regulatory compliance reporting is available in accessible formats for people with disabilities.	If the provided format is not accessible then upon request the material will be provided in an accessible format within two days.
Provider role	
Providers have established mechanisms for quality improvement and assurance.	Annual client satisfaction survey is undertaken.
Providers have an established service charter that specifies the roles of the provider and consumer, and service standards that address accessibility for people with disabilities.	The tribunal has an established service charter that specifies the roles of the provider and consumer, and contains service standards addressing accessibility for people with disabilities.
Complaints/grievance mechanisms, including access to external mechanisms, in place to address concerns raised about performance.	Mechanisms are established through the client satisfaction survey and the client service charter.



APPENDICES

Current level of performance 2010–11	Goals for 2011–12	Actions for 2011–12
<p>100% of information related to the regulation of registered organisations is available on the Fair Work Australia website.</p> <p>Usability Review of Fair Work Australia website conducted. A number of suggested areas for improvement identified.</p> <p>There were no requests for alternative formats received in 2010–11.</p>	<p>100% of information related to the regulation of registered organisations is available on the Fair Work Australia website.</p> <p>Recommendations for improvement to the Fair Work Australia website identified in the Accessibility and Usability Reviews fully implemented.</p>	<p>Ensure Fair Work Australia website information remains up-to-date.</p> <p>Address accessibility and usability issues identified in the review.</p>
<p>Client satisfaction survey undertaken, collation of results and analysis to be completed in 2011–12.</p>	<p>Conduct annual satisfaction survey and improve data collection.</p> <p>Improvement in satisfaction levels expressed from 2010–11.</p>	<p>Complete analysis of client satisfaction survey.</p> <p>Circulate results and encourage discussion of areas for improvement.</p> <p>Incorporate results into strategic planning for 2011–12.</p>
<p>The Fair Work Australia service charter established and made available on the Fair Work Australia internet home page.</p> <p>Fair Work Australia service charter provides that employees will assist applicants to complete an application form if needed.</p>	<p>Maintain flexible and responsive service.</p>	<p>Review and update feedback and complaint mechanisms.</p>
<p>No complaints with an access/disability component were received through the established mechanisms during 2010–11.</p>	<p>Maintain flexible and responsive service.</p>	<p>Review and update feedback and complaint mechanisms.</p>



Appendix M: Glossaries

M.1 Glossary of terms

'AG' matters

Matters dealt with by Fair Work Australia in relation to enterprise agreements.

'AM' matters

Matters dealt with by Fair Work Australia in relation to modern awards.

Annual wage review

A review of award minimum wages and the national minimum wage order conducted by Fair Work Australia constituted by the Minimum Wage Panel each financial year.

applicant

The initiating party to a proceeding before Fair Work Australia.

'AR' matters

Matters dealt with by Fair Work Australia in relation to the obligations of registered organisations to keep records and lodge returns (other than audited financial reports) with Fair Work Australia.

arbitration

A process in which Fair Work Australia determines a grievance or dispute by imposing a binding settlement. Fair Work Australia has powers of compulsory arbitration as well as offering voluntary arbitration.

associate

A Fair Work Australia member's support staff.

AusTender

A web-based application, managed by the Department of Finance and Deregulation, enabling access to Australian Government business opportunities online (www.tenders.gov.au).

Australian Fair Pay Commission (AFPC)

An independent, statutory body responsible for setting and adjusting federal minimum wages to promote the economic prosperity of the people of Australia. The

AFPC was established by the Work Choices Act. The AFPC was replaced by Fair Work Australia's Minimum Wage Panel on 1 August 2009.

Australian Industrial Relations Commission (AIRC)

Australia's national industrial tribunal from 1988 to 2009. Many of the AIRC's functions were assumed by Fair Work Australia on 1 July 2009. The AIRC ceased to exist and transferred the remainder of its functions to Fair Work Australia on 31 December 2009.

Australian Pay and Classification Scale (APCS)

A notional instrument, introduced by the Work Choices Act, which is derived from a federal award and contains rates of pay and casual loadings. These are temporarily preserved as transitional APCSs. A transitional APCS does not cover an employee covered by a modern award.

Australian Workplace Agreement

An individual, legally enforceable agreement between an employer and employee about the employee's terms and conditions of employment. AWAs were replaced by Individual Transitional Employment Agreements and can no longer be made.

award modernisation

A process initiated in April 2008 by the Minister for Education, Employment and Workplace Relations. By December 2009 the Australian Industrial Relations Commission had created 122 modern awards. The award modernisation process is continuing under Fair Work Australia. Award modernisation with respect to enterprise awards is scheduled to be concluded by 31 December 2013.

