

Statement of Findings

The FWO investigation of ACT Government entities involved in the employment and payment of ACT Ambulance Service employees

November 2013

About the Fair Work Ombudsman

The Fair Work Ombudsman is an independent statutory agency, created by the Fair Work Act 2009 (the Act) on 1 July 2009.

Our vision is fair Australian workplaces, and our mission is to work with Australians to educate, promote fairness and ensure justice in the workplace. We promote harmonious, productive and cooperative workplace relations and ensure compliance with Australia's workplace laws, by:

- offering people a single point of contact for them to receive accurate and timely advice and information about Australia's workplace relations system
- educating people working in Australia about their workplace rights and obligations
- monitoring compliance with, inquiring into and, investigating any act or practice that may be contrary to workplace laws, awards and agreements
- litigating to enforce workplace laws and to deter people from not complying with their workplace responsibilities.

The Fair Work Ombudsman employs a range of strategies to achieve compliance with national workplace laws. This includes working with enterprises in a positive and constructive manner to ensure the duty holder is:

- meeting its obligations under the Act
- identifying and minimising business risks with respect to its employees
- addressing potential areas of non-compliance with the Act.

For further information and media enquiries please contact FWO media (media@fwo.gov.au).

If you would like further information about the Fair Work Ombudsman's Compliance and Enforcement policy please contact Steve Ronson, Executive Director – Dispute Resolution and Compliance (steven.ronson@fwo.gov.au).

A report by the Fair Work Ombudsman under the *Fair Work Act 2009*.
November 2013

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Introduction

1. On 14 November 2012 the Transport Workers' Union of Australia [TWU] wrote to the Fair Work Ombudsman [FWO] expressing concern the ACT Ambulance Service [ACTAS] had failed to comply with section 535 of the *Fair Work Act 2009* [FW Act] and the ACT government was seeking to recover apparent overpayments paid to 65 ACTAS employees including administrative staff, intensive care paramedics, ambulance paramedics, ambulance support officers, communication officers and duty officers.
2. The apparent overpayments, referred to in the TWU's correspondence, were in individual amounts ranging from \$18.48 to \$56,586.26 with an average total of \$6,083.51.
3. The apparent overpayments were detected by the employing entity through an audit of leave records of 214 staff.
4. The purpose of this document is to provide a report of the findings in relation to the FWO's investigation of certain ACT government entities.
5. In addition, these findings set out 'next steps' to the ACT Government entities and the workers within those organisations aimed at resolving current complaints and avoiding future complaints.

Statement of key findings and next steps

Key findings

6. The FWO makes the following findings:
 - (a) The investigation disclosed the ACT Government employing entity¹ failed to comply with statutory record keeping procedures from 24 October 2008 until 16 August 2012:
 - (i) Prior to 1 July 2009, the ACT Government employing entity contravened:
 - i. Chapter 2 Part 19 Div 3 regulations 19.12 and 19.16 *Workplace Relations Regulations 2006*.
 - (ii) After 1 July 2009, the ACT Government employing entity contravened:
 - i. Section 535 FW Act; and
 - ii. Chapter 3 Part 3.6 Div 3 regulations 3.31, 3.36 and 3.44 *Fair Work Regulations 2009*.

¹ See par 18 below for definition of the 'employing entity'

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 - ii. Chapter 3 Part 3.6 Div 3 regulations 3.31, 3.36 and 3.44 *Fair Work Regulations 2009*.

¹ See par 18 below for definition of the 'employing entity'

- (b) By 28 August 2009, the employing entity was aware that its systems and processes for managing the accurate accrual and deduction of annual leave for relevant ACTAS employees were failing.
- (c) The employing entity's decision in late 2009 - early 2010 to suspend the processing of employees' leave applications, while an internal leave audit was undertaken, impaired the employing entity's ability to monitor and record accurate accrual and deduction of relevant ACTAS employees' personal and annual leave.
- (d) The employing entity published leave balances on pay slips from 28 August 2009 to 15 September 2011 that were incorrect.
- (e) From 28 August 2009, the employing entity conducted 'review and audit action' to identify and remedy Human Resources Management Systems [HRMS] problems but this action did not successfully manage the potential consequences resulting from the continued publication of incorrect leave balances.
- (f) The investigation failed to disclose any evidence the record keeping deficiency was deliberate or any intention by the employing entity to deny employee entitlements through a system of unsatisfactory record keeping.
- (g) Subject to sections 324 and 326 of the FW Act, the employing entity may rely on the *Justice and Community Safety Directorate ACT Ambulance Enterprise Agreement 2011-2013* [the Agreement] to recover overpayments where agreement between the employing entity and employee to any deductions from wages is recorded in writing, signed by the employing entity and employee and the amount of any payment by instalments for large overpayments is reasonable and there is sufficient and reliable evidence of leave taken.
- (h) The employing entity's proposed actions, outlined by letter to employees on 12 November 2012, to recover overpayments using clause D5 of the Agreement do not comply with the requirements to seek agreement with individual employees "on a reasonable rate of recovery, having regard for all of the circumstances"², including a sound evidence base and to otherwise follow the procedures prescribed by clause D5 of the Agreement.

Next steps

7. The FWO expects the employing entity will consider the content and findings of this report and take such action necessary to ensure that the employing entity:

² Subclause D5.4 *Justice and Community Safety Directorate ACT Ambulance Enterprise Agreement 2011 - 2013*

- (a) complies with the record keeping provisions of the FW Act and the *Fair Work Regulations 2009*;
 - (b) resolves the disputes relating to recovery of overpayment of leave entitlements to certain ACTAS employees in accordance with the FW Act and the Agreement; and
 - (c) investigates and resolves within 30 days any future complaints, including those referred by the FWO, relating to the accurate recording of time worked, accurate accrual and deduction of leave entitlements, accuracy of leave balances and the correct payment of wages.
8. The FWO will issue to the employing entity a Letter of Caution in respect of the contraventions identified, informing the employing entity that while the FWO has determined that it is not, at this time, in the public interest to commence litigation in relation to the contraventions the employing entity is put on notice regarding future compliance.
9. The FWO will conduct an inspection of the employing entity employee records before September 2014 to satisfy itself that the employing entity is compliant with the FW Act and the *Fair Work Regulations 2009*.

