



Australian Government

Fair Work
OMBUDSMAN

Fair Work Ombudsman

Regulator Performance Framework Report

2015-16



Contents

[Executive summary](#) 3

[Introduction](#) 4

[Evidence](#) 5

KP1

[Measure 1.1](#) 7

[Measure 1.2](#) 8

KPI 2

[Measure 2.1](#) 9

[Measure 2.2](#) 10

KPI 3

[Measure 3.1](#) 11

[Measure 3.2](#) 13

KPI 4

[Measure 4.1](#) 13

[Measure 4.2](#) 15

KPI 5

[Measure 5.1](#) 16

[Measure 5.2](#) 16

KPI 6

[Measures 6.1](#) 17

[Measure 6.2](#) 18

[Overall assessment](#) 19

[Opportunities for Improvement](#) 20

[Appendix](#) 21

[Case study 1](#) 22

[Case study 2](#) 23

[Case study 3](#) 24

[Case study 4](#) 25

[Case study 5](#) 26

[Case study 6](#) 27

[Case study 7](#) 28

Executive summary

The Fair Work Ombudsman (FWO) has conducted its first assessment against the Regulator Performance Framework for the period 1 July 2015 to 30 June 2016. Throughout 2015-16, the FWO continued to listen closely to regulated entities – that is employers, employees and the groups that represent them – to identify ways to decrease the burden of interacting with the agency.

The FWO is achieving a balance between assisting customers to get the basics right and resolve problems early in their workplaces, and bringing about sustainable change in non-compliant industries, regions and labour markets. We will continue to support small business to understand and apply workplace laws and focus on vulnerable groups, including migrant workers and young workers.

With our focus on vulnerable workers and migrant small business operators, the FWO is engaging with a broader range of stakeholders than ever before; consultation with community groups is now a fundamental part of the way we conduct our business. We recognise that vulnerable workers and the businesses that employ them have particular needs and face greater barriers to achieving compliance. For these individuals and businesses, getting the 'basics' right is often difficult and the burden of regulatory intervention can be acute.

While we are making progress in these areas, we continue to look for ways to improve how we measure our impact. This includes better measurement of our efforts to reduce our regulatory burden; publishing more information about our activities and strategies; and investing in technology to streamline processes and improve our service offerings.

Introduction

The Australian Government has developed the Regulator Performance Framework (the Framework) to measure the performance of regulators. The Framework applies to Commonwealth regulators from 1 July 2015.

The objective of the Framework is to encourage regulators to undertake their functions with the minimum impact necessary to achieve regulatory objectives, as well as to influence positive, ongoing and lasting change.

The Framework establishes a common set of six outcomes-based key performance indicators (KPIs) that will allow for the comprehensive assessment of regulator performance and their interactions with regulated entities, specifically:

1. Regulators do not unnecessarily impede the efficient operation of regulated entities.
2. Communication with regulated entities is clear, targeted and effective.
3. Actions undertaken by regulators are proportionate to the regulatory risk being managed.
4. Compliance and monitoring approaches are streamlined and coordinated.
5. Regulators are open and transparent in their dealings with regulated entities.
6. Regulators actively contribute to the continuous improvement of regulatory frameworks.

The Fair Work Ombudsman (FWO) supports the Framework, as it allows the agency to report objectively on the outcomes of its efforts to administer the *Fair Work Act 2009*.

Self-assessment under the Framework will enhance accountability and transparency in how the FWO achieves its regulatory objectives, and contribute to the Australian Government's deregulation agenda, which aims to reduce the cost of unnecessary red tape and inefficient regulation imposed on individuals, business and the community.

Evidence

The agency has collected a combination of quantitative and qualitative evidence from a range of sources to demonstrate and assess its performance under the KPIs. The evidence has been drawn from existing internal reporting and data collection processes. This includes:

- performance data from key service offerings
- examples and case studies of stakeholder engagement, such as inter-agency initiatives, memoranda of understanding (MoU) and stakeholder forums
- explanatory materials about FWO processes and procedures, and
- published guidance that assists regulated entities comply with regulation.

We have adopted a descriptive approach to the self-assessment report, which allows causal links to be drawn between the evidence and the outcomes achieved in relation to the performance measures.

In future years, the self-assessment report will also provide feedback on the FWO's progress against continuous improvement activities that have been identified in earlier reports.

FWO Regulatory Performance Framework Summary Table

The summary table below provides an indication of the extent to which the FWO is achieving the KPI measures.

KPI	Measure	Indicator
KPI 1: Regulators do not unnecessarily impede the efficient operation of regulated entities.	1.1 The FWO uses appropriate methods to manage requests for assistance to reduce the burden on regulated entities	Achieving KPI measure
	1.2 The FWO engages with regulated entities and peak bodies to understand and inform the design and execution of our work	Area for improvement
KPI 2: Communication with regulated entities is clear, targeted and effective.	2.1 The FWO provides information and advice that is timely, useful and reliable to make it easier for regulated entities to comply with their obligations	Achieving KPI measure
	2.2 The FWO consults with regulated entities prior to implementing key strategies	Area for improvement
KPI 3: Actions undertaken by regulators are proportionate to the regulatory risk being managed.	3.1 The FWO focuses its compliance and enforcement efforts proportionate to the seriousness of the matter	Achieving KPI measure
	3.2 The FWO applies a risk-based approach to its compliance and monitoring activities	Achieving KPI measure
KPI 4: Compliance and monitoring approaches are streamlined and coordinated.	4.1 The FWO takes a coordinated approach to delivering its services	Achieving KPI measure
	4.2 The FWO works collaboratively with other regulators and industry bodies to minimise the burden of interacting with government bodies	Achieving KPI measure
KPI 5: Regulators are open and transparent in their dealings with regulated entities.	5.1 The FWO publishes key performance results in a timely manner to ensure accountability and transparency	Achieving KPI measure
	5.2 The FWO publishes key strategies and acts on feedback regarding the effectiveness of how it operates	Area for improvement
KPI 6: Regulators actively contribute to the continuous improvement of regulatory frameworks.	6.1 The FWO makes it easy for stakeholders and regulated entities to contribute to the efficient operation of the FWO	Area for improvement
	6.2 The FWO shares information, intelligence and feedback with policy departments for the improvement of the regulatory framework	Achieving KPI measure