'B' matters

Matters dealing with applications for protected action ballots, as well as extension and revocation of protected action ballots.

bargaining order

An order made on application to Fair Work Australia by a bargaining representative negotiating for a proposed enterprise agreement to ensure good faith bargaining requirements or to promote fair and efficient bargaining.

bargaining representative

A bargaining representative for a proposed enterprise agreement is an employer or a person appointed by the employer to be his or her representative; an employee organisation with respect to its members who will be covered by the agreement (unless the member appoints another person or revokes the status of the employee organisation); and any other person the employee appoints in writing to be their bargaining representative.

**better off overall test**

The test that Fair Work Australia must apply to a proposed agreement before it can be approved. Individual flexibility arrangements under modern awards and enterprise agreements must also satisfy the test.

Board of Reference

A board consisting of two or more persons that allows, approves, fixes or deals with matters specified in an award.

'BOR' matters

Matters dealt with by a Board of Reference.

'C' matters

Matters dealt with by Fair Work Australia including such matters as appeals to a full bench.

certified agreement

A legally enforceable collective agreement about terms and conditions of employment between an employer and a group of employees or between an employer and one or more unions. Such agreements were certified by the Australian Industrial Relations Commission.

collective agreement

A legally enforceable agreement about terms and conditions of employment between an employer and a group of employees or between an employer and one or more unions. Collective agreements were approved by the Workplace Authority.

commissioner

A member of Fair Work Australia other than a presidential member.

conciliation

One of the informal processes used by Fair Work Australia to facilitate the resolution of a grievance or a dispute between parties by helping them reach an agreement. Mediation is another informal technique used.

corporate governance

The process by which agencies are directed and controlled. Corporate governance is generally understood to encompass authority, accountability, stewardship, leadership, direction and control.

‘D’ matters

Matters heard by a member of Fair Work Australia, including such matters as applications for registration of an association as an organisation, the amalgamation of organisations and changes to eligibility rules of an organisation.

Department of Education, Employment and Workplace Relations

An Australian Government department encompassing the portfolios of education, training, employment and workplace relations.

deputy president

A member of Fair Work Australia other than the President or a commissioner.

discrimination—direct and indirect

Direct discrimination occurs when someone is treated unfairly or less favourably in the same or similar circumstances because, for example, of their gender or race. Indirect discrimination occurs when there is a rule, policy, practice or procedure that is the same for everyone, but has an unequal or disproportionate effect for a specific group of people.

dispute resolution

The process of resolving disputes conducted by Fair Work Australia arising from the dispute resolution procedure in awards, agreements or the Fair Work Act.

Division 2B State award

An award that applied to employers who were not constitutional corporations in New South Wales, Queensland, South Australia and/or Tasmania and who are now national system employers.

‘DR’ matters

Matters dealt with by Fair Work Australia under the dispute resolution procedures in awards, agreements or the Fair Work Act.

‘E’ matters

Matters dealt with by Fair Work Australia in relation to making arrangements with the Australian Electoral Commission for the conduct of elections for an office of a registered organisation or a branch of an organisation.

‘EM’ matters

Matters dealt with by Fair Work Australia in relation to modern enterprise awards.

**enterprise agreement**

A legally enforceable agreement that covers the employment conditions of a group of employees and their employer. Enterprise agreements can be single or multi-enterprise agreements and must meet a number of requirements of the Fair Work Act before they can be approved by Fair Work Australia.

Fair Work Act 2009 (Fair Work Act)

The principal Commonwealth law governing Australia's workplace relations system.

Fair Work Australia (the tribunal)

The independent, national workplace relations tribunal established under the Fair Work Act. Fair Work Australia assumed the functions of the Australian Industrial Relations Commission and the Australian Fair Pay Commission and the agreement-making function of the Workplace Authority.

Fair Work Australia Bulletin

Weekly publication produced by Fair Work Australia, which provides summaries of Fair Work Australia decisions and industrial judgments of the High Court of Australia, the Federal Court of Australia and federal and state jurisdictions.

Fair Work (Registered Organisations) Act 2009 (RO Act)

The legislation that covers the registration and accountability of federally registered unions and employer associations.

Fair Work (Transitional Provisions and Consequential Amendments) Act 2009 (Transitional Act)

Legislation that governs transitional matters in connection with the Fair Work Act and other related matters.

Federal Court of Australia

The court with jurisdiction over matters arising under the Fair Work Act.

'FR' matters

Matters dealt with by Fair Work Australia in relation to the obligations of registered organisations and their branches to keep accounting records and lodge audited financial reports.