The functions of the FWO

10. The FWO is established by the FW Act to perform the functions set out in section 682 of the FW Act:

- (1) The FWO has the following functions:
 - (a) to promote:
 - (i) harmonious, productive and cooperative workplace relations; and
 - (ii) compliance with this Act and fair work instruments;
including by providing education, assistance and advice to employees, employers, outworkers, outworker entities and organisations and producing best practice guides to workplace relations or workplace practices;
 - (b) to monitor compliance with this Act and fair work instruments;
 - (c) to inquire into, and investigate, any act or practice that may be contrary to this Act, a fair work instrument or a safety net contractual entitlement;
 - (d) to commence proceedings in a court, or to make applications to FWA, to enforce this Act, fair work instruments and safety net contractual entitlements;
 - (e) to refer matters to relevant authorities;
 - (f) to represent employees or outworkers who are, or may become, a party to proceedings in a court, or a party to a matter before FWA, under this Act or a fair work instrument, if the FWO considers that representing the employees or outworkers will promote compliance with this Act or the fair work instrument;
 - (g) any other functions conferred on the FWO by any Act.

Note 1: The FWO also has the functions of an inspector (see section 701).

Note 2: In performing functions under paragraph (a), the FWO might, for example, produce a best practice guide to achieving productivity through bargaining.

- (2) The FWO must consult with FWA in producing guidance material that relates to the functions of FWA.

11. The FW Act establishes Australia's national workplace relations system, which extends rights and obligations to employers, employees and others (notably independent contractors and registered organisations of employers and employees). The nature and extent of those rights and obligations will vary according to the subject matter and whether or not the national system applies to the employer or employee.

Jurisdiction

12. Whether a person or an entity is an employer within the jurisdiction of the FWO will depend on where the party is located, together with where and when the work is performed, and in certain cases, whether the employer is a “constitutional corporation”.
13. The *Workplace Relations Act 1996* [WR Act] (until 30 June 2009) and the FW Act (after 1 July 2009) and their respective Regulations are the statutes governing record keeping obligations for employers within jurisdiction.
14. The WR Act at subsection 6(1)(f) states:
- 6 (1) In this Act, unless the contrary intention appears;
- employer** means:
- (f) a person or entity (which may be an unincorporated club) that carries on an activity (whether of a commercial, governmental or other nature) in a Territory in Australia, so far as the person or entity employs, or usually employs, an individual in connection with the activity carried on in the Territory.
15. The FW Act at subsection 14(f) states:
14. A **national system employer** is:
- (f) a person who carries on an activity (whether of a commercial, government or other nature) in a Territory in Australia, so far as the person employs, or usually employs, an individual in connection with the activity carried on in the Territory.
16. The FWO has a key role in investigating matters relating to parties whose affairs are regulated by both statutes.
17. In this particular matter, the FWO has determined the employing entity³ as the Justice and Community Safety Directorate (see paragraph 19 below).

³ As defined in s 6(f) WR Act; s 14(f) FW Act

FWO's investigation

Who is the subject of this investigation?

18. The FWO's investigation involves the activities of several ACT Government entities:

- the ACT Ambulance Service [ACTAS] [ABN – 77 972 506 632]
- ACT Justice and Community Safety [JACS] [ABN – 77 972 506 632]
- ACT Shared Services [ABN – 63 197 439 746] – responsible for pay and associated functions for the relevant employees; and
- ACT Government Payroll [ABN – 48 581 627 113] – responsible for issuing pay slips.

Who is the employing entity?

19. The investigation disclosed the Justice and Community Safety Directorate [JACS] is the employing entity which is within jurisdiction of the WR Act⁴ and the FW Act⁵. The reasons for this determination include:

- (a) In fulfilling its functions and services the ACT Government is organised into nine Government Directorates.
- (b) The **JACS**, as one of the nine ACT Government Directorates, comprises several agencies responsible for a wide range of activities and services in the areas of justice, the law, emergencies, commercial practices and government elections.
- (c) The ACT Emergency Services Agency is the business unit within JACS responsible for provision of services including the State Emergency Service [SES], Rural Fire Services, Fire and Rescue and the **ACTAS**.
- (d) Shared Services is part of the ACT Government's Commerce and Works Directorate. Shared Services provides, inter alia, payroll and other HR management services, to each of the nine Government Directorates including JACS.
- (e) The 'Chief Executive of the Department of Justice and Community Safety on behalf of the Australian Capital Territory' is named as the employer party bound to the *Department of Justice and Community Safety, ACT Ambulance Service Union Collective Agreement 2007-2010*.
- (f) The 'Director General of the Justice and Community Safety Directorate on behalf of the Australian Capital Territory' is named as the employer party bound to the

⁴ S 6(f) *Workplace Relations Act 1996*

⁵ S 14(f) *Fair Work Act 2009*

Justice and Community Safety ACT Ambulance Service Enterprise Agreement 2010-2011.

- (g) The 'head of Service on behalf of the Australian Capital Territory' is named as the employer party covered in the *Justice and Community Safety Directorate ACT Ambulance Enterprise Agreement 2011-2013.*

What has led to this investigation?

20. A complaint was made to the FWO by the TWU on 14 November 2012, asserting the employing entity had breached section 535 of the FW Act by failing to maintain and issue accurate and complete records to employees.
21. Various media articles appeared in relation to the TWU allegations on 15 November 2012 and several ACTAS employees contacted the FWO raising a number of related concerns on 16 November 2012.

What are the questions involved in this investigation?

22. The allegations relate to the employing entity's record keeping practices over a period of time from early 2007 to the present.
23. The investigation was concerned with two broad subjects:
- (a) The employing entity's level of compliance with record keeping provisions:
 - (i) Were there deficiencies in the employing entity's record keeping?
 - (ii) If so, when did the employing entity become aware of those deficiencies? and
 - (iii) Was appropriate action taken by the employing entity to remedy identified deficiencies?
 - (b) The overpayment of employee leave entitlements:
 - (i) Did any act or omission by the employing entity lead to overpayment of employee entitlements?
 - (ii) Is the employing entity entitled to rely on the *Justice and Community Safety Directorate ACT Ambulance Enterprise Agreement 2011-2013* as the vehicle for recovery of overpayment of leave entitlements?

Legislative provisions

24. The FWO investigation considered the relevant record keeping provisions of the WR Act, WR Regulations 2006, the FW Act and FW Regulations.

25. Section 836 of the WR Act provides:

836 Records relating to employees

- (1) The regulations may make provision in relation to:
 - (a) the making and retention by employers of records relating to the employment of employees; and
 - (b) the inspection of such records.
- (2) The regulations may require employers of employees to issue pay slips to those employees at such times, and containing such particulars, as are prescribed.

26. The WR Regulations provide:

19.4 Obligation to make and keep records relating to employees

- (1) An employer who employs an employee must make, or cause to be made, a record in accordance with Divisions 3 and 4 relating to the employee.
- (2) Subject to regulation 19.15, an employer must keep, or cause to be kept, an entry in a record:
 - (a) in the case of a matter of a kind mentioned in regulation 19.8 or paragraph 19.13 (1) (e) — for a continuous period of 7 years after the date on which:
 - (i) the entry is changed; or
 - (ii) the employee's employment with the employer is terminated;whichever happens first; or
 - (b) in any other case — for a continuous period of 7 years after the date on which the entry is made.
- (3) Strict liability applies to the physical elements in subregulations (1) and (2).

