

## Employment protection in Australia – 2008

Item 1 Notification procedures in the case of individual dismissal of a workers with a regular contract	No prescribed procedures. In case of legal proceedings, the Australian Industrial Relation Commission will consider whether there was a valid reason for the termination, whether employee notified of reason, given opportunity to respond where reason related to capacity/conduct, and any warnings about unsatisfactory performance if that's why employee was terminated.
Item 2 Delay involved before notice can start	<b>Redundancy:</b> written or oral notice with statement of reasons; <b>Personal reasons:</b> if disputed, the AIRC takes into account whether the employee was warned about unsatisfactory performance and given time to respond before dismissal.
Item 3 Length of notice period at different tenure durations	<b>All workers:</b> 1w<1y, 2w<3y, 3w<5y, 4w>5y. These notice periods are increased by one week if employee is over 45 years old and has over 2 years continuous service. Notice periods may be increased through collective agreements, particularly in cases of redundancy.
Item 4 Severance pay at different tenure durations	<b>All workers:</b> None. <b>Redundancy cases:</b> 0<1y ; 4w<2y, 6w<3y, 7w<4y, 8w>4y (typical cases). No redundancy pay for employees of businesses with fewer than 15 employees.
Item 5 Definition of unfair dismissal	<b>Fair:</b> Dismissal can be fair if justified on the basis of capacity or conduct, subject to whether it is harsh, unjust or unreasonable as well as for economic redundancy ("retrenchment"), or for genuine operational reasons meaning reasons of an economic, technological, structural or similar nature relating to the employer's undertaking, establishment, service or business. <b>Unfair</b> dismissal happens when process of an employee's dismissal is 'harsh, unjust or unreasonable.' This phrase is not defined but factors taken into account in determining whether it applies are: whether there was a valid reason for the termination related to the capacity/conduct of the employee or operational requirements of business, whether employee notified of reason, whether employee given opportunity to respond to reason related to capacity/conduct, whether warned of unsatisfactory performance if that's the ground of termination, degree to which employer's business affects procedures, degree to which absence of dedicated HR people impacts on employer's procedures. <b>Unlawful:</b> temporary absence from work because of illness or injury, trade union membership, non membership of a trade union, seeking office as or acting as a representative of employees, filing complaint or participating in proceedings against employer involving a violation of laws, race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, absence from work during maternity leave or parental leave, temporary absence from work to carry out voluntary emergency management activity, religion, political opinion, national extraction or social origin, refusing to negotiate in connection with, make, sign, extend, vary or terminate an AWA.
Item 6 Length of trial period	The probation period is no more than 3 months, except if a longer period is reasonable given the nature of employment. Employees are not eligible to make an unfair dismissal claim in the first 6 months of employment.
Item 7 Compensation following unfair dismissal	Compensation up to six months wages, plus entitlements (that would have been) accrued until the end of notice period. (For non-award employees, the cap is either 6 months wages or \$42,700, whichever is the lower amount.)
Item 8 Reinstatement option for the employee following unfair dismissal	Courts may order reinstatement with back pay. The option of reinstatement is relatively rarely made available to the employee.
Item 9 Maximum time period after dismissal notification up to which an unfair dismissal claim can be made	21 days.
Item 10 Valid cases for use of fixed term contracts	No restrictions in legislation.
Item 11 Maximum number of successive FTCs (initial contract plus renewals and/or prolongations)	No legal limit specified; but risk that, upon continuous renewal, the courts will find that the primary purpose of the contract is to avoid termination laws.
Item 12 Maximum cumulated duration of successive FTCs	No limit specified.
Item 13 Types of work for which temporary work agency (TWA) employment is legal	General.
Item 14 Are there restrictions on the number of renewals and/or prolongations of TWA contracts?	No.
Item 15 Maximum cumulated duration of TWA contracts	No limit.

Item 16 Does the set-up of a TWA require authorisation or reporting obligations?	No.
Item 17 Do regulations ensure equal treatment of regular workers and agency workers at the user firm?	No regulations for equal treatment.
Item 18 Definition of collective dismissal	Termination of 15 or more employees for reasons of an economic, technological or structural nature, or for reasons including such reasons.
Item 19 Additional notification requirements (compared to Item 1) in cases of collective dismissal	<b>Notification of employee representatives:</b> Obligation to inform and consult with employees and trade union (if requested by an affected employee), where relevant. <b>Notification of public authorities:</b> Notification of competent labour authorities.
Item 20 Additional delays involved (compared to Item 2)	No specific delay in Act or Regulations, but must go through consultation steps with relevant unions, including measures to avert the terminations, or minimise the terminations, and measures (such as finding alternative employment) to mitigate the adverse effect of the termination(s).
Item 21 Other special costs to employers in case of collective dismissals	<b>Type of negotiation required:</b> Consultation on alternatives to redundancy and selection standards. <b>Selection criteria:</b> Law requires fair basis of employee selection. <b>Severance pay:</b> No special regulations for collective dismissal.

*This summary was produced by the OECD based on responses to a questionnaire submitted by authorities in OECD member countries. It describes the situation current as at 1 January 2008 and is the basis for calculating the OECD employment protection indicators. To find out more about the methodology used to calculate the OECD employment protection indicators, see [www.oecd.org/employment/protection](http://www.oecd.org/employment/protection).*