Full Bench

A Full Bench of Fair Work Australia is convened by the President of Fair Work Australia and comprises at least three Fair Work Australia members, one of whom must be a deputy president. Full Benches are convened to hear appeals, matters of

significant national interest and various other matters specifically provided for in the Fair Work Act.

general protections

General workplace protections specified in the Fair Work Act including freedom of association, protection from discrimination and sham contracting, and the ability to exercise, or to not exercise, workplace rights. The general protections provisions provide a right to apply to Fair Work Australia if a person, including an employee or employer, is the recipient of adverse action.

high income threshold

An amount calculated in accordance with Fair Work Regulation 2.13.

International Labour Organization (ILO)

An international organisation that aims to enhance workplace participation and standards. Australia has signed a number of ILO conventions that are reflected within the Fair Work Act.

low-paid authorisation

An authorisation made on application to Fair Work Australia by a bargaining representative or union negotiating for a proposed multi-enterprise agreement. A low-paid authorisation gives access to an array of rights such as bargaining orders and low-paid workplace determinations.

mediation

One of the informal processes used by Fair Work Australia to facilitate the resolution of a grievance or a dispute between parties by helping them reach an agreement. Conciliation is another informal technique used.

member

A member of Fair Work Australia.

Minimum Wage Panel

Consists of seven Fair Work Australia members, including the President and at least three specifically appointed Minimum Wage Panel Members. The Panel must review award wages annually and make the national minimum wage order.

modern award

An award created by Fair Work Australia. Modern awards created during the award modernisation process came into effect on 1 January 2010 and include terms that complement the National Employment Standards. Fair Work Australia must ensure that, together with the National Employment Standards, modern awards provide a



fair and relevant minimum safety net. Modern awards are expressed to cover entire industries and/or occupations.

modern enterprise award

A modern award that covers only one enterprise. Existing enterprise awards may be subject to modernisation on application.

modernisable instrument

Award-based transitional instruments—federal awards and NAPSAs created before 27 March 2006, and transitional APCS—wage schedules derived from federal awards and NAPSAs on 27 March 2006 as adjusted by minimum wage decisions of the Australian Fair Pay Commission from 2006 to 2009.

National Employment Standards (NES)

A set of 10 minimum employment standards that apply to all employees within the federal system from 1 January 2010. The National Employment Standards include maximum weekly hours, requests for 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.

national minimum wage order

Fair Work Australia must make a national minimum wage order each year in the annual review undertaken by the Minimum Wage Panel. It includes a minimum wage for all national system employees, a casual loading for award-free and agreement-free employees, and special minimum wages for junior employees, trainees and employees with a disability.

national system employee

An employee covered by the national workplace relations system because they are employed by a constitutional corporation, the Commonwealth or a state reference employer, in certain designated industries or in a territory.

national system employer

An employer covered by the national workplace relations system because they are a constitutional corporation, the Commonwealth or a state reference employer, in certain designated industries or in a territory.

non-ongoing employee

An employee who is in a temporary role within Fair Work Australia.

notional agreements preserving state awards (NAPSAs)

State awards which became federal agreements when the Work Choices Act came into operation.

Office of the Fair Work Ombudsman

An inspectorate headed by the Fair Work Ombudsman, a statutory appointee, whose role is to impartially assist in, and enforce compliance with, Commonwealth workplace laws including the Fair Work Act, the *Independent Contractors Act 2006* and associated regulations.

ongoing employee

A person engaged in a permanent role within Fair Work Australia.

panel system

The system by which the work of Fair Work Australia is administered. In general, each panel has a panel head (who is a deputy president) and at least one commissioner, and is responsible for work in a number of set industries. The President of Fair Work Australia determines the composition of the panels. There are four industry panels, as well as an Organisations Panel, which deals with work in relation to registered employee and employer organisations, a Termination of Employment Panel and a Minimum Wage Panel.

parental leave

A term encompassing maternity leave, paternity leave and adoption leave. Parental leave is regulated by the National Employment Standards as of 1 January 2010.

party

An applicant or a respondent to a proceeding before Fair Work Australia.

personal/carer's leave

Combines entitlements to sick leave, carer's leave and bereavement leave into one entitlement. Personal/carer's leave is regulated by the National Employment Standards as of 1 January 2010.

pre-reform award

Federal awards created before the Work Choices Act came into operation.

pre-reform Workplace Relations Act

The *Workplace Relations Act 1996* as operative before the introduction of the Work Choices Act.



President

The President of Fair Work Australia.

protected action ballot

A secret ballot allowing employees directly concerned to vote on whether or not they authorise industrial action to advance the claims for their proposed enterprise agreement.

