

FAIR WORK PRINCIPLES

The Australian Government Fair Work Principles support the creation of quality jobs and decent work by ensuring that procurement decisions are consistent with the Fair Work Act and its aims including promoting fair, cooperative and productive workplaces in which employees are treated fairly and with respect including respect for freedom of association and their right to be represented at work.

Fair, cooperative and productive workplaces involves not only fair wages and conditions and productivity, but also respect for other workplace rights, high levels of OHS and the availability of training and apprenticeship opportunities.

The Australian Government recognises its public responsibility to provide a model of fairness in the workplace for those who are performing work for the Commonwealth whether as employees of a Commonwealth agency, or as employees of a contractor to the Commonwealth.

Contracting is a normal part of modern business arrangements that can provide flexibility and efficiency in resource allocation. However, it is also sometimes used as a vehicle to undermine the entitlements of employees. The Australian Government does not support the adoption of contracting arrangements for this purpose. The Government will only contract out when it is in the public interest, having regard to considerations including the quality and accessibility of services, and the implications for affected public sector employees. Further, the Government expects that in conducting their businesses, government contractors meet public expectations of fair and reasonable workplace practices.

Fair Work Act

- The Government's new workplace relations system provides a strong safety net that workers can rely on, in good and in uncertain economic times. The Government's new fair and balanced workplace relations system has enterprise bargaining at its heart to drive productivity.
- A strong independent umpire, Fair Work Australia, has been established to oversee the system.
- To facilitate genuine enterprise bargaining, the Government's new workplace relations system has enshrined good faith bargaining. Good faith bargaining helps agreement-making by setting out the standards and conduct expected of bargaining representatives and encouraging parties to communicate openly. Enterprise Agreements are subject to the "Better off overall test".
- Under the Government's new workplace relations system low paid employees who have not had access to the benefits of, or who face substantial difficulty undertaking, enterprise-level collective bargaining can seek assistance from Fair Work Australia to facilitate multiple-employer bargaining. This may help employees working in areas like

child care, aged care, community services, security and cleaning, who are often paid the basic award rate.

- From 1 January 2010, the Fair Work Act also provides workers with ten legislated National Employment Standards (NES) that cannot be undermined:
 - o hours of work
 - o right to request flexible working arrangements
 - o parental leave
 - o personal/carer's and compassionate leave
 - o community service leave
 - o annual leave
 - o long service leave
 - o public holidays
 - o notice of termination and redundancy pay
 - o fair work statement

- The Australian Industrial Relations Commission (AIRC) is currently in the process of modernising awards. This process is to be completed by 31 December 2009. The combination of the NES and modernised awards guarantee that workers are provided with decent and relevant entitlements.

- The Government's new workplace relations system ensures that the workplace rights of employees, including freedom of association and the right to be represented in relation to workplace matters, are respected.

Government Suppliers

- Compliance with the Fair Work Act 2009 is a 'condition of participation' for Australian Government procurement.

- Agencies covered by the *Financial Management and Accountability Act* (FMA Act) and a number of Commonwealth Authorities and Companies (CAC) Act agencies whose operations are predominantly non-commercial must undertake procurement in a manner consistent with the principles contained in the Commonwealth Procurement Guidelines (CPGs), which state:

(Clause) 6.20 Agencies should include contract provisions requiring contractors to comply with materially relevant laws and should, as far as practicable, require suppliers to apply such a requirement to sub-contractors. Contractors must also be able to make available details of all sub-contractors engaged in respect of the procurement contract.

- All tenderers must respect freedom of association and the right to representation. Specifically, tenderers must allow employees to be able to make a free and informed choice about whether to join a union and be represented at work.

- To give effect to the Fair Work Principles, Australian Government tender documents for procurement will require the following:
 - o Agencies must include contract provisions requiring contractors to comply with materially relevant laws and must, as far as practicable, require suppliers to apply such a requirement to sub-contractors.
 - o A consequence of this contractual requirement is that a breach of any industrial law, occupational health and safety law or workers compensation laws, will also constitute a breach of the contract with the Australian Government.
 - o Suppliers will be required to provide undertakings that they have not been subject to any adverse judgments for a breach of industrial laws, occupational health and safety laws or workers' compensation laws during the past two years and are not subject to any outstanding claims (not including decisions under appeal)
 - o Suppliers will be required to provide information about how they promote fair, cooperative and productive workplace relations as described above including, where appropriate, providing information about their commitment to supporting apprenticeships and education and training in the workplace.

- Australian Government agencies are required to take these requirements into account when awarding contracts.

- To support the above requirements suppliers may be required to provide information in relation to relevant matters, for example;
 - o compliance with awards and industrial agreements and laws;
 - o providing annual leave and long service leave entitlements;
 - o the capacity to meet workers entitlements and the making of superannuation contributions;
 - o compliance with occupational health and safety and workers' compensation laws.

- In reporting annually on the Government's procurement practices, the Procurement Coordinator will also report on developments related to the workplace practices of suppliers.

- Agencies will seek ongoing input from industry, union and other community stakeholders about the application and operation of these provisions.

Dispute Resolution Procedures

- To foster best practice, Commonwealth agencies and government contractors in the event of a workplace dispute, must provide as a minimum genuine dispute resolution mechanisms, such as those set out in Schedule 6.1 of the Fair Work Regulations, which provides for the representation of employees and the settlement of the dispute by Fair

Work Australia if discussions at the workplace and mediation or conciliation by Fair Work Australia have failed to resolve the dispute.

Australian Government Cleaning Services Contracts

- In view of the history of underpayment, exploitation and unsafe work practices in the cleaning industry, it has been identified by the Australian Government as a sector potentially requiring assistance to promote fairness, bargaining, freedom of association and other workplace rights.
- The Australian Government notes these concerns are shared in the community and notes the recent development of the Cleanstart Agreement in the cleaning industry.
- In addition to the Fair Work Principles, Australian Government agencies must take the following requirements into account when awarding contracts:
 - o The key parameters that will define relevant performance levels and provide adequate staffing to achieve these performance levels,
 - o Information about how the supplier will provide their employees with the appropriate training, supervision, equipment and materials to enable them to perform their job safely and efficiently, and
 - o Provision of information by the supplier that will allow Australian Government agencies to verify that the terms and conditions of a contract are being met.
- Further, the Procurement Coordinator will work together with property owners and managers, cleaning contractors and relevant unions on a tripartite basis, to pilot the development of best practice measures that can be embraced by cleaning contractors to fully realise these Principles and fair, cooperative and productive workplace relations as described above.

Australian Government Suppliers Using Homeworkers

- The Australian Government is committed to ensuring an appropriate safety net for Homeworkers.
- All government contractors in the textile, clothing and footwear industry must comply with any relevant Federal and State legislation, awards, industrial instruments and codes of practice relating to the performance of work in the Textile, Clothing and Footwear (TCF) industry.
- Suppliers in the TCF industry who tender to provide goods to the Australian Government must be accredited with the Homeworkers' Code of Practice. This requirement also applies to any subcontractor in the supply chain.