



What are your Privacy rights?

Australia's new workplace relations system

From 1 July 2009, most Australian workplaces are governed by a new system created by the *Fair Work Act 2009*.

The Fair Work Ombudsman helps employees, employers, contractors and the community to understand and comply with the new system. We provide education, information and advice, investigate workplace complaints, and enforce relevant Commonwealth workplace laws.

Introduction and general information

The Fair Work Ombudsman is bound by the *Privacy Act 1988* (Privacy Act) in collecting, storing, using and disclosing your personal information.

The Privacy Act also provides you with a number of rights designed to protect your privacy.

These rights and obligations are set out in eleven information privacy principles (IPPs) contained within the Privacy Act.

What is 'personal information'?

Personal information is broadly defined under the Privacy Act as information or an opinion which identifies you or would allow your identity to be ascertained.

Some examples of personal information include:

- names, addresses, phone numbers or email addresses
- letters of offer, employment contracts, Australian Workplace Agreements (AWAs) or Individual Transitional Employment Agreements (ITEAs)
- work rosters, sign-in sheets, payslips and bank statements
- statements taken by the Fair Work Ombudsman which allow the person who made the statement or persons referred to in the statement to be identified.

The definition of personal information only relates to natural persons. It does not extend to other legal persons, such as companies.

Collection of personal information

The Fair Work Ombudsman may collect personal information from you in a range of circumstances, including:

- when you lodge a workplace complaint or when you email or telephone the Fair Work Ombudsman
- where the Fair Work Ombudsman investigates a matter
- where the Fair Work Ombudsman conducts a targeted campaign and compliance audit (ie. an audit of a particular industry).

A Fair Work Inspector can require the production of records or documents from employers regarding their employees in order to establish that the business is complying with its obligations under relevant Commonwealth workplace laws.

When you visit the Fair Work Ombudsman website, anonymous information about your visit is recorded. The information recorded only confirms how you used the site. It does not record any personal information about you.

However, if you email us through the Fair Work Ombudsman website, or submit an online workplace complaint form, we will collect personal information about you.

The Fair Work Ombudsman's website abides by the *Guidelines for Federal and ACT Government Web-sites* issued by the Office of the Privacy Commissioner.

Under the Privacy Act, the Fair Work Ombudsman can only collect personal information for lawful purposes necessary for, or related to, carrying out its functions under relevant legislation.

Any personal information collected by the Fair Work Ombudsman must be relevant to carrying out its functions and cannot intrude to an unreasonable extent on your affairs.

For example, if you submit a workplace complaint form to the Fair Work Ombudsman, the personal information you provide, such as pay slips, will be used to investigate the matter to determine whether the allegation is substantiated. Other personal information that you provide, such as contact details, may be used to contact you and keep you up to date about your complaint.

Use of your personal information

Information collected by the Fair Work Ombudsman can only be used for the purpose for which it is collected or for any other directly related purpose, unless:

- you consent to it being used for another purpose
- the use is necessary to prevent or lessen a serious threat to the life or health of another individual
- the use is necessary for the enforcement of a criminal law, law imposing a penalty of money, or the protection of public revenue.

Also, the Fair Work Ombudsman may refer your complaint, or relevant aspects of your complaint to other Federal or State Government agencies for the purpose of determining issues that fall within their area of responsibility. For example, the Fair Work Ombudsman may wish to refer a suspected contravention of a skilled migration visa by an employer to the Department of Immigration and Citizenship for it to investigate the matter further.

An example of inappropriate use would be the Fair Work Ombudsman using personal information you provide for the purpose of marketing other services to you.

Your rights to privacy under the Privacy Act

Where you provide personal information to the Fair Work Ombudsman, the Privacy Act gives you a number of rights, including:

- the right to be told why the information is being collected where the Fair Work Ombudsman seeks personal information from you, whether it is required or authorised under law, and whether the Fair Work Ombudsman can give it to anyone else
- the right to have your personal information protected against loss, unauthorised access, use, modification and disclosure

- the right to access records containing personal information about you, subject to Commonwealth laws, that may refuse you access to certain information (the *Freedom of Information Act 1982* also covers access to records)
- the right to have personal information about you corrected if it is inaccurate or out of date (the *Freedom of Information Act 1982* also covers this).