Public Service Act 1999 (Public Service Act)

Principal Commonwealth law providing for the establishment and management of the Australian Public Service (and therefore the employees of Fair Work Australia).

Published documents

Documents issued by Fair Work Australia with an individual print identification number, including decisions (including General Manager's and delegates' decisions), orders and determinations, and some recommendations and directions.

'R' matters

Matters dealt with by Fair Work Australia in relation to registered organisations (other than 'AR', 'E', 'FR' and 'RE' matters) including the certification of alterations of rules of organisations.

'RE' matters

Matters dealt with by Fair Work Australia in relation to applications by registered organisations for the issue or revocation of right of entry permits.

registration

The process by which employee and employer organisations formally register as industrial organisations. Registration under the *Fair Work (Registered Organisations) Act 2009* confers certain rights and obligations, including the right to appear before Fair Work Australia and the obligation to report to Fair Work Australia on certain financial matters.

respondent

A party to a proceeding before Fair Work Australia initiated by someone else.

right of entry

The legal right of union officials to enter business premises under certain conditions for purposes described in the Fair Work Act.

right of entry permit

A permit issued by Fair Work Australia to officials of a union who are found to be 'fit and proper persons' to hold an entry permit. A permit holder is able to utilise specific rights under the Fair Work Act.

Small Business Fair Dismissal Code

A code declared by the Minister for Education, Employment and Workplace Relations for small businesses to follow when dismissing an employee in order to make the dismissal fair.

state reference transitional award

A type of transitional award that covers one or more state reference employers (and their employees). Specifically, state reference transitional awards cover employers that are non-constitutional corporations. A transitional award is type of federal award that was in force immediately before 27 March 2006 and applied to non-constitutional corporations. State reference employers and employees are part of the national workplace relations system as a result of referral of industrial relations powers from their respective state (all states other than WA). State reference transitional awards can be replaced by modern awards.

supported wage system

The productivity-based wage assessment system which aims to promote the employment of people who cannot work at full award wages because of a disability.

take-home pay order

An order made by Fair Work Australia to preserve an employee's take-home pay where it may have been reduced following the introduction of a modern award.

'TERM' matters

Matters dealt with by Fair Work Australia in relation to unfair dismissal.

unfair dismissal

Unfair dismissal occurs when the employee who is protected by unfair dismissal provisions has been dismissed, the dismissal is harsh, unjust or unreasonable, it is not a genuine redundancy, and the dismissal is not consistent with the Small Business Fair Dismissal Code (if it applies).

Work Choices Act

See *Workplace Relations Amendment (Work Choices) Act 2005*.



Workplace Authority

Between 26 March 2006 and 30 June 2009, the Workplace Authority provided advice, assistance, information and education on workplace agreements made under the *Workplace Relations Act 1996* and accepted lodgments of workplace agreements. The Workplace Authority ceased to exist on 31 January 2010.

workplace determinations

Fair Work Australia can make three types of workplace determinations: low-paid, bargaining-related and industrial action-related. A workplace determination is similar to an enterprise agreement, but is determined by Fair Work Australia when the parties cannot reach agreement on their own. The process and content of workplace determinations are regulated by the Fair Work Act.

Workplace Relations Act 1996 (Workplace Relations Act)

The principal Commonwealth law that governed Australia's workplace relations system before the Fair Work Act.

Workplace Relations Amendment (Transition to Forward with Fairness) Act 2008

Legislation, effective from 28 March 2008, amending the Workplace Relations Act 1996 to make a number of changes to the framework for workplace agreements and to enable the process of award modernisation to begin.

Workplace Relations Amendment (Work Choices) Act 2005 (Work Choices Act)

The Work Choices legislation, which introduced substantial change to Australia's workplace relations system by amending the *Workplace Relations Act 1996* and which largely came into effect on 27 March 2006.

Note: Definitions in this glossary have been prepared to assist readers in understanding this annual report. They should not be regarded as comprehensive or legally authoritative.

M.2 Glossary of acronyms and abbreviations

ACCI	Australian Chamber of Commerce and Industry
ACOSS	Australian Council of Social Services
ACT	Australian Capital Territory
ACTU	Australian Council of Trade Unions
Ai Group	Australian Industry Group
AIRC	Australian Industrial Relations Commission