Note: For **strict liability**, see section 6.1 of the Criminal Code.
- (4) Subregulations (1) and (2) are civil remedy provisions.

Note: Part 14 of this Chapter sets out provisions dealing with contraventions of civil remedy provisions.

19.5 Condition of records

- (1) The record relating to the employee must be in a condition that allows a workplace inspector to determine the employee's entitlements and whether the employee is receiving those entitlements.
- (2) Strict liability applies to a physical element in subregulation (1).

Note: For **strict liability**, see section 6.1 of the Criminal Code.
- (3) Subregulation (1) is a civil remedy provision.
- (4) Note: Part 14 of this Chapter sets out provisions dealing with contraventions of civil remedy provisions.

19.6 Form of records

- (1) The record must be:
 - (a) in a legible form in the English language; and
 - (b) in a form that is readily accessible to a workplace inspector.
- (2) Strict liability applies to a physical element in subregulation (1).

Note: For **strict liability**, see section 6.1 of the Criminal Code.

- (3) Subregulation (1) is a civil remedy provision.

Note: Part 14 of this Chapter sets out provisions dealing with contraventions of civil remedy provisions.

19.12 Contents of records — leave

- (1) If the employee is entitled to leave, the record relating to the employee must contain the following details:

- (a) the accrual of that leave;
- (b) any leave taken by the employee;
- (c) the balance of the employee's entitlement to that leave from time to time.

- (2) If the employee has elected to forgo an entitlement to take an amount of leave, an employer must keep the following:

- (a) a copy of the employee's written election to forgo the amount of leave;
- (b) a record of the rate of payment for the amount of leave forgone and when the payment was made.

- (3) Strict liability applies to the physical elements in subregulations (1) and (2).

Note: For **strict liability**, see section 6.1 of the Criminal Code.

- (4) Subregulations (1) and (2) are civil remedy provisions.

Note: Part 14 of this Chapter sets out provisions dealing with contraventions of civil remedy provisions.

19.16 Alteration and correction of a record

- (1) Subject to subregulations (2) and (3), an employer must not alter a record, or allow a record to be altered.

- (2) An employer must correct any error in a record as soon as the employer becomes aware of the error.

- (3) An employer who corrects an error in a record must record the nature of the error with the correction.

- (4) Strict liability applies to the physical elements in subregulations (1), (2) and (3).

Note For **strict liability**, see section 6.1 of the *Criminal Code*.

- (5) Subregulations (1), (2) and (3) are civil remedy provisions.

Note Part 14 of this Chapter sets out provisions dealing with contraventions of civil remedy provisions.

19.17 False or misleading entry in a record

- (1) A person must not make, or make use of, an entry in any record required to be kept under Division 2, 3 or 4 if the person does so knowing that the entry is false or misleading.

- (2) Strict liability applies to a physical element in subregulation (1).

Note For **strict liability**, see section 6.1 of the *Criminal Code*.

- (4) Subregulation (1) is a civil remedy provision.

Note Part 14 of this Chapter sets out provisions dealing with contraventions of civil remedy provisions.

27. Section 535 of the FW Act provides:

535 Employer obligations in relation to employee records

(1) An employer must make, and keep for 7 years, employee records of the kind prescribed by the regulations in relation to each of its employees.

Note: This subsection is a civil remedy provision (see Part 4-1).

(2) The records must:

- (a) if a form is prescribed by the regulations—be in that form; and
- (b) include any information prescribed by the regulations.

Note: This subsection is a civil remedy provision (see Part 4-1).

(3) The regulations may provide for the inspection of those records.

28. The FW Regulations provide:

3.31 Records — form

(1) For subsection 535 (1) of the Act, an employee record made and kept by an employer for this Subdivision must be of the following kind:

- (a) a record in a legible form and in the English language;
- (b) a record in a form that is readily accessible to an inspector.

Note: Subsection 535 (1) of the Act is a civil remedy provision. Section 558 of the Act and Division 4 of Part 4-1 of the Act deal with infringement notices relating to alleged contraventions of civil remedy provisions.

(2) For section 796 of the Act, an employee record made and kept by an employer for this Subdivision must be of the following kind:

- (a) a record in a legible form and in the English language;
- (b) a record in a form that is readily accessible to an inspector.

Note: Subregulation (2) is a civil remedy provision to which Part 4-1 of the Act applies. Division 4 of Part 4-1 of the Act deals with infringement notices relating to alleged contraventions of civil remedy provisions.

3.36 Records — leave

(1) For subsection 535 (1) of the Act, if an employee is entitled to leave, a kind of employee record that the employer must make and keep is a record that sets out:

- (a) any leave that the employee takes; and
- (b) the balance (if any) of the employee's entitlement to that leave from time to time.

(2) If an employer and employee agree to cash out an accrued amount of leave:

- (a) a copy of the agreement is a kind of employee record that the employer must make and keep; and
- (b) a kind of employee record that the employer must make and keep is a record that sets out:
 - (i) the rate of payment for the amount of leave that was cashed out; and
 - (ii) when the payment was made

Note: Subsection 535 (1) of the Act is a civil remedy provision. Section 558 of the Act and Division 4 of Part 4-1 deal with infringement notices relating to alleged contraventions of civil remedy provisions.

3.44 Records — accuracy

- (1) An employer must ensure that a record that the employer is required to keep under the Act or these Regulations is not false or misleading to the employer's knowledge.

Note Subregulation (1) is a civil remedy provision to which Part 4-1 of the Act applies. Division 4 of Part 4-1 of the Act deals with infringement notices relating to alleged contraventions of civil remedy provisions.

- (2) An employer must correct a record that the employer is required to keep under the Act or these Regulations as soon as the employer becomes aware that it contains an error.

Note Subregulation (2) is a civil remedy provision to which Part 4-1 of the Act applies. Division 4 of Part 4-1 of the Act deals with infringement notices relating to alleged contraventions of civil remedy provisions.

- (3) An employer must ensure that a record that the employer is required:

(a) to keep under the Act or these Regulations; and

(b) to correct in accordance with subregulation (2);

contains a notation of the nature of the corrected error with the correction.

Note Subregulation (3) is a civil remedy provision to which Part 4-1 of the Act applies. Division 4 of Part 4-1 of the Act deals with infringement notices relating to alleged contraventions of civil remedy provisions.

- (4) An employer must not alter a record that the employer is required to keep under the Act or these Regulations except:

(a) in compliance with subregulation (2) or (3); or

(b) to any extent otherwise permitted by the Act or these Regulations.