KPI 1 – Regulators do not unnecessarily impede the efficient operation of regulated entities

Measure 1.1 – The FWO uses appropriate methods to manage requests for assistance to reduce the burden on regulated entities.

The FWO is aware of the burden that unnecessary red tape can impose on individuals, businesses and the community, and the potential impact this has on productivity. The agency is continuously working to streamline its processes and implement changes to make it easier for regulated entities to comply with workplace laws.

A key priority outlined in the FWO 2015-16 Corporate Plan is to encourage and empower employers and employees to resolve disputes within their workplace, recognising that workplace disputes can potentially lead to both financial and non-financial costs for regulated entities, including lost productivity and reputational damage.

Activities	Achievements
The FWO provides information and advice in a timely manner to enable regulated entities to resolve workplace disputes efficiently, reducing the potential for the dispute to turn into a formal complaint.	<ul style="list-style-type: none"> • 15.3 million visits to fairwork.gov.au • 47 605 My account enquiries answered • More than 5 million calculations carried out on the Pay and Conditions Tool (PACT) • 18 220 views of online learning modules • 2.8 million fact sheet views • 345 637 template downloads • 13 991 employer newsletter subscribers
The FWO provides an 'early intervention' service to assist in the resolution of workplace issues without formal investigation, saving all parties time and money.	<ul style="list-style-type: none"> • 10 256 early intervention activities were undertaken, resulting in \$4.4 million in recoveries
The FWO uses mediation so parties to a dispute can reach a mutually agreeable solution and, where possible, preserve the employment relationship.	<ul style="list-style-type: none"> • 31 per cent of formal disputes were resolved via mediation in 2015-16
The FWO conducts proactive compliance and education campaigns to assist regulated entities comply with workplace laws.	<ul style="list-style-type: none"> • 4539 proactive compliance and education audits were undertaken

For a summary of all customer interactions refer to the [2015-16 Fair Work Ombudsman Annual Report](#) (pp. 2-3). The Annual Report also presents the annual performance statement and summary of key outcomes (pp. 14-28).

Case study

The following case study demonstrates how the FWO has achieved this measure (see Appendix):

Case study	1	2	3	4	5	6	7
Measure 1.1	✓						

Measure 1.2 – The FWO engages with regulated entities and peak bodies to understand and inform the design and execution of our work.

Stakeholder engagements represent an ongoing commitment by the FWO to collaborate and exchange information with regulated entities and peak bodies, in order to promote and achieve workplace compliance, improve the agency's regulatory function and improve the regulatory framework. Stakeholder consultations enable the FWO to gain insight into:

- the agency's operating environment
- the effectiveness of the agency's interventions, products and services
- existing or emerging issues that affect regulated entities and particular industries or groups
- the compliance costs and unintended consequences of administering, monitoring and enforcing regulation.

Stakeholder Consultation

The FWO meets with key industry stakeholders (employer associations and unions) to share information about the agency's priorities and seek feedback. In 2015-16, the FWO collaborated with a range of stakeholders across government, industry and the not-for-profit sectors. This included, but was not limited to the following organisations:

- Australian Chamber of Commerce and Industry
- Australian Council of Trade Unions
- Australian Industry Group
- Australian Research Council
- Community Migrant Resource Centre
- Cultural Perspectives Group
- Franchise Council of Australia
- Council of Small Business Australia
- State and Federal Small Business Commissioners

Co-Design

Another way the agency engages with stakeholders in order to inform the design and execution of its work is to consult extensively in the development of information and advice for the website. The FWO's online tools and the agency's position on legislative matters are routinely tested with stakeholders and user groups to ensure they account for the needs of our customers and stakeholders.

For example, when developing the 'Anonymous tip off' form for fairwork.gov.au the FWO user-tested the form with the help of an external provider. Twelve employers and employees were observed using the form. The user feedback informed changes to the way the form was presented to manage customer expectations around how the FWO would treat the intelligence.

Campaign development and design

The FWO makes comprehensive use of campaigns to provide information and advice to workplace participants, encouraging compliance with workplace laws. During the inception phase of a campaign, data and intelligence collected by the agency is analysed to identify priority areas. This ensures that the intended campaign will deliver the greatest benefit to the industry or geographic location where systemic compliance issues have been identified. To complement the research, project teams within the FWO also conduct stakeholder consultations to inform the design of campaigns. This includes engaging with industry associations, employer representatives, unions and community groups.

Case study

The following case studies demonstrate how the FWO has achieved this measure (see Appendix):

Case study	1	2	3	4	5	6	7
Measure 1.2		✓		✓	✓		

KPI 2 – Communication with regulated entities is clear, targeted and effective

Measure 2.1 – The FWO provides information and advice that is timely, useful and reliable to make it easier for regulated entities to comply with their obligations.