ANAO	Australian National Audit Office
AO	Order of Australia
APCS	Australian Pay and Classification Scales
APS	Australian Public Service
ASU	Australian Municipal, Administrative, Clerical and Services Union
AWU	Australian Workers' Union
CFMEU	Construction, Forestry, Mining and Energy Union
CMS+	The case management system used by Fair Work Australia
DWGs	designated work groups
EDRMS	electronic document and records management system
eFiling	electronic filing
Fair Work Act	<i>Fair Work Act 2009</i>
FMA Act	<i>Financial Management and Accountability Act 1997</i>
FOI Act	<i>Freedom of Information Act 1982</i>
FWA	Fair Work Australia
FWAEA	<i>Fair Work Australia Enterprise Agreement 2010–11</i>
FWAFB	Fair Work Australia Full Bench
GST	goods and services tax
HSMA	health and safety management arrangements
HSRs	Health and Safety Representatives
ICT	information and communications technology
ILO	International Labour Organization
IM	information management
IPPs	Individual Performance Plans
IRCNSW	Industrial Relations Commission of New South Wales
IRSSA	Industrial Relations Society of South Australia
IT	information technology
LHMU	Liquor, Hospitality and Miscellaneous Union
MSS	MSS Security Pty Ltd
NAPSAs	notional agreements preserving state awards
NES	National Employment Standards
NSW	New South Wales



NT	Northern Territory
OHS	occupational health and safety
OHS Act	<i>Occupational Health and Safety Act 1991</i>
Panel	Minimum Wage Panel of Fair Work Australia
P3M3	Portfolio, Programme and Project Management Maturity Model
PSM	Public Service Medal
Public Service Act	<i>Public Service Act 1999</i>
Public Service Regulations	<i>Public Service Regulations 1999</i>
QIRC	Queensland Industrial Relations Commission
QLD	Queensland
RO Act	<i>Fair Work (Registered Organisations) Act 2009</i>
SA	South Australia
SACS industry	social, community and disability services industry throughout Australia
SAIRC	South Australian Industrial Relations Commission
SES	senior executive service
TAFE	Tertiary and Further Education
TAS	Tasmania
TIC	Tasmanian Industrial Commission
Transitional Act	<i>Fair Work (Transitional Provisions and Consequential Amendments) Act 2009</i>
tribunal	Fair Work Australia
TWU	Transport Workers' Union of Australia
Ulan	Ulan Coal Mines Limited
VIC	Victoria
WA	Western Australia
Work Choices Act	<i>Workplace Relations Amendment (Work Choices) Act 2005</i>
Xstrata	Xstrata Coal Pty Ltd

Appendix N: List of requirements

This is a guide to the report's compliance with the requirements for Annual Reports as approved by the Joint Committee of Public Accounts and Audit under subsections 63(2) and 70(2) of the Public Service Act.

Part of report	Description	Requirement	Ref
Aids to access	Letter of transmittal	Mandatory	iii
	Table of contents	Mandatory	v
	Index	Mandatory	171
	Glossaries	Mandatory	M
	Contact officer	Mandatory	ii
	Internet home page address and internet address for report	Mandatory	ii
Year in review	Review by President of Fair Work Australia	Mandatory	1.1
	Role and functions	Mandatory	1.2
	Organisational structure	Mandatory	1.6, D
	Outcome and program structure	Mandatory	1.5
	Where outcome and program structures differ from PB Statements/PAES or other portfolio statements accompanying any other additional appropriation bills (other portfolio statements), details of variation and reasons for change	Mandatory	n/a
Overview	Portfolio structure	Mandatory for portfolio departments	n/a
	Review of performance during the year in relation to programs and contribution to outcomes	Mandatory	2.1–2.12
	Actual performance in relation to deliverables and KPIs set out in PB Statements/PAES or other portfolio statements	Mandatory	C

Part of report	Description	Requirement	Ref
Report on performance	Where performance targets differ from the PBS/ PAES, details of both former and new targets, and reasons for the change	Mandatory	C
	Discussion and analysis of performance	Mandatory	2.1, 3.4
	Trend information	Mandatory	2.1–2.12
	Significant changes in nature of principal functions/services	Suggested	1.1
	Factors, events or trends influencing agency performance	Suggested	1.1
	Social inclusion outcomes	If applicable, mandatory	n/a
	Performance against service charter customer service standards, complaints data, and the department's response to complaints	If applicable, mandatory	3.1.3
	Discussion and analysis of the department's financial performance	Mandatory	2.1–2.12
	Agency resource statement and summary resource tables by outcomes	Mandatory	J, K
	Developments since the end of the financial year that have affected or may significantly affect the department's operations or financial results in future	If applicable, mandatory	n/a
Management accountability			
Corporate Governance	Agency heads are required to certify that their agency comply with the Commonwealth Fraud Control Guidelines.	Mandatory	3.1.5
	Statement of the main corporate governance practices in place	Mandatory	3.1
	Names of the senior executive and their responsibilities	Suggested	3.1.1