Note Subregulation (4) is a civil remedy provision to which Part 4-1 applies. Division 4 of Part 4-1 deals with infringement notices relating to alleged contraventions of civil remedy provisions.

- (5) An employer must ensure that a record that the employer is required to keep under the Act or these Regulations is not altered by another person except:

(a) in compliance with subregulation (2) or (3); or

(b) to any extent otherwise permitted by the Act or these Regulations.

Note Subregulation (5) is a civil remedy provision to which Part 4-1 of the Act applies. Division 4 of Part 4-1 of the Act deals with infringement notices relating to alleged contraventions of civil remedy provisions.

- (6) A person must not make use of an entry in an employee record made and kept by an employer for this Subdivision if the person does so knowing that the entry is false or misleading.

Note Subregulation (6) is a civil remedy provision to which Part 4-1 of the Act applies. Division 4 of Part 4-1 of the Act deals with infringement notices relating to alleged contraventions of civil remedy provisions.

24. In summary both WR and FW provisions in relation to leave records:

- (a) require that the employing entity's records in relation to leave must accurately detail the employee's accrual of leave, any leave taken by the employee and the balance of the employee's entitlement to leave from time to time;

- (b) require an employing entity to correct a record that the employer is required to keep as soon as the employer becomes aware that the record contains an error;
- (c) provide that a person must not make use of an entry in any record required to be kept if that person does so knowing that the entry is false or misleading.

Relevant industrial instruments

Record keeping

25. The FWO considered the relevant provisions of the applicable Agreements covering the employees.
26. The investigation disclosed the relevant employees are covered by the *Justice and Community Safety Directorate ACT Ambulance Enterprise Agreement 2011-2013* [2011-2013 Agreement] and predecessor agreements:
- *Department of Justice and Community Safety, ACT Ambulance Service Union Collective Agreement 2007-2010* [2007-2010 Agreement]
 - *Justice and Community Safety ACT Ambulance Service Enterprise Agreement 2010-2011* [2010 -2011 Agreement].
27. Clause 22.1 of the 2007-2010 Agreement states, 'The employee will record the time of commencing and ceasing duty for each day. These records will be provided to the manager / supervisor where the manager / supervisor so requests.'
28. Clause 22.1 of the 2010-2011 Agreement states, 'The ACTAS will keep records relating to the employees' work, including records about attendance and pay, in accordance with the WR Act and the Workplace Relations Regulations.'
29. These clauses are contained in subsequent agreements with appropriate reference to the FW Act and Regulations.

Recovery of overpayment

30. Clause D5 of the *Justice and Community Safety Directorate ACT Ambulance Enterprise Agreement 2011-2013* contains provisions for the recovery of overpayments to employees:

D5 Overpayments

- D5.1 An overpayment is any payment in respect of pay, allowance or leave, whether the overpayment is by accident or otherwise, to which the employee is not entitled.
- D5.2 In the event that an employee has received an overpayment, the Directorate will recover the overpayment in accordance with this clause.

- D5.3 Where an overpayment has occurred, the head of service will advise the employee in writing, as soon as practicable, of the:
- (a) pay period(s) in which the overpayment occurred; and
 - (b) nature of the overpayment; and
 - (c) gross and net components of the overpayment; and
 - (d) process for recovery of the overpayment; and
 - (e) proposed recovery rate.
- D5.4 The head of service and the employee will agree on a reasonable recovery rate having regard for all of the circumstances prior to any recovery being made. Where agreement cannot be reached subclause D5.7 will apply.
- D5.5 Any such agreement may include recovery of the overpayment by the Directorate:
- (a) as a lump sum; or
 - (b) by payroll deduction from pay.
- D5.6 In respect to recovery action it may be agreed with the employee to adjust their leave credits instead of, or in combination with, a cash recovery.
- D5.7 Where the head of service and the employee cannot agree a reasonable recovery rate, the overpayment will be recovered at the rate of up to 10% of the employee's gross fortnightly pay, or such other rate determined by the head of service having regard for all of the circumstances.
- D5.8 Despite subclauses D5.4 and D5.7, the recovery period will not usually exceed twenty six pay periods.
- D5.9 Any outstanding money owing to the Directorate when an employee ceases employment is to be recovered by deduction from any final entitlements payable to the employee. If a debt still exists further debt recovery action is to be taken unless the head of service:
- (a) directs the recovery be waived, in part or in full, based on evidence provided by the employee of exceptional circumstance or that such recovery would cause undue hardship; or
 - (b) determines that an overpayment is not recoverable.
- D5.10 Where the head of service determines that an overpayment is not recoverable, the provisions of the Directorate's Financial Instructions, relating to the waiver and write off of monies, will apply.

Appeal

31. Sections I & J of the 2011-2013 Agreement establishes internal review and appeal procedures for 'employees to seek a review of management actions that affect them.'
32. Clause G2 of the 2011-2013 Agreement provides Dispute Avoidance /Settlement Procedures.

Investigative process - General

33. In the course of its investigation, the FWO has exercised several of its statutory functions, including those set out in subsections 682(1)(a), 1(b) and 1(c) FW Act.
34. The work of the FWO is performed through Fair Work Inspectors [FWIs] whose role includes the obligation to inquire into workplace relations compliance both upon receiving complaints and upon its own initiative. The FWO's compliance policies are articulated

publicly in Guidance Notes, most notably Guidance Note 1, FWO Litigation Policy [GN1], and Guidance Note 8, Investigative Process [GN8] which outlines the general approach to investigations.

35. On 3 December 2012, Mr Steve Ronson, Executive Director - Dispute Resolution and Compliance – Fair Work Ombudsman, wrote to the ACT Emergency Services Commissioner, Mr Mark Crosswell, formally informing him that FWO had commenced an investigation into the allegations raised by the TWU.
36. FWIs met with TWU representatives on 15 November 2012, 27 November 2012 and 2 April 2013 as well as exchanged phone and email communication during the course of the investigation.
37. FWIs met with ACT Government and employing entity representatives on 21 November 2012, 17 December 2012, 19 March 2013 and 22 March 2013 as well as exchanged phone and email communication during the course of the investigation.
38. In accordance with section 712 of the FW Act, a Notice to Produce was served on the employing entity on 3 December 2012 requiring the production of certain leave and other records for selected employees.
39. FWIs interviewed eleven (11) ACTAS employees. Individual meetings with employees were conducted on 19 November 2012, 14 December 2012, 6 February 2013, 15 February 2013 and 19 March 2013.
40. FWIs responded to telephone enquiries from ACTAS employees regarding the investigation.
41. FWIs examined the records provided by the employing entity.
42. FWIs assessed individual employee records.
43. On 10 July 2013 A Statement of Preliminary Findings in relation to the FWO investigation of ACT Government Entities involved with employment and payment of ACT Ambulance Service Employees was provided by the FWO to the employing entity and the TWU for comment.
44. Responses to the preliminary findings were received from the employing entity on 6 August 2013 and from the TWU on 5 August 2013.
45. The employing entity's and the TWU's response to the preliminary findings were exchanged between parties for comment with final submissions being received from each party by 10 September 2013.