The FWO provides timely and reliable information and assistance to the community through a number of different channels. Regulated entities have access to a range of services, including self-service tools and online resources, to assist them better understand and comply with workplace laws, and implement better workplace practices.

The FWO provides information and assistance to regulated entities via the following channels:

Channels /Activities	Achievements
The FWO website (www.fairwork.gov.au) is the primary channel for customer interactions with the agency.	<ul style="list-style-type: none"> Responsive web design allows information to be accessed on any desktop, smart phone or tablet (mobile device visits accounted for 40 per cent) Materials developed by technical experts to ensure accuracy Materials developed for the website are user-tested to ensure that communication is clear, targeted and effective
Self-service tools and resources assist regulated entities comply with their workplace obligations.	<ul style="list-style-type: none"> My account enables customers to store tailored information PACT provides calculations on pay, leave entitlements, notice and redundancy and shift work rates Online learning courses cover topics ranging from difficult conversations in the workplace to managing performance
Fair Work Infoline / Small Business Helpline are available 8 a.m. to 5.30 p.m., Monday to Friday.	<ul style="list-style-type: none"> General information and assistance is provided to the community Dedicated helpline to assist small business owners meet their workplace obligations, reducing their waiting time

Case study

The following case studies demonstrate how the FWO has achieved this measure (see Appendix):

Case study	1	2	3	4	5	6	7
Measure 2.1	✓					✓	

Measure 2.2 – The FWO consults with regulated entities prior to implementing key strategies.

The FWO is committed to fostering relationships with regulated entities by engaging in consultation prior to implementing key strategies. Consultation enables the FWO to consider and understand the impact of changes in policy, procedures or service standards on regulated entities.

One of the key areas in which the FWO consults extensively with regulated entities in order to inform strategy development is its work with the small business community. As part of its commitment to establishing productive small business relationships to reduce regulatory burden, the FWO's Small Business Strategy team held a Small Business Forum on 10 November 2015, titled 'Intermediaries: Linking Government and Small Business' (the Forum). Rather than focussing on traditional stakeholders, the FWO extended invitations to organisations that provide advisory services to small business. This included accountants, payroll advisers, local councils and other small business advisers. The Forum was attended by representatives of 38 different advisory organisations.

The Forum addressed the important role of intermediaries in relation to small business, and explored opportunities for consultation, innovation and collaboration on strategies to assist the small business community. Attendees were given a platform to provide feedback and input into FWO's current regulatory operations. This included feedback on current compliance practices, our approach to accessorial liability, FWO's public messaging, and support for unaffiliated small businesses.

Building on the intelligence gathered in the Forum, the FWO has commissioned research into specific areas of the small business community. This research aims to provide an increased awareness into the drivers of non-compliance and the potential barriers to compliance. This information is currently being used to enhance our service delivery model.

Case study

The following case study demonstrates how the FWO has achieved this measure (see Appendix):

Case study	1	2	3	4	5	6	7
Measure 2.2				✓			

KPI 3 – Actions undertaken by regulators are proportionate to the regulatory risk being managed

Measure 3.1 – The FWO focuses its compliance and enforcement efforts proportionate to the seriousness of the matter.

The FWO recognises the regulatory burden that compliance and enforcement activities can place on regulated entities involved in a workplace dispute. Activities can be disruptive to business operations and have an adverse financial impact on those involved. Where possible, the circumstances and compliance history of regulated entities is taken into account to determine the most appropriate corrective action to remedy the issues and promote future compliance. This is an important feature of the FWO’s best practice approach to regulation.

The 2015 Compliance and Enforcement Policy sets out the principles adopted by the FWO to achieve proportionate and risk-based regulation and compliance with the law. The policy outlines the different treatments that are used to promote and enforce compliance.

The importance of flexibility is a key consideration for the FWO when addressing non-compliance, as not every circumstance is the same. Each request for assistance is assessed on a case-by-case basis, to ensure that the approach taken is proportionate to the seriousness and risks posed by the non-compliant conduct.

For example, litigation action is reserved for circumstances where the conduct is particularly serious, where there is reason to be concerned about future behaviour, or where the party involved is unwilling to provide satisfactory resolution. It is an enforcement measure that causes significant financial and non-financial costs to parties. The FWO initiates action for a range of reasons, including where it considers that litigation is the most appropriate way to achieve its compliance and enforcement objectives. Where appropriate, the FWO may also pursue matters to assist in clarifying aspects of the law to provide greater confidence in its application, particularly provisions of the Act that are ambiguous or uncertain.

The FWO demonstrates its proportionate approach in the way it manages disputes and applies its compliance and enforcement options.

Activities	Achievements
Proactive compliance and education activities	<ul style="list-style-type: none"> • 4539 campaign audits conducted • 1 compliance partnership established
Early involvement	<ul style="list-style-type: none"> • 10 256 early interventions completed • 4500 mediations completed
Investigations	<ul style="list-style-type: none"> • 2336 investigations completed • 1081 letters of caution issued
Enforcement outcomes (available under the <i>Fair Work Act 2009</i>)	<ul style="list-style-type: none"> • 573 infringement notices issued • 186 compliance notices issued • 43 enforceable undertakings executed • 50 litigations commenced

For further information on the FWO’s compliance and enforcement activities refer to the [2015-16 Fair Work Ombudsman Annual Report](#) (pp. 22-23).