Part of report	Description	Requirement	Ref
	Senior management committees and their roles	Suggested	3.1.2
	Corporate and operational planning and associated performance reporting and review	Suggested	3.1.3
	Policy and practices on the establishment and maintenance of appropriate ethical standards	Suggested	3.1.6
	How nature and amount of remuneration for SES officers is determined	Suggested	3.1.7, 3.3.3
External Scrutiny	External scrutiny	Mandatory	3.2
	Judicial decisions and decisions of administrative tribunals	Mandatory	3.2.1
	Reports by the Auditor-General, a Parliamentary Committee or the Commonwealth Ombudsman	Mandatory	3.2.2
Management of human resources	Assessment of effectiveness in managing and developing human resources to achieve departmental objectives	Mandatory	3.3
	Workforce planning, staff turnover and retention	Suggested	3.3.2
	Impact and features of enterprise or collective agreements, individual flexibility arrangements (IFAs), determinations, common law contracts and AWAs	Suggested	3.3.3
	Training and development undertaken and its impact	Suggested	3.3.4
	Statistics on staffing	Mandatory	3.3.2
	Enterprise or collective agreements, IFAs, determinations, common law contracts and AWAs	Mandatory	3.3.3
	Performance pay	Mandatory	3.3.3

Part of report	Description	Requirement	Ref
Assets management	Assessment of effectiveness of assets management	If applicable, mandatory	3.4.1, K
Purchasing	Assessment of purchasing against core policies and principles	Mandatory	3.4.2
Consultants	A summary statement detailing the number of new consultancy services contracts let during the year; the total actual expenditure on all new consultancy contracts let during the year (inclusive of GST); the number of ongoing consultancy contracts that were active in the reporting year; and the total actual expenditure in the reporting year on the ongoing consultancy contracts (inclusive of GST).	Mandatory	3.4.5
	Statement noting that information on contracts and consultancies is available through the AusTender website.	Mandatory	3.4.5
Australian National Audit Office Access Clauses	Absence of provisions in contracts allowing access by the Auditor-General	Mandatory	3.4.6
Exempt contracts	Contracts exempt from the AusTender	Mandatory	3.4.7
Financial statements	Financial statements	Mandatory	I
Other mandatory information	Occupational health and safety (section 74 of the <i>Occupational Health and Safety Act 1991</i>)	Mandatory	L.1
	Freedom of information for the period 1 July 2010 to 30 April 2011 inclusive (see terms of subsection 8(1) of the <i>Freedom of Information Act 1982</i> as it existed prior to 1 May 2011)	Mandatory	L.2



APPENDICES

Part of report	Description	Requirement	Ref
	Advertising and Market Research (Section 31 IA of the <i>Commonwealth Electoral Act 1918</i>) and statement on advertising campaigns	Mandatory	L.3
	Ecologically sustainable development and environmental performance (Section 516A of the <i>Environment Protection and Biodiversity Conservation Act 1999</i>)	Mandatory	L.5
	Grant programs	Mandatory	L.6
	Disability reporting—explicit and transparent reference to agency-level information available through other reporting mechanisms	Mandatory	L.8
	Correction of material errors in previous annual report	Mandatory	L.7
	List of requirements	Mandatory	N

INDEX

A

activities, lodgment and caseload statistics	78, 149
addresses	65
administrative review, judicial decisions and	50
advertising and market research	60, 146
agency resource statement	57, 141
agreement making	11, 37
agreements, collective and individual	55
Annual Wage Review 2010–11	15–17, 41
A & PM Fornataro (trading as Tony's Plumbing Service), McConnell v	27
Applications by United Voice and another for a low-paid authorisation	29
appointments, members	5, 71
archives, Sir Richard Kirby	39
Armacell Australia Pty Ltd and others	26
assets, financial	108
management	57
Australian Industrial Registry	56, 124
Australian Industrial Relations Commission	9–10, 39
Australian Mines and Metals Association Inc. v Transport Workers' Union of Australia	31
Australian National Audit Office	49, 60
award modernisation	15
and Annual Wage Review	16
and expense-related allowances	16
Division 2B State awards	15
enterprise instruments	17
take-home pay applications	17

termination of modernisable instruments	15
variation of modern awards	15
B	
briefings	38
C	
caseflow measures	84
caseload, indicators of	9–10
cases, significant	21, 86
checklist of reporting requirements, see list of requirements	
collective and individual agreements	55
Commonwealth Disability Strategy	150
competitive tendering and contracting	60
compliance checks and investigations, organisations	20
conciliation settlement rate	13
Construction, Forestry, Mining and Energy Union v Woodside Burrup Pty Ltd and Kentz E & C Pty Ltd	21
consultancy contracts	58–60
consultants	58
and competitive tendering and contracting	60
consulting contracts	58
contact officer	ii
contents	v
contracts,	
exempt	60
list	58
corporate,	
governance	47
operational planning	48
corrections to previous annual report	149
D	
decisions finalising termination of employment applications	12