Investigative process - Evidence gathered

46. In response to a Notice To Produce the employing entity provided employment records for seventeen (17) ACTAS employees:
47. The employment records provided by the employing entity included for each employee:
- (a) A letter to the employee from Shared Services, HR Services, 12 November 2012. The letter informed the employee of the result of the Payroll and Personnel Services [PPS] Shared Services' leave audit and the alleged amount of overpayment found for the employee and repayment options;
 - (b) Excel and other spread sheets detailing the PPS Shared Services leave audit;
 - (c) Copies of data taken from the employing entity's HRMS programs detailing leave taken and entered into the HRMS;
 - (d) Copies of relevant pages from Deployment Books;
 - (e) Relevant rosters;
 - (f) Supporting documentation for leave applications;
 - (g) Application for Leave Forms;
 - (h) Internal communication relevant to the leave audit;
 - (i) Payslips in electronic form for selected employees.
48. The employing entity provided copies of email correspondence to 'all employees' regarding leave audits.
49. The employing entity provided a copy of the report of an audit completed in May 2012 by an external auditor Protiviti Risk and Business Consulting (the Protiviti Report) titled *ACT Justice and Community Safety Directorate ACT Ambulance Service Leave Records Audit*.
50. The employing entity provided a written summary of a report titled *ACTAS Leave Audit / Overpayment Summary as at April 2013*.
51. Employees provided evidence about their involvement in the leave audit and their understanding of the relevant issues.
52. The employing entity witnesses involved in this investigation were representatives from JACS People and Workplace Strategy, Shared Services, HR Services and ACTAS.
53. The TWU provided evidence to the investigation.

Investigative Process - FWO's examination of employing entity's records

54. The employing entity provided detailed pay and leave records for 17 employees. These employees were selected to cover employees who had contacted FWO to discuss the

employing entity's correspondence requiring rectification of overpayments. The records included excel spread sheets generated by the Payroll and Personnel Services [PPS] audit.

55. FWIs inspected the records provided by the employing entity and made the following observations:

- (a) Pay slips are issued and meet the legislative requirements;
- (b) Some written leave applications and supporting documentation have been maintained for leave requests prior to the introduction of electronic leave applications;
- (c) There were few written leave applications provided for annual leave requests;
- (d) Leave applications were usually date stamped on receipt and at processing by payroll;
- (e) There were instances of a significant delay in PPS processing leave;
- (f) Extracts from deployment books were provided;
- (g) Internal communications regarding leave audit for individual employees were provided;
- (h) Detailed results of the PPS audit were provided for each employee;
- (i) The accrual and deduction of leave for the employees is a complex process complicated by the irregular and complicated leave provisions in the 2007-2010 Agreement;
- (j) The risk of error occurring in the ongoing calculation of correct leave balances is increased because of the multiple handling of leave requests through ACTAS to KRONOS⁷ from KRONOS through PPS⁸ to CHRIS21⁹;
- (k) FWIs were unable, without employing entity or employee assistance, to verify whether the employing entity's records of leave taken and accrued are correct.

56. FWIs noted that, except for the periods April and May 2010 and October 2011 to September 2012, pay slips recorded leave balances even though leave balances may not have been correct.

⁷ KRONOS is a HR management system for managing time, attendance and absence.

⁸ Payroll and Personnel Services

⁹ Comprehensive Human Resource Integrated Solution is a Human Resource Management and Payroll software system used in the processing of payroll.

Investigative Process – Key Questions

Key question 1: Were there deficiencies in the employing entity's record keeping?

57. The investigation disclosed:

- (a) Prior to January 2007 applications for leave were processed through a manual system. Paper leave forms were completed by ACTAS employees and signed off by local ACTAS managers. ACTAS managers forwarded leave reports to Shared Services which was responsible for processing leave applications and entering accurate data into the HRMS known as Chris 21;
- (b) There was agreement between the employing entity and TWU that leave balances expressed in employing entity records and pay slips were correct as at January 2007;
- (c) The 2007-2010 Agreement was approved on 24 October 2008.
- (d) The 2007-2010 Agreement's provisions for the deduction of leave from entitlements, accrued prior to 24 October 2008, varied from the provisions in the previous *Transport Workers (ACT Ambulance Officers) Award 2001* and the later 2010-2011 and 2011-2013 Agreements.
- (e) For employees working a 10/14 roster the 2007-2010 Agreement provided at Clause 146.3 that deductions from Annual or Accrued Day Off leave, accrued prior to 24 October 2008, would occur at the rate of:
 - 1 Day = 9 hours 26 minutes
 - 1 Night = 13 hours 26 minutes
- (f) The *Transport Workers (ACT Ambulance Officers) Award 2001* and the later 2010-2011 and 2011-2013 Agreements provided that deductions from Annual or Accrued Day Off leave, accrued prior to 24 October 2008, would occur at the rate of:
 - 1 Day = 8 hours 52 minutes
 - 1 Night = 12 hours 52 minutes
- (g) The 2007-2010 Agreement and subsequent Agreements provided that Annual Leave accrued after 24 October 2008 would deduct on an hour for hour basis i.e. for each hour of leave taken an hour would be deducted from accruals.
- (h) To deal with the anomaly created by the 2007 – 2010 Agreement the employing entity introduced a system to account for annual leave deductions whereby:
 - annual leave balances current at 24 October 2008 were frozen and given the name **ANNA leave**;

- annual leave accrued after 24 October 2008 was given the name **Annual Leave**;
 - approved annual leave taken by Ambulance staff after 24 October 2008 was deducted from ANNA leave balances until ANNA leave was exhausted. Once ANNA leave was exhausted Annual Leave balances commenced drawing down;
- (i) Between October 2008 and mid 2010 the accruals recorded on pay slips relating to the employees working a 10/14 roster were incorrect. Due to an employing entity system error in HRMS CHRIS21 ANNA leave balances recorded on pay slips did not reduce when leave was processed.¹⁰ It follows that the ANNA leave accruals on pay slips were incorrect and inflated during this period;¹¹
- (j) Personal leave balances were not affected by this system error;¹²
- (k) 11 June 2009 - KRONOS was implemented by ACTAS to record attendance and absence by ACTAS staff;¹³
- (l) 28 August 2009 - JACS People and Workplace Strategy informed all ACTAS Intensive Care Paramedic staff and the TWU about the CHRIS21 system issue and that ANNA leave would need to be deleted and reprocessed;¹⁴
- (m) 15 December 2009 - ACTAS staff were advised that the CHRIS21 issue was resolved, that PPS staff were processing outstanding leave applications and that this would affect leave balances on pay slips;¹⁵
- (n) 22 January 2010 - following concerns raised by staff and the TWU ACTAS staff were advised by staff memo that the updating of ANNA leave had been suspended and that leave balances on pay slips may not be correct;¹⁶
- (o) Pay slips evidencing significant delays in the processing of annual and personal leave applications.