Case study

The following case studies demonstrate how the FWO has achieved this measure (see Appendix):

Case study	1	2	3	4	5	6	7
Measure 3.1	✓		✓				

Measure 3.2 – The FWO applies a risk-based approach to its compliance and monitoring activities.

The FWO recognises that enforcement action is costly and not necessarily the most effective or efficient way of promoting compliance with workplace laws. The Compliance and Enforcement Policy sets out the principles adopted by the FWO to achieve proportionate and risk-based regulation and compliance with the law. The policy allows for proportionate responses appropriate to the scale, nature, complexity, seriousness and risks posed by the non-compliant conduct. Formal requests for assistance received by the FWO are assessed and an informed decision is made as to the most appropriate method of dispute resolution.

The FWO understands that the actions it takes should be proportionate to the risk at hand. The following are indicative of the factors that FWO considers in weighing risks against actions. Greater risk is attributed to conduct that:

- involves vulnerable workers
- has potential implications on the broader community
- is industry-wide or likely to become systemic if the FWO does not intervene
- suggests a deterrent effect is needed in an industry or region.

Where possible, the FWO will provide the necessary information and support to enable workplace participants to resolve issues within the workplace. The FWO takes the view that education and self-resolution promotes greater compliance and effects positive workplace change. In the case of serious non-compliance, the FWO will take the necessary steps to seek the appropriate corrective actions in order to uphold the integrity of the regulatory framework and deter future non-compliance. This risk-based approach enables the FWO to achieve its regulatory objectives more efficiently and reduce the overall burden on regulated entities.

Case study

The following case studies demonstrate how the FWO has achieved this measure (see Appendix):

Case study	1	2	3	4	5	6	7
Measure 3.2	✓		✓				

KPI 4 – Compliance and monitoring approaches are streamlined and coordinated

Measure 4.1 – The FWO takes a coordinated approach to delivering its services. The FWO takes an evidence based approach to our work, drawing on our own intelligence and data, commissioned research and other publicly available information, data and research to inform how we organise and resource our activities. This informed and coordinated approach supports the agency’s corporate and business planning processes, ensuring that resources are directed to activities and services that will deliver the greatest benefit and have the greatest impact.

For example, in response to the barriers that migrant workers face understanding and enforcing their rights, the FWO established a Migrant Workers Strategy & Engagement Branch. The branch brings together specialist skills from a range of functions across the FWO to ensure a coordinated approach to migrant worker and employer issues. It supplements our existing compliance teams which prioritise vulnerable workers, including visa holders and young workers, and acknowledges that building capacity amongst these workers and those who employ them is essential to enhancing compliance in the sectors that engage them. The FWO also has a dedicated team responsible for analysing intelligence and trends in the community, which inform a range of our activities. This is one of the ways the FWO ensures a consistent approach to the delivery of its services.

Using technology to reduce regulatory burden

The FWO recognises the burden that information requests can place on regulated entities, particularly small business that may not have payroll and human resources functions. Where possible, the FWO utilises existing information to limit the reliance on requests for data from regulated entities.

With data and intelligence at the centre of our operating model, the FWO has invested in new technology and implemented process improvements to reduce the frequency of information collected from regulated entities.

The new customer relationship management system aims to create a single record for each customer, which enables the agency to provide a more efficient service that is tailored to the needs of regulated entities.

For further information on how the FWO uses innovation and technology to improve the services it provides to regulate entities, refer to the [2015-16 Fair Work Ombudsman Annual Report](#) (p. 7).

Case study

The following case studies demonstrate how the FWO has achieved this measure (see Appendix):

Case study	1	2	3	4	5	6	7
Measure 4.1					✓	✓	✓

Measure 4.2 – The FWO works collaboratively with other regulators and industry bodies to minimise the burden of interacting with government bodies.

The FWO has established cooperative relationships with key stakeholders to improve the efficiency and effectiveness of the regulatory framework. These relationships include both formal and informal information sharing arrangements with other regulators and law enforcement bodies. The information that is shared includes, but is not limited to:

- Industry specific data and intelligence to support compliance and enforcement action
- Information to provide the FWO with a better understanding of the operating environment, in particular the unique challenges faced by certain industries or groups
- Information about projects, events or initiatives that may support or complement the work undertaken by the FWO.

The FWO also meets regularly with a range of other government regulators to discuss ways to leverage off work that is already underway, in order to minimise the burden and cost for regulated entities dealing with multiple regulators in different jurisdictions.

Memoranda of understandings

The FWO has memoranda of understandings (MoUs) with the organisations listed below. These agreements set out the terms of a relationship between the FWO and key stakeholders:

Government

- Australian Taxation Office
- Australian Defence Force
- Department of Immigration and Border Control
- Fair Work Commission
- Victorian Registration & Qualifications Authority
- Australian Securities and Investments Commission

Non-government

- Accommodation Association of Australia
- Australian Hotels Association
- Australian Security Industry Association Limited
- National Union of Workers
- Restaurant and Catering Association
- Shop Distributive & Allied Employees Association

Case study

The following case studies demonstrate how the FWO has achieved this measure (see Appendix):

Case study	1	2	3	4	5	6	7
Measure 4.2						✓	✓

KPI 5 – Regulators are open and transparent in their dealings with regulated entities

Measure 5.1 – The FWO publishes key performance results in a timely manner to ensure accountability and transparency.