decisions of Fair Work Australia, see significant cases,	
development,	
staff professional	51
training and	55
Disability Strategy, Commonwealth	150
discretionary grants and grant programs	148
dispute resolution	3, 10–11, 35
Division 2B State awards	15, 22–23, 34
documents,	
categories maintained by Fair Work Australia	145
published on Fair Work Australia website	43
relating to the work of Fair Work Australia	67
domestic activities, members	36
E	
ecologically sustainable development	147
educational activities	38–39
education and information services	38
enterprise agreements,	
lodgment and finalisation	12
processing times	12
enterprise instruments	15, 17, 26
Equal Remuneration Case	30, 61, 87
ethical standards	49–50
exempt contracts	60
expenses and resources for outcome	142
external scrutiny	50
F	
Fair Work Act 2009	2–3, 9, 11, 17–18, 20, 35, 37, 47, 58, 62–63
Fair Work Australia,	
appeal decisions relating to termination of employment	14
branches	7

decisions	21–35
establishment, role and functions	2
Fair Work Australia Enterprise Agreement 2010–11	52, 55–56
Fair Work Australia Rules 2010	2
members	1, 4–6, 16
organisation structure	70
President’s introduction	1
rules	2
staff	7, 47, 50
survey	51
staff separations	53
website	ii, 45, 57–58
work of	9
Fair Work Ombudsman	2, 27, 41
liaison with	43
financial management	56
financial statements	56–57, 88–140
balance sheet	93
cash flow statement	95
independent auditor’s report	89
notes to and forming part of the financial statements	102
schedule of administered items	100
schedule of asset additions	99
schedule of commitments	97
statement by the General Manager and Chief Finance Officer	91
statement of changes in equity	94
statement of comprehensive income	92
Fish Liquor Pty Ltd trading as Marina Quays International, Ford v	27
Ford v Fish Liquor Pty Ltd trading as Marina Quays International	27
fraud control	49
freedom of Information	144–146
requests	146
statement	145

Full Bench matters 10–11, 15–17, 21–34

G

General Manager, reporting requirements 1, 58, 62

general protections 9–13, 27, 78

geographic deployment of staff 53

glossary,

 of acronyms and abbreviations 162

 of terms 152

graduate program 54

grant programs, discretionary grants and 148

H

heads of tribunals meetings 35

hearings

 by location 79

help line 40, 61

historical table of common caseload categories 10

home-based work 54

Honeysett and others, Ulan Coal Mines Limited v 23

I

indicators of caseload 9

individual,

 and collective agreements 55

information,

 freedom of 144

 on specific statutory requirements 143

 services 38, 40, 45

 technology, management of 61

information technology 54, 61

internal audit 49

internet

 address—home page ii

introduction, President's 1

J

J. J. Richards & Sons Pty Ltd v Transport Workers' Union of Australia 31

judicial decisions and administrative review 50

K

Kentz E & C Pty Ltd, Construction, Forestry, Mining and Energy Union
v Woodside Burrup Pty Ltd and 21

key performance indicators 4, 50, 69

key strategies 3

L

legal services expenditure 147

legislation, regulations and rules 2

Liquor, Hospitality and Miscellaneous Union, MSS Security Pty Ltd v 22

list of contracts 58

list of requirements 165

lodgments,

 caseload statistics 9

 enterprise agreements 12

 of all Fair Work Australia matters by location 78

M

management,

 assets 57

 financial 56

 of human resources 50

 of information technology 61

 senior, committees and their roles 48

mandatory information 60, 143, 165

Marina Quays International, see Ford v Fish Liquor Pty Ltd

trading as Marina Quays International

market research, advertising and 60, 146

McConnell v A & PM Fornataro (trading as Tony's Plumbing Service)	27
members,	
appointments	5
domestic activities	36
list of	71
overseas activities	35
overview	1
panel assignments as at 30 June 2010	73
resignations	5
minimum wages,	
Annual Wage Review 2010–11	17
panel	4–6
research	18–19
modernisation, award; modern awards, see award modernisation	
MSS Security Pty Ltd v Liquor, Hospitality and Miscellaneous Union	22
Murray and others v Ulan Coal Mines Limited	23

