

Fair Work Ombudsman

Regulator Performance Framework Report 2016-17



Australian Government

Fair Work
OMBUDSMAN

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Executive summary

This report sets out the Fair Work Ombudsman's (FWO) self-assessment against the Regulator Performance Framework (the Framework) for the period 1 July 2016 to 30 June 2017. Following the inaugural self-assessment report of 2015-16, the FWO continues to assess its performance against the six outcomes-based key performance indicators (KPIs) contained in the framework. This assessment relies on both quantitative performance data and qualitative narrative highlighting actions and activities undertaken throughout the year to evidence performance against the KPIs.

Throughout 2016-17, the FWO has continued to ensure that regulated entities have access to a range of resources, tools and information services to support compliance with regulatory obligations. In 2016-17, the FWO added to its collection of resources releasing the "Find my award" tool, three new online learning courses and a suite of contracting labour and supply chain guides. The FWO also launched the "Library" - providing customers with direct access to the collection of technical knowledge articles used by FWO staff.

The FWO continued providing assistance to regulated entities through existing services. This included Fair Work Infoline and Small Business Helpline advisers answering a range of workplace enquiries, and FWO's continued commitment to timely and reliable information regarding the annual wage review being available to regulated entities on 1 July.

Throughout 2016-17, the FWO engaged with regulated entities and peak bodies to better understand their needs and inform the design and execution of our work with the aim of ensuring regulatory interventions are efficient for all parties involved. Recognising a need for streamlined stakeholder consultation, the FWO has established a new team to oversee key stakeholder engagement and research to inform the FWO's activities and services. In addition, the FWO continued its established practice of engaging with relevant stakeholders in the lead-up to and throughout proactive inquiry and campaign audit activities to understand issues within the targeted customer segment, region or industry.

The FWO continues to focus its compliance and enforcement efforts proportionately based on the seriousness of a matter. The FWO is aware of the impact that compliance and enforcement activities can have on businesses and aims to resolve workplace disputes efficiently with the most appropriate corrective action whilst considering regulatory burden. Applying a risk-based approach and working with parties to resolve requests for assistance in their principal stages, resulted in workplace disputes being finalised in an average of 15

days during the 2016-17 financial year – a reduction from previous years that reduces the burden on regulated entities.

The FWO continues to work with government and other agencies to identify improvements to the regulatory framework, including ways to make compliance easier for regulated entities. In 2016-17, the FWO participated in a number of reviews or inquiries of workplace laws led by taskforces, other regulators, the Australian Government, or Parliament. The FWO also actively participated in a number of inter-agency forums and maintains memoranda of understandings (MoUs) with government and non-government organisations to facilitate appropriate information sharing. This work informs improvements to the regulatory framework and policy development. Introduction

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 FWO has relied on a mixture of quantitative performance data and qualitative narrative from a range of sources to assess its performance against the measures. The evidence in this report has been drawn from existing internal reporting and data collection processes. This includes:

- performance data and case studies from key functions and activities
- internal project materials
- explanatory materials about FWO processes and procedures
- published guidance that assists regulated entities to comply with regulation.

Following on from the process adopted for the 2015-16 performance report, this report uses a descriptive approach, which allows causal links to be drawn between the evidence and the outcomes achieved in relation to the performance measures.

This year's report also highlights areas for improvement against those measures for which an amber indicator has been applied.

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. The measures highlighted green indicate that the FWO has achieved a suitable level of performance, with amber indicating potential areas for improvement. A red indicator highlights that there is a significant need for improvement.

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.	●
	1.2 The FWO engages with regulated entities and peak bodies to understand and inform the design and execution of our work.	●
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.	●
	2.2 The FWO consults with regulated entities prior to implementing key strategies.	●
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.	●
	3.2 The FWO applies a risk-based approach to its compliance and monitoring activities.	●
KPI 4: Compliance and monitoring approaches are streamlined and coordinated.	4.1 The FWO takes a coordinated approach to delivering its services.	●
	4.2 The FWO works collaboratively with other regulators and industry bodies to minimise the burden of interacting with government bodies.	●

KPI	Measure	Indicator
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.	●
	5.2 The FWO publishes key strategies and acts on feedback regarding the effectiveness of how it operates.	●
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.	●
	6.2 The FWO shares information, intelligence and feedback with policy departments for the improvement of the regulatory framework.	●

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

2015-16 self-assessment rating	●	2016-17 self-assessment rating	●
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The FWO is committed to ensuring regulated entities have access to a range of resources and services that provide practical advice to support compliance and are accessible in a manner appropriate for regulated entities. The FWO invests heavily in the provision of educational resources to support compliance without the need for formal regulator intervention.