Australian Public Service (APS) agencies are required to publish a range of public accountability information online, including Annual Reports and Portfolio Budget Statements. These reporting mechanisms ensure accountability and transparency in the way APS agencies perform their functions, and is central to building public trust and confidence in public sector decision-making processes.

The FWO meets Government requirements for the publication of Annual Reports and Portfolio Budget Statements on www.fairwork.gov.au. In addition, the FWO publishes reports on key activities, including campaign reports, inquiry reports and litigation outcomes. These provide a description of the activity and broadly highlight the outcomes, results and further actions undertaken. Media releases are also routinely issued by the FWO to raise community awareness of the agency’s activities, such as the outcome of litigation action and enforceable undertakings executed.

In 2015-16, FWO published the following activities on www.fairwork.gov.au:

Activities	Achievements
Campaigns may be educative in nature or be conducted for compliance monitoring purposes. Campaign reports present the results of each campaign activity and where applicable include compliance and non-compliance rates and main contravention types.	<ul style="list-style-type: none"> • 11 campaign reports
Inquiries are comprehensive compliance monitoring activities examining businesses, industries, regions, supply chains, labour markets or a combination of these areas. These activities enable the FWO to better identify and understand issues in these areas and to recommend responses. Inquiry reports present our findings, recommendations and actions.	<ul style="list-style-type: none"> • Three inquiry reports • An example of an inquiry report published in 2015-16 was ‘Identifying and addressing the drivers of non-compliance in the 7-Eleven network’
Litigation outcomes include information on the nature of the proceedings, the decision and penalties ordered.	<ul style="list-style-type: none"> • 28 litigation outcomes
Enforceable undertakings are written undertakings, enforceable in a court, which is made by agreement with a party where the FWO reasonably believes that person has contravened the Fair Work Act.	<ul style="list-style-type: none"> • 30 enforceable undertakings
Compliance partnerships are agreements between a business and the FWO, that demonstrate their commitment to ensuring sustainable compliance with Australian workplace laws. Compliance partnerships are tailored for individual businesses to ensure their systems and processes are working effectively.	<ul style="list-style-type: none"> • 1 compliance partnership

Case study

Note that case studies are not applicable to this measure.

Measure 5.2 – The FWO publishes key strategies and acts on feedback regarding the effectiveness of how it operates.

The FWO exercises its powers as a workplace relations regulatory agency in a transparent and accountable manner. The agency’s approach to accountability extends to its corporate planning processes, standards for investigations, and public reporting of decisions and outcomes.

The FWO publishes a range of policies on www.fairwork.gov.au, which provides information on how we do our work and who we work with. This includes information on agency priorities, and operational processes and procedures. This provides regulated entities with greater certainty about how the agency may respond to a particular issue.

Key strategy and policy documents that have been published on fairwork.gov.au include:

Published strategies:	Description
Corporate Plan	Sets out the agency’s strategic direction. It outlines our purpose, vision, setting, priorities and activities and targets for measuring our success.
Strategic Intent	States our vision. That is, to be valued by the community for supporting compliant, productive and inclusive workplaces. This document highlights the agency’s focus, priorities and strategies for how we plan to achieve our vision.
Compliance and Enforcement Policy	Sets out principles adopted by the agency to achieve compliance with the law, and outlines the FWO’s enforcement powers and functions. The policy provides information on how the agency identifies and acts on opportunities to offer assistance in workplace disputes.
Litigation policy	Sets out guidelines for FWO in commencing litigation proceedings, in relation to a contravention or proposed contravention.
Information Access Policy	Outlines how the FWO deals with requests for information in accordance with the Freedom of Information Act 1982.
Feedback and Complaints Management Policy	Outlines how FWO responds to feedback, service complaints and requests for review. The policy provides information on the way requests are prioritised and potential actions. This information is used to develop strategies to continuously improve and enhance our services and provide opportunities to innovate and improve the agency’s operational effectiveness.

Case study

Note that case studies are not applicable to this measure.

KPI 6 – Regulators actively contribute to the continuous improvement of regulatory frameworks

Measures 6.1 – The FWO makes it easy for stakeholders and regulated entities to contribute to the efficient operation of the FWO.

The FWO establishes cooperative and collaborative relationships with stakeholders to improve the efficiency and effectiveness of the regulatory framework. Being in active dialogue with stakeholders is central to the way the FWO undertakes its role as a regulator. This is reflected as a key priority in the Corporate Plan.

The FWO recognises that effective stakeholder engagement enables higher quality decision-making. Feedback and insight provided by stakeholders and regulated entities contributes towards the development of planned and informed decisions, policies, programs and services.

For stakeholders and regulated entities, the benefits of engagement include:

- The opportunity to contribute as experts in their industry or field to policy and program development
- The opportunity to have their concerns heard
- The opportunity to participate in the decision making process.

In 2015-16, the FWO actively consulted, sought and received feedback from key stakeholders and regulated entities through the following activities:

- Information and intelligence sharing arrangements set out in MoUs
- Knowledge in the Public Square event
- Small Business Forum

Case study

The following case studies demonstrate how the FWO has achieved this measure (see Appendix):

Case study	1	2	3	4	5	6	7
Measure 6.1		✓			✓		

Measure 6.2 - The FWO shares information, intelligence and feedback with policy departments for the improvement of the regulatory framework.

Where appropriate, the FWO shares information with government departments and agencies to inform improvements to the regulatory framework and the development of policies where workplace relations is an issue.