[See Appendix 1 Case Note 1 for an illustrative example](#)

¹⁰ JACS People and Workplace Strategy email to FWIs Tony Mileto, Sarah Morris 29 November 2012 – Point 3 in annexure to the email.

¹¹ Protiviti Risk & Business Consulting, *ACT Justice & Community Safety Directorate ACT Ambulance Service Leave Records Audit* (The Protiviti Report) at 1.1; May 2012

¹² Email from JACS People and Workplace Strategy to FWI Phil Marsh 18 June 2013

¹³ *ibid*

¹⁴ *ibid*

¹⁵ *ibid*

¹⁶ *ibid*

- (p) In 2010 Payroll and Personnel Services [PPS] commenced its first leave audit. A TWU member was released from the ACTAS roster to assist the audit. This leave audit did not include checks against ACTAS deployment books or rosters;¹⁷
- (q) During this PPS leave audit PPS suspended the processing of leave for some ACTAS staff which resulted in a backlog of leave applications which needed processing.¹⁸ The processing of leave applications was not re-commenced for some staff following the audit which also contributed to a backlog of leave applications that required processing;¹⁹
- [See Appendix 1 - Case Note 2 for an illustrative example](#)
- (r) On 28 May 2010 JACS People and Workplace Strategy wrote to employees providing information about this first PPS audit. This email to employee indicates that employees had been provided with personal audit results and provided opportunity to question the results or provide further information.²⁰
- (s) 27 July 2011 - staff were informed via memo that in regards to KRONOS access leave balances were not accurate unless the individual's leave audit had been finalised;
- (t) In mid-2011 a second more comprehensive leave audit was commenced by PPS. This process involved the establishment of a full leave record for each individual based on data sourced from deployment books, rosters, CHRIS21 data, leave registers, leave forms and Kronos Records.²¹ The second PPS audit:
- (i) Covered 164 staff for the period 1 January 2008 – 6 June 2011;
 - (ii) Provided preliminary outcomes to staff with opportunities to engage with the employing entity about the result, to dispute findings and provide additional evidence;
 - (iii) Finalised 78 staff records – leave adjustments made but no overpayments detected;
 - (iv) Resulted in 65 staff members receiving written advice from PPS advising that as a result of this audit overpayments had been identified.²²
- (u) On 15 September 2011 leave balances were removed from pay slips;

¹⁷ JACS People and Workplace Strategy email to FWIs Tony Mileto, Sarah Morris 29 November 2012 – Point 4 in annexure to that email.

¹⁸ *ibid*

¹⁹ The Protiviti Report at 1.1

²⁰ JACS People and Workplace Strategy email to ESA, ACTAS, All Staff 28 May 2010

²¹ JACS People and Workplace Strategy email to FWIs Tony Mileto, Sarah Morris 29 November 2012 – Point 5 in annexure to that email.

²² JACS People and Workplace Strategy letter to Steve Ronson, Executive Director Dispute Resolution and Compliance, 10 April 2013

- (v) Following the PPS audit the TWU lobbied the employing entity for an independent audit of leave records. The employing entity engaged Protiviti Risk & Business Consulting to conduct the independent audit. Agreement was reached with the TWU that if Protiviti detected an error rate greater than 2% an external audit of all employees' records would be conducted. The Protiviti audit:
- (i) Commenced on 31 August 2011;
 - (ii) Assessed the accuracy of the employing entity's recalculation of annual and personal leave records taken from a sample of 10% of active ACTAS emergency staff over the period 1 January 2008 – 6 June 2011;²³
 - (iii) Did not assess the accuracy of leave records and other records including staff rosters and deployment books;²⁴
 - (iv) Did not recalculate leave entitlements accrued for ACTAS staff;²⁵
 - (v) Commented on the poor record keeping practices of the employing entity in relation to leave management documentation;²⁶
 - (vi) Assessed the PPS audit of annual leave taken to contain an error rate of 0.54%;
 - (vii) Assessed the PPS audit of personal leave taken to contain an error rate of 0.18%;²⁷ and
 - (viii) Was completed in May 2012.
- (w) 14 June 2012 - ACTAS staff were informed of the completion of the leave audit and were advised of PPS staff availability to answer queries;
- (x) 1 July 2012 - an automated leave application and approval process was activated in KRONOS;
- (y) On 16 August 2012 leave balances returned to pay slips.

Key question 1: Findings

58. On the evidence gathered the FWO has determined the employing entity's record keeping was deficient because its employees records, during the period 24 October 2008 – 16 August 2012, did not accurately record leave taken by employees and did not accurately record the balance of the employee's entitlement to leave from time to time.

²³ The Protiviti Report at 2.3

²⁴ *ibid*

²⁵ *ibid*

²⁶ *op.cit.* at 2.5 and 4

²⁷ *op.cit.* at 1.2

The ACT Government employing entity failed to comply with statutory record keeping procedures from 24 October 2008 until 16 August 2012.

59. Prior to 1 July 2009, the ACT Government employing entity has contravened

(a) WR regulations 19.12 and 19.16

60. In the period after 1 July 2009 the ACT Government employing entity has contravened:

(a) Section 535 of the FW Act

(b) FW Regulations 3.31, 3.36 and 3.44

61. The investigation failed to disclose any evidence the record keeping deficiency was deliberate.

62. The investigation failed to disclose any intention by the employing entity to deny employee entitlements through a system of unsatisfactory record keeping.

Key question 2: When did the employing entity become aware of and notify staff of those deficiencies?

Key question 2: Findings

63. The commencement of the 2007-2010 Agreement on 24 October 2008 was, on balance, the trigger for the decline of the employing entity's record keeping standards.

64. On 28 August 2009 the employing entity notified employees that there was a problem with CHRIS21 correctly accounting ANNA leave. The employing entity knew (or should have known) by 28 August 2009 that at least ANNA leave balances recorded on pay slips were incorrect.

Key question 3: Was appropriate action taken by the employing entity to remedy identified deficiencies?

65. The FWO notes the PPS and Protiviti audits involved a review of records available to identify employee attendance at work, leave taken and unexplained absences.

66. A period of more than two years passed from 28 August 2009, when the employing entity first notified employees of a problem with ANNA leave deductions and leave balances, until the employing entity suspended the publication of leave balances on employee pay slips on 15 September 2011.