Special laws applying to tax file numbers

The Privacy Act sets out special laws in relation to the collection and use of tax file numbers.

The Fair Work Ombudsman cannot request tax file numbers from you. If you provide your tax file number incidentally, the Fair Work Ombudsman cannot record, use, or disclose your tax file number.

For example, if you provide the Fair Work Ombudsman with your group certificate/payment summary as evidence of amounts paid to you, the Fair Work Ombudsman cannot record, use, or otherwise disclose the tax file number.

For more information about your rights relating to tax file numbers, visit the webpage of the Office of the Privacy Commissioner on www.privacy.gov.au and/or visit the webpage of the Australian Taxation Office on www.ato.gov.au

Disclosure of personal information

The Fair Work Ombudsman cannot disclose your personal information to another person, body or agency unless:

- you give the Fair Work Ombudsman permission
- you are aware the information is usually passed onto such persons, bodies or agencies
- the disclosure is necessary to prevent or lessen a serious threat to the life or health of another individual
- the disclosure is authorised by law
- the disclosure is necessary for the enforcement of a criminal law, law imposing a penalty of money, or the protection of public revenue.

Disclosure of your personal information authorised by the *Fair Work Act 2009*

The Fair Work Ombudsman is authorised by the *Fair Work Act 2009* to disclose personal information collected if the Fair Work Ombudsman reasonably believes:

- that it is necessary or appropriate to do so in the course of performing functions or exercising powers under the *Fair Work Act 2009*
- that it is likely to assist in the administration or enforcement of Commonwealth, State or Territory laws.

Any such information disclosed is taken to be an authorised disclosure under the Privacy Act.

For example, in the course of an investigation, a Fair Work Inspector may provide personal information relating to one party to the investigation to the other party to the investigation. Generally, this will be done to ensure procedural fairness in the conduct of the investigation.

Despite the Fair Work Ombudsman's right under law to disclose personal information in this context, the Fair Work Ombudsman has in place policies designed to protect 'personal information'. For example, where information is disclosed under the provisions of the *Fair Work Act 2009*, policy requires the Fair Work Ombudsman to delete certain types of personal information relating to others, such as names and contact details.

The Fair Work Ombudsman does this to balance competing interests, affording procedural fairness to parties involved in an investigation and protecting any personal information provided.

In addition, the Fair Work Ombudsman may disclose information (either directly or through senior officials of the Department of Education, Employment and Workplace Relations) to the Minister for Employment and Workplace Relations, to assist the Minister to consider a complaint or issue under the *Fair Work Act 2009*.

Disclosure of your personal information authorised by the *Freedom of Information Act 1982*

The Fair Work Ombudsman also has obligations regarding the disclosure of information under the *Freedom of Information Act 1982* (the FOI Act). The FOI Act provides any person with the right to request access to documents relating to them held by a Commonwealth agency. Any person has the right to ask for their personal information to be changed or annotated if it is incomplete, out of date, incorrect, or misleading.

For more information about your rights and the Fair Work Ombudsman's obligations under the FOI Act, please see the *Fair Work Ombudsman Fact Sheet – Freedom of Information*.

For further information, please see the *Fair Work Ombudsman Guidance Note 2 - Document Access Policy* on the website at www.fwo.gov.au

Further information

For more information on privacy, please see <http://www.fwo.gov.au/Footer/Pages/Privacy.aspx>

You can obtain more information on your privacy rights by contacting the Fair Work Ombudsman's Privacy Contact Officer.

Privacy Contact Officer
Fair Work Ombudsman
GPO Box 9887
MELBOURNE VIC 3001

Fax: (02) 6267 4286

Email: privacy@fwo.gov.au

The Office of the Privacy Commissioner's website contains further information on privacy. Please visit www.privacy.gov.au

Contact us

Fair Work Online: www.fairwork.gov.au

Fair Work Infoline: **13 13 94**

Monday to Friday, between 8.00am–6.00pm

Need language help?

Contact the Translating and Interpreting Service (TIS) on 13 14 50

Hearing & speech assistance

Call through the National Relay Service (NRS):

- For TTY: 13 36 77. Ask for the Fair Work Infoline 13 13 94
- Speak & Listen: 1300 555 727. Ask for the Fair Work Infoline 13 13 94