The FWO is a member of a number of information-sharing forums in which approaches to complex regulation and policy are discussed. In 2015-16, the FWO participated in the following forums:

- Small business fix-it squads

The ATO initiated ‘Small business fix-it squads’ which are aimed at addressing the difficulties that small business owners face in complying with government regulation. It is a coordinated effort between small business owners, tax professionals, government and small business intermediaries to work collaboratively to examine specific problems affecting small businesses, and develop recommendations to fix the problems.

- Phoenix Forum/Taskforce

The Inter-Agency Phoenix Forum/Taskforce is a key component of the Australian Government’s commitment to addressing fraudulent phoenix activity. The forum was established to bring together government agencies to share intelligence, as well as identify, design and implement cross-agency strategies to reduce and deter phoenix activity.

The FWO also shares its expertise to improve the regulatory framework in other ways. In 2015-16:

- A number of FWO staff were seconded to the Department of Employment to assist with the Government’s responses to the Heydon Royal Commission.
- The FWO also gave evidence at the Senate Education and Employment References Committee inquiry into the impact of Australia’s temporary work visa programs on the Australian labour market and on the temporary work visa holders.
- The FWO has MoUs with number of key stakeholders, including government agencies, employer organisations and unions. These MoUs provide a framework for sharing information and intelligence.

Case study

The following case studies demonstrates how the FWO has achieved this measure (see Appendix):

Case study	1	2	3	4	5	6	7
Measure 6.2					✓	✓	

Overall assessment

The FWO has demonstrated its commitment to reducing regulatory burden associated with compliance by taking a coordinated approach to its education, compliance and enforcement activities. A review of the FWO's performance over the assessment period has highlighted areas in which the agency has delivered on its strategic priorities. These include:

- Ensuring that compliance and enforcement activities are conducted in a manner that is minimally disruptive to business operations, whilst meeting our regulatory obligations. This has been achieved by:
 - Investing in customer relationship management technology to minimise the need to request information from regulated entities.
 - Embedding education into dispute resolution processes, in order to provide regulated entities with the information and tools required to resolve workplace disputes and implement better practices.
- Ensuring that actions undertaken to address requests for assistance are proportionate to the risks identified through rigorously assessing the nature of each request and applying the most appropriate method of dispute resolution. This has been achieved by:
 - Providing alternative methods of dispute resolution, such as early intervention and mediation services, aimed at preserving the employment relationship and minimising the costs that can often result from compliance and enforcement activities.
 - Reserving litigation for circumstances where the conduct is particularly serious, recognising that this enforcement measure causes significant costs to regulated entities involved.
- Strategically using campaign activities to assist regulated entities identify areas of non-compliance and rectify the issues before they escalate into formal workplace disputes. This recognises that disputes can potentially lead to both financial and non-financial costs for regulated entities. This has been achieved by:
 - Undertaking research and consultation to ensure that the development and design of campaign activities will deliver the greatest benefit to the industries in which systemic compliance issues have been identified.
 - Developing tailored information and advice for the regulated entities within the targeted industry.
 - Undertaking follow-up audits to ensure that regulated entities have effectively resolved issues previously identified, and providing any additional support required to assist them comply with workplace laws.
- Using technology to streamline and improve processes in order to make it easier for regulated entities to access the information they require to comply with workplace laws. This has been achieved by:
 - Using customer behaviour analytics and behavioural insights in order to identify the unique needs of regulated entities and understand how they access information.
 - Developing and launching new digital service offerings that enable regulated entities to access reliable information at their convenience. For example, 'My account' was developed as a repository for businesses to store pay and conditions information.

Opportunities for Improvement

The FWO has identified a number of key opportunities for improvement. These include:

- Developing robust mechanisms to evaluate the effectiveness of our performance in relation to reducing regulatory burden on regulated entities. This may involve:
 - Partnering with external research providers to undertake research and evaluation to improve the agency's understanding of its impact on regulated entities and the broader community.
 - Engaging with key stakeholders to conduct post-implementation reviews of a range of activities across the agency.
- Identifying opportunities to publish information about our activities and strategies. This could provide regulated entities with greater certainty about how the agency performs its functions and how it may respond to particular issues. This may include:
 - Publishing and maintaining information on the agency's campaign work program, outlining key areas of focus (such as industry, regional location, occupation) to provide regulated entities and those impacted by the activities an understanding of what to expect.
 - Publishing the outcomes of key stakeholder consultation and feedback, and the agency's response or follow-up action.
- Continuing to invest in technology to streamline processes and improve our service offerings to make it easier for regulated entities to comply with their obligations. This includes:
 - Exploring systems and processes to enable better management of repeat contacts, in order to reduce the frequency of information collected from regulated entities.
 - Using data analytics and business intelligence technology to understand emerging issues impacting regulated entities and how regulated entities access and use information, in order to improve services.
 - Improving the functionality of digital service offerings, such as 'My account', to enable regulated entities and other users to easily access, search and store information that is tailored to them.
- Continuing to measure our effectiveness as a regulator and identify ways to contribute to the improvement of the regulatory framework. This may involve:
 - Partnering with external research providers to undertake research and evaluation into the agency's effectiveness as a regulator.
 - Conducting environment scans and research to understand emerging issues and challenges in the regulatory environment, and how these issues may pose as impediments to compliance.
 - Continuing to engage with key stakeholders, including intermediaries and industry bodies, to collect information to complement research that is undertaken.
 - Continuing to engage with other regulators to share information and experience on regulatory best practice.