67. The employing entity provided evidence it has responded to ongoing individual concerns and disputes about leave balances and requirements to repay overpayments.

Key question 3: Findings

68. The decision of the employing entity to continue publishing leave balances on pay slips knowing that there was a very high likelihood that the balances were incorrect and inflated until 15 September 2011 was unsafe and potentially in breach of WR Regulations 19.12, 19.16 and FW Regulations 3.36 and 3.44.
69. The employing entity took review and audit action to identify and remedy HRMS problems but this action failed to take steps to ensure that employees would not rely on or exploit inaccurate, published leave balances.

Key question 4: Did any act or omission by the employing entity lead to overpayment of employee entitlements?

70. Employees interviewed by FWO confirmed that there were significant delays (months) in leave being processed and deducted from leave balances. The employing entity admits to these delays²⁸.
71. Evidence provided by employees during interviews with FWIs confirmed individual employee's confusion about leave processes, entitlements and accrued leave balances. Employees interviewed stated that they did rely on leave balances printed on pay slips when applying for leave.
72. The employing entity's audits confirmed the employing entity could not rely on its leave application, approval and accounting processes to determine with sufficient precision whether an employee was either working for the employing entity or on leave²⁹. The PPS audit was required to examine secondary material such as rosters and deployment books to determine the attendance of its workforce. The employing entity further required employees to examine their own memories and records to determine their whereabouts for events months and years past.
73. There is evidence that some employees applied for and took approved leave relying on advice and information provided by the employing entity only later to be told that the approved leave was without entitlement and that they would have to repay the resultant overpayment.

[See Appendix 1 - Case Note 3 for an illustrative example](#)

74. The FWO expects a well-resourced Government employer to have systems in place that ensure it has the capacity to accept leave applications from employees, accurately

²⁸ Email from JACS People and Workplace Strategy to FWI Phil Marsh 18 June 2013

²⁹ Chronology attached to Email from JACS People and Workplace Strategy to FWI Phil Marsh 18 June 2013

assess whether the employee has the entitlement to take paid leave and to approve that leave within a current pay period.

75. The FWO expects all employers will closely monitor employee entitlements, guard against over spending so that any overpayments are captured and rectified quickly and not allow individual overspend of accrued entitlements to continue unchecked for years incurring significant debt.

Key question 4: Findings

76. The FWO has determined the employing entity's acts and omissions in response to its HRMS failures identified by 28 August 2009 most likely led to an overpayment of some employee entitlements.

77. The employing entity communicated with all staff about record keeping deficiencies and action to remedy on 28 August 2009, 15 December 2009, 28 May 2010, 27 July 2011, 30 August 2011, 9 September 2011 and 14 June 2012.

78. The employing entity notified employees on 15 December 2009, 22 January 2010 and 27 July 2011 that leave balances recorded on pay slips may not be accurate.

79. The employing entity continued to publish erroneous leave balances on pay slips until 15 September 2011.

80. The employing entity's failure to correct its record of 'the balance employee's entitlement to that leave from time to time'³⁰ as soon as it became aware of error in the record's accuracy contravened WR Regulation 19.16 and FW Regulation 3.44.

81. The employing entity engaged with individual staff about the PPS audit. Copies of preliminary findings were provided to staff for comment and correction. PPS staff were made available and met with individual employees as requested.

Key question 5: Is the employing entity entitled to rely on the *Justice and Community Safety Directorate ACT Ambulance Enterprise Agreement 2011-2013* as the vehicle for recovery of overpayment of leave entitlements?

82. Under subsection 324(1)(b) FW Act an employer may deduct an amount from an employee's pay if, inter alia, the deduction is authorised by the employee in accordance with an enterprise agreement.

83. Section 324 is further qualified by section 326. Subsection 326(1) provides that a term of an enterprise agreement permitting an employer to make a deduction from an amount

³⁰ WR Regulation 19.12, FW Regulation 3.36

payable to the employee or requiring an employee to make a payment to the employer has no effect if the payment is directly or indirectly for the benefit of the employer and is unreasonable in the circumstances.

84. It is FWO's view that:

- (a) Subsection 324(1)(b) FW Act (deduction authorised by the employee in accordance with an enterprise agreement) requires the employee's written authority for every overpayment requiring a deduction, and the fact that the enterprise agreement applies to the employee's employment does not constitute an "authority" for the purposes of the subsection;
- (b) A written authorisation by an employee to deduct an amount from the employee's pay must specify the amount of the deduction and may be withdrawn in writing by the employee at any time³¹;
- (c) There must be genuine agreement from the employee to have overpayments deducted from their pay and the authorisation must not have been given as the result of coercion or duress;
- (d) A deduction to recover an overpayment may be principally for the employee's benefit in certain circumstances as it may avoid the employee being legally liable to pay a debt that could be recovered, in a lump sum, through Court action;
- (e) A term in an enterprise agreement will have no effect if it permits a deduction that is, directly or indirectly, for the benefit of the employer and is unreasonable in the circumstances.³²

85. The *Justice and Community Safety Directorate ACT Ambulance Enterprise Agreement 2011-2013* [the Agreement] was approved on 24 October 2012.

86. Clause D5 of the Agreement covers overpayments. The Agreement defines an overpayment at subclause D5.1, 'An overpayment is any payment in respect of pay, allowance or leave, whether the overpayment is by accident or otherwise, to which the employee is not entitled.'

87. Subclause D5.2 states that the Directorate will recover the overpayment in accordance with this clause. It is presumed that the reference to this clause is a reference to clause D5 (read in total) of the Agreement.

³¹ Ss 324(2)(b) FW Act

³² Ss 326(1) FW Act

88. On 12 November 2012 Shared Services, HR Services wrote to affected employees, informed them of an overpayment and invited employees to make an 'election' as to the method of recovery the employee chose for repayment. Options included:

- recovery sourced from back payments due to employees following the introduction of the Agreement;
- offsetting against AL or LSL credits;³³
- fortnightly deductions;³⁴
- payment in full;³⁵ or
- a combination of the above methods.

89. Shared Services, HR Services informed employees, '(i)n accordance with clause D5.8 of (the Agreement) any overpayments linked to pay, allowances or leave **must** (emphasis added) be recovered by the Directorate.' Subclause D5.8 does not state that overpayments must be recovered by the Directorate.

90. Subclause D5.8 states, '(d)espite subclauses D5.4 and D5.7 the recovery period will not usually exceed twenty six pay periods.'

91. The Agreement states at D5.4, '(t)he head of service and the employee will agree on a reasonable recovery rate having regard to all of the circumstances prior to any recovery being made. Where agreement cannot be reached subclause D5.7 will apply.'