N

non-salary benefits	55
---------------------------	----

O

occupational health and safety	54, 143
organisations,	
applications	19
compliance	20
matters statistics	79
registered	20
organisation structure	4, 70
outcome,	
and program structure	3
expenses and resources for	142
overseas activities, members	35
overview of Fair Work Australia	1, 9

P

panel assignments	73
panels	5
Parmalat Food Products Pty Ltd v Wililo	28
part-time work	54
performance,	
indicators	3–4, 50, 69
outcome and program	3
pay	55
Pietraszek v Transpacific Industries Pty Ltd trading as Transpacific Cleanaway	34
planning, workforce	51
policy and practices on the establishment and maintenance of ethical standards	49
portfolio structure	3, 149, 165
President's introduction	1
previous annual report, corrections to	149
procurement plan	57
protected action ballots	43, 63
public liaison and awareness,	
help line	40–41, 43
publication of tribunal documents	40
website	ii, 57, 58
purchasing	57, 147

R

records management	58–59, 61
registered organisations, see organisations, registered	
regulations, legislation and rules	2
reporting,	
on operations	50
on performance	48

reporting requirements, see list of requirements	
research,	
minimum wages	18–19
reports	18
unfair dismissal	44
resignations, Fair Work Australia members	5
resources for outcome	142
resource statement, agency	141
Roadworx Surfacing Pty Ltd, The Australian Workers' Union and	30
role and functions of Fair Work Australia	2
rules, see Fair Work Australia, rules	
rules, legislation and regulations	2

S

senior executive,	
responsibilities	47
senior executive service	50, 55
significant cases,	21
Annual Wage Review 2010–11	32
Applications by United Voice and another for a low-paid authorisation	29
Armacell Australia Pty Ltd and others	26
Award Modernisation—Division 2B State awards	22
Award Modernisation—Termination of Modernisable Instruments	24
Construction, Forestry, Mining and Energy Union v Woodside Burrup Pty Ltd and Kentz E & C Pty Ltd	21
Equal Remuneration Case	30
Ford v Fish Liquor Pty Ltd trading as Marina Quays International	27
J. J. Richards & Sons Pty Ltd v Transport Workers' Union of Australia and Australian Mines and Metals Association Inc. v Transport Workers' Union of Australia	31
McConnell v A & PM Fornataro (trading as Tony's Plumbing Service)	27
MSS Security Pty Ltd v Liquor, Hospitality and Miscellaneous Union	22
Parmalat Food Products Pty Ltd v Wililo	28

Pietraszek v Transpacific Industries Pty Ltd trading as Transpacific Cleanaway	34
The Australian Workers' Union and Roadworx Surfacing Pty Ltd	30
Ulan Coal Mines Limited v Honeysett and others, and Murray and others v Ulan Coal Mines Limited	23
Sir Richard Kirby Archives	39
staff,	
geographic deployment of	53
location and gender	53
overview	50
professional development	51, 56
retention and turnover, workforce planning	51
separations	53
statistics,	
caseflow measures	78
caseload	9–10, 78
lodgments	78
on the activities of the tribunal, see lodgments, caseload statistics	
registered organisation matters	79
statutory requirements, information on specific	60, 143
structure,	
organisation	70
outcome and program	3
portfolio	3
subscription services	40, 43, 86
survey,	
client satisfaction	44
of Fair Work Australia staff in 2010	51
unfair dismissal conciliation research	44
T	
take-home pay applications	15, 17

termination of employment	9–10, 12, 14, 27, 28
appeal decisions	14
applications finalised	12
client research	44
conciliation settlement rate	13
decisions finalising termination of employment applications	12
overview	12
The Australian Workers' Union and Roadworx Surfacing Pty Ltd	30
Tony's Plumbing Service), see McConnell v A & PM Fornataro (trading as Tony's Plumbing Service)	
training and development	55
transcripts	43
Transpacific Industries Pty Ltd trading as Transpacific Cleanaway, Pietraszek v	34
Transport Workers' Union of Australia, Australian Mines and Metals Association Inc. v	31
Transport Workers' Union of Australia, J. J. Richards & Sons Pty Ltd v	31
U	
Ulan Coal Mines Limited, Murray and others v	23
Ulan Coal Mines Limited v Honeysett and others	23
unfair dismissal, see termination of employment	
W	
Waltzing Matilda and the Sunshine Harvester Factory	39
website	ii, 57–58
Wililo, Parmalat Food Products Pty Ltd v	28
Woodside Burrup Pty Ltd and Kentz E & C Pty Ltd, Construction, Forestry, Mining and Energy Union v	21
work,	
home-based	54
of the tribunal	9
part-time	52, 54
workforce planning, staff retention and turnover	51