Appendix

Case study 1

Early intervention to promote compliance

The FWO recognises the regulatory burden that compliance and enforcement activities can place on regulated entities involved in a workplace dispute. Accordingly, the FWO takes a range of factors into consideration when determining the most appropriate action to resolve disputes and promote future compliance.

Early intervention aims to educate employees and employers about how to resolve workplace issues directly and amicably with each other before the issues potentially escalate into formal and protracted disputes. The aim is to maintain positive working relationships by keeping the matter in the hands of the parties supporting them to resolve the issue, businesses can continue to be compliant and productive.

For example, a small business owner called the Fair Work Infoline about a current employee's request to reduce her full time hours due to her pregnancy. The employee had provided a medical certificate to support her request.

The employer advised that she felt worried that she would be unable to approve the request due to operational requirements of the business. The

employer was referred to an early intervention adviser to provide tailored advice and assistance. The adviser encouraged the employer to meet with the employee to ensure that both parties were aware of all the relevant issues and for the employer to be prepared to consider a range of options with a view to meeting the needs of both the business and the employee. The adviser was able to discuss the issue with both the employee and employer to ensure they both had the opportunity to raise any issues and have access to information to support them.

The employer was also provided with a link to FWO's 'Dealing with difficult conversations' online educational module. Our online learning modules have been specifically designed to support the business community across a range of issues.

The outcome for both parties was one of mutual benefit, whereby an agreement was reached that supported the employee in the lead up to parental leave and also ensured that the operational needs of the business were managed. In addition, the employment relationship was maintained and through the use of a variety of online resources the employer felt confident and informed about managing workplace issues in her business.

Case study 2

Chinese Australian Engagement Strategy 2016

The FWO is committed to fostering positive relationships with the entities that it regulates by engaging in consultation prior to implementing key strategies. The FWO works collaboratively with a range of regulated entities, recognising that in some areas regulated entities may experience challenges for a range of reasons. By tailoring our approach to specific communities, the FWO is able to identify specific trends and issues affecting regulated entities in those areas.

Multicultural communities can experience a range of challenges, including language and cultural differences, limited experience in the Australian workplace and potential concerns about visa status. These can all be barriers to understanding workplace rights and responsibilities and seeking help.

In recognising this increased level of vulnerability, working with multicultural communities is a priority. The FWO developed a Chinese Australian Engagement Strategy (the Strategy) to drive strong engagement with businesses, employees and stakeholders in the Chinese community. It was created in consultation with Chinese business

stakeholders and community roundtables.

The Strategy seeks to introduce the FWO to the Chinese speaking community and improve their understanding of workplace laws. In particular, the strategy aims to:

- Provide the Chinese speaking community with information and education about workplace issues in Australia.
- Create a culture of compliance with workplace laws in the Chinese community.

The Strategy was launched on 29 January 2016 by the Fair Work Ombudsman, Natalie James, together with prominent Chinese Community Leader, Mr Benjamin Chow AO, Life Member of the Australian Chinese Community Association, NSW Chapter. Key members of the Chinese community and media attended this event and were encouraged to collaborate with FWO to promote the Strategy.

The Strategy involves ongoing engagement with influential community organisations, the development of tailored and specific educative resources and ongoing communication with the Chinese community, including in-language media. All Chinese language resources are available on fairwork.gov.au.

Case study 3

Compliance Partnerships

Compliance partnerships are another way the FWO is making it easier for regulated entities to comply with their obligations by:

- Providing a process for self-resolving compliance issues with our assistance.
- Using an informal resolution method that is simple and proportionate where errors are inadvertent or where the employer is willing to become compliant.
- Helping to resolve potential disputes before they turn into a matter for formal investigation or litigation.
- Proactively identifying and remedying systemic non-compliance before it becomes an intractable or public issue.
- Providing targeted education based on understanding where contraventions occur.
- Providing for regular stakeholder engagement with the FWO.

In November 2013, the FWO commenced an Inquiry into Baiada Poultry's labour procurement processes at its three New South Wales sites. The Inquiry was conducted following allegations raised on the ABC's Lateline program in October 2013 concerning the employment practices within Baiada's labour supply-chain at its Beresfield site.

The Inquiry led Baiada to implementing changes to its contracting and subcontracting arrangements to ensure that workers at their processing sites receive their correct wages and entitlements under Commonwealth workplace laws.

On 23 October 2015, Baiada signed a compliance partnership with the FWO, taking on greater responsibility for workers engaged at their processing sites. The nature and terms of the compliance partnership were detailed in the Proactive Compliance Deed (PCD) executed by both parties.

The PCD details the terms of the partnership, which ensures that the company and the contractors supplying workers on its sites fully comply with all workplace laws.

In addition to these measures, Baiada has committed to providing the FWO with copies of all written contracts entered into with each contractor, as well as written certification from each contractor stating that they have understood their statutory and contractual obligations, to comply with workplace laws.

A copy of the PCD and other information about the compliance partnership are available on fairwork.gov.au.

Case study 4

Health Care & Social Assistance Campaign 2015-16

Campaign work allows the FWO to understand its impact across sectors of the community, and changes to compliance behaviours. The FWO continues to evaluate its work and report on campaign activities.

The National Health Care & Social Assistance Campaign 2015-16 commenced in November 2015. The decision to initiate the campaign was driven by a number of factors, including:

- The health care and social assistance industry is the largest employing industry in Australia, accounting for 13 per cent of the total workforce, with forward projections indicating strong growth.
- The industry has a high retention rate of businesses, with 75 per cent of businesses operating at the start of 2010 still operating at the end of 2014. The stability of the industry means that any compliance and educational campaign conducted by the FWO would likely yield long-term benefits. There was a clear opportunity to influence cultural changes within workplaces in the sector.
- The industry has a large proportion of mature aged workers, with 45 per cent of employees aged 45 years or over, and more than one in every five employees aged 55 years and over.