92. The Agreement states at D5.7, '(w)here the head of service and the employee cannot agree a reasonable recovery rate, the overpayment will be recovered at the rate of up to 10% of the employee's gross fortnightly pay, or such other rate determined by the head of service having regard for all of the circumstances.'

93. The FWO's view is that the Agreement authorises recovery of overpayments following a three step process which involves:

- Advising the employee of the overpayment in detail. The details which must be provided by the employing entity include the pay period(s) in which the

³³ Subclause D5.6 *Justice and Community Safety Directorate ACT Ambulance Enterprise Agreement 2011-2013*

³⁴ Op.Cit at D5.5

³⁵ *ibid*

overpayment occurred³⁶ and the gross and net components of the overpayment;³⁷³⁸

- Agreement being reached between the employee and the head of service about a reasonable recovery rate having regard for all the circumstances;³⁹
- Agreement being reached between the employee and the head of service about the method of recovery.⁴⁰

94. The FWO's view is that the employing entity has not complied with Clause D5 of the Agreement for the following reasons:

(a) Shared Services, HR Services letter of November 2012 to the affected employees does not adequately detail when the overpayments occurred;

(b) The Agreement provides for consultation and negotiation about the recovery of overpayments. The employer has calculated a definitive overpayment to individual employees and expects that amount to be repaid. The FWO does not have evidence that the head of service has engaged with individual employees to reach agreement about 'a **reasonable recovery rate** having regard for all of the circumstances prior to recovery being made'.⁴¹

(c) The FWO considers that key factors to be considered by the employee and head of service when reaching agreement about a reasonable recovery rate include:

- any employer involvement in overpayments being made to the employee;
- any employee involvement in causing overpayments to be made;
- any evidence of employer negligence or mismanagement in causing overpayments being made;
- any evidence of exploitation by the employee of the employer's erroneous records; and
- the period of time that had elapsed between the overpayment occurring and the employer detecting and notifying that overpayment to the employee.

³⁶ Op. Cit at D5.3(a)

³⁷ Op. Cit at D5.3(c)

³⁸ The FWO acknowledges that provision of gross and net components of the overpayments cannot occur where the overpayments have occurred in financial years other than the current financial year.

³⁹ Op.Cit at D5.4

⁴⁰ Op.Cit at D5.5 and D5.6

⁴¹ Op Cit at D5.4

95. While subclause D5.7 provides an option for recovery by the head of service if agreement on a reasonable recovery rate is not reached the Agreement provides further opportunities for the employee to access Internal Review Procedures.⁴²

Key question 5: Findings

96. The employing entity may rely on the Agreement to recover overpayments where agreement between the employing entity and employee to any overpayment plan is recorded in writing, signed by the employing entity and employee and the amount of any payment by instalments for large overpayments is reasonable.
97. If the Agreement is to be relied upon in support of the deduction of the overpayment there would need to be sufficient and reliable evidence of leave taken.
98. The operation of subclause D5.7 is dependent on the express authority of the employee for deductions to occur, pursuant to subsection 324(1)(b) of the FW Act.
99. The employing entity's proposed actions⁴³ to recover overpayments using clause D5 of the Agreement do not comply with the requirements to seek agreement with individual employees on a reasonable rate of recovery, to have regard for all the circumstances and to otherwise follow the procedures prescribed by clause D5 of the Agreement.
100. The FWO's view is that there is no express provision in the *Financial Management Act 1996 (ACT)* or any other law of the ACT that authorises the unilateral deduction of an overpayment to an employee.
101. The *Financial Management Act 1996 (ACT)* and the Agreement contemplate waiver and write off of debts in certain circumstances. These options may be available for ACTAS employees whose leave overpayment was directly due to the failure of the employing entity to keep accurate leave records.

⁴² Op.Cit at Section I

⁴³ Shared Services, HR Services letter to employees 12 November 2012

What the Justice and Community Services Directorate might do to reduce further complaints?

102. Complaints will be avoided if the employing entity maintains current and accurate employee records and ensures those records are available to its employees.
103. The FW Act, *Fair Work Regulations 2009* and the *Justice and Community Safety Directorate ACT Ambulance Enterprise Agreement 2011-2013* provide the employing entity with a compliance framework for maintaining employee records. The FWO expects the employing entity will review its management systems, policies and practices to ensure that employee records are accurate, compliant with the law, accessible to employees and comprehensible.
104. The employing entity may need to seek advice with regard to and conduct a review of its current systems and practices used for recording the attendance and absence of employees.
105. The employing entity and ACT Shared Services may need to review its current systems and practices for used for servicing employee enquiries regarding attendance, absence, leave and employee records to ensure that enquiries are responded to promptly and accurately and so avoid enquiries escalating to complaint.
106. Further complaints will be avoided if the employing entity accurately monitors employee leave entitlements and the use of those entitlements by employees. Systems should be in place which ensures managers have accurate and current information available to be able to deal with any request or issue regarding leave promptly and on a case by case basis.

Michael Campbell
Group Manager, Operations

November 2013

Appendix 1 Case Notes

Case Note 1

Pay slips issued by the employing entity include the following:

** The leave balances reflect leave processed by Personnel, and do not include leave where the start date is in the future.*

Employee A's pay slips indicate there was significant delay in processing leave.

Employee A's pay slip dated 30 September 2010 records current leave balances. Under the heading '**LEAVE PROCESSED THIS PAY**' the pay slip records two entries for personal leave taken in February and March 2010.

Pay slips issued to Employee A on 28 October 2010, 20 January 2011 and 16 August 2012 also demonstrate significant time delay in leave being processed and deducted from available leave balances.

It follows if Employee A took leave in March 2010 and that leave was not processed until September 2010, the leave balances recorded on pay slips were incorrect for the intervening period between the taking of leave and the processing of leave

Case Note 2

Employee B applied for annual leave for the period 16 – 24 April 2009. The employee submitted the application on 4 December 2008 and the application was given support by a local manager on the same day. The application form was then submitted to management for approval and processing.

Employee B, presuming the leave had been approved, took annual leave from 16 – 24 April 2009.

The application for leave was formally approved on 14 September 2009.

Case Note 3

The TWU informed the FWO that there were ACTAS employees who had taken a combination of leave surrounding child birth. The TWU alleged that the employees had consulted the employing entity before taking extended leave to ascertain the quantum of paid leave available. The employees relied and acted on the employing entity's advice and took extended parental / annual / long service leave.

The TWU alleged that following the PPS audit each of the employees was found to have exceeded entitlements and that each was notified of the requirement to repay the employing entity for the significant overpayments.

The employing entity told the FWO that these cases would be further reviewed. The employing entity decided that if the employees were found have relied on erroneous information provided by the employing entity then the employees would be deemed to have been on leave and the overpayment debt nullified.