- The industry has a large culturally and linguistically diverse workforce, with almost one third (32 per cent) of employees born overseas; and of those almost one in five (19 per cent) were born in non-English speaking countries.
- 79 per cent of employees are female, with 45 per cent of employees being engaged on a part-time basis; this figure is even higher in the Residential Care Services sector (58 per cent).

Strong industry growth, coupled with a high proportion of part-time and low-skilled employees provided a strong case for initiating a campaign in this industry. The campaign has broad impact and reach, helping to encourage an ongoing culture of compliance in the largest employing industry in Australia.

The FWO engaged with key stakeholders in regards to the design and development of the campaign. This included the Australian Medical Association, Optometry Australia, Health & Community Services Union, United Voice, Aged & Community Services Australia and Leading Age Services Australia. The communications strategy developed for the campaign focused on key issues identified in the sectors, based on advice provided by stakeholders during the pre-campaign engagement activities.

Case study 5

Knowledge in the Public Square event

Engaging with industry bodies and regulated entities allows the FWO to understand its operating environment and the needs of specific customer segments – two key factors that allow the agency to coordinate efficient services for the community. The FWO is always looking to maximise the value of engagement by making it easier for regulated entities to work with us.

In 2015-16, the FWO launched Knowledge in the Public Square (KIPS). KIPS are a series of ‘community cabinet’ style public forums that bring the FWO face-to-face with industry participants to discuss workplace issues. KIPS forums provide the FWO with insight into employment and business conditions in different industries, while providing stakeholders the opportunity to provide feedback on the agency’s approach in an open and transparent way.

A KIPS forum on the rapidly growing nanny and au pair sector highlighted a demand for better information and advice to assist employers and employees. The forum brought together 30 industry participants, including placement agencies, industry advocates, payroll companies and training providers. Nannies, au pairs and people who access childcare also attended.

The insights gained have helped to coordinate services and strategies to promote workplace relations compliance in the sector. For example, better advice is now available for workers and families engaging au pairs and nannies. The FWO also has a more sophisticated understanding of dynamics in the sector, which will help form the basis of a strategic inquiry into this sector if compliance issues emerge.

Case study 6

Small business fix-it squads

The FWO continues to develop and strengthen relationships across government and industry, including working with representatives from federal and state government agencies and industry across a range of initiatives; both educational and compliance focused.

In 2015-16, the FWO participated in the ATO initiated 'Small business fix-it squads'. These projects aim to address the difficulties that small business owners face with their business operations. It is a coordinated effort between small business owners, tax professionals, government and small business intermediaries, allowing them to work collaboratively to examine specific problems affecting small businesses and develop recommendations to fix the problems.

The consultation highlighted that small business owners struggle with having to search and navigate through several different sources to find information that applies to them. This led to the development of a whole-of-government online 'Checklist for taking on an employee'. This new resource was carefully designed to assist employers understand and meet a range of state and federal government requirements when hiring new employees.

A further recommendation of the Fix-it squad was to promote the Pay and Conditions Tool developed by the FWO to help small business operators find up to date information about awards, classifications and rates of pay. The FWO identified significant savings for small business with the introduction of its online Pay and Conditions Tool in 2015. The agency is committed to increasing customer confidence in using our online resources to manage workplace relations.

The FWO continues to monitor, analyse and re-design customer focused digital solutions to support Australian workplaces and work collaboratively across industry and government to increase our reach into the community.

Case study 7

FWO & ASIC Joint Audit Campaign

One of FWO's key principles in its Small Business Strategy 2014-16 is to maximise the ease of compliance with workplace laws by ensuring our approach is fair and necessary, and our processes and procedures are appropriate, proportionate and free from unnecessary red tape. The FWO does this by liaising and working directly with other areas of Government in administering regulation, and providing information and support. This makes it easier for small businesses to understand their obligations, reduces unnecessary red tape, and provides tailored resources and support for small businesses.

One of the ways the FWO delivers on these goals is through the implementation of educational and compliance campaigns. The FWO/ASIC QLD Campaign commenced late in May 2016, in partnership with the Australian Securities and Investments Commission (ASIC) – Small Business Compliance & Deterrence team.

Whilst FWO assists employers and employees in understanding their rights and obligations under Commonwealth workplace laws, ASIC regulates Australian companies, financial markets, financial services organisations and professionals who deal and advise in investments, superannuation, insurance, deposit taking and credit.

This campaign provided the opportunity to reduce regulatory burden on small business and provide them with the advice and support they need from the two agencies concurrently.

In addition to auditing compliance with time and wage records under the FWO's jurisdiction, the campaign included first time company directors (who are operating companies that employ staff). This meant ASIC could ensure the directors are aware of both their employee's employment entitlements under the Act and the Regulations, along with their registration and reporting responsibilities under ASIC legislation.

In total 46 audits were conducted. A FWO Fair Work Inspector and an ASIC Analyst conducted the audits at each business site. The audits were pre-arranged with businesses to minimise disruption, as well as ensure that businesses had the correct records and office holders on site when the audit was being conducted.

A report will be published in the 2016-17 financial year. The campaign report will include an analysis of data obtained throughout the auditing phase of the campaign.