In 2016-17, the FWO launched new products that aim to reduce regulatory burden and provide appropriate support, including:

- a new award finder tool - Find my award
- three new online learning courses
- contracting labour and supply chain guides.

FWO continues to innovate to ensure that regulated entities have access to a range of self-service tools, including free access to a customer portal where businesses can view and save pay rates and awards applicable to their business.

Activity	2016-17 Achievement
The FWO is committed to supporting regulated entities understand their compliance obligations. The FWO has a suite of online resources designed to support business.	<ul style="list-style-type: none"> ■ 4 100 000 pay tool visits ■ 5 300 000 pay tool calculations ■ 70 000 online enquiries answered ■ 30 000 online learning courses commenced ■ 3000 supply chain guide downloads ■ 600 000 Find my award searches commenced

Note: Figures in the table above have been rounded.

The FWO recognises there are times when it is appropriate to provide regulated entities with more tailored advice. Fair Work Infoline and Small Business Helpline advisers provide tailored assistance to business on a range of workplace enquiries. In 2016 the Fair Work Infoline was recognised for its high quality services at the 2016 Government Contact Centre Excellence Awards.

Activity	2016-17 Achievement
The FWO provides tailored advice through the Fair Work Infoline and Small Business Helpline.	<ul style="list-style-type: none"> ■ 400 000 Fair Work Infoline calls answered (including 100 000 Small Business Helpline calls)

Note: Figures in the table above have been rounded.

For more detailed statistics relating to the FWO’s customer interactions, please refer to the 2016-17 Fair Work Ombudsman Annual Report.

Inlanguage resources

In addition to delivering new products, the FWO is committed to enhancing and improving existing resources. Research was undertaken to identify and inform opportunities to increase the FWO’s reach and influence in migrant communities. This included an analysis of data from the Department of Immigration and Border Protection, the Census, records of the Translating and Interpreting Service (TIS) and Google Analytics relating to our customers’ preferred language settings. An analysis of these datasets demonstrated that the top 16 priority languages covered 80% of the migrant worker population in Australia. New in-language content was published on the FWO’s website in 2017 for priority languages Arabic, Chinese (both Simplified and Traditional), French, German, Hindi, Italian, Japanese, Korean, Spanish & Vietnamese, and later expanded to Indonesian, Filipino, Portuguese, Thai and Nepali.

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

2015-16 self-assessment rating	●	2016-17 self-assessment rating	●
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The FWO is focused on engaging with regulated entities by consulting them before implementing key strategies. In the 2015-16 Regulator Performance Framework Report the FWO identified this measure as an area in which improvements could be made.

The FWO is committed to enhancing the way in which we are collaboratively working with our key stakeholders. During 2016-17 the FWO reviewed its organisational structure and established a group focussed on stakeholder engagement strategy.

The newly formed group is led by a new Deputy Fair Work Ombudsman - Strategy, Engagement and Communications and has an enhanced emphasis on collaboration and an opportunity to better understand broader community needs. The Strategic Engagement and Stakeholder Relations branch is responsible for working in communities with key representatives and stakeholders to build relationships and undertake research to inform the FWO's activities and services. The branch has also commenced development of a FWO stakeholder engagement strategy that includes new systems and improved processes for direct engagement to increase the FWO's impact in the community.

Stakeholder engagement in FWO inquiries and campaigns

It is standard FWO practice to engage with relevant industry stakeholders throughout our inquiries and campaigns. This helps identify the key issues facing an industry or segment of the workforce and ensure that compliance activities will deliver the greatest benefit. It also raises awareness of FWO campaigns, by leveraging the established communication networks of industry stakeholders.

The FWO's National Textile, Clothing and Footwear Campaign (TCF) was conducted in two distinct phases; an educative campaign which commenced in March 2015, followed by a compliance-based campaign. To achieve its objectives the FWO engaged with key stakeholders in regards to the design and development of the campaign. In addition to this, FWO commenced a communications campaign through social and traditional media.

Co-design.

The FWO continues to work with industry, key community groups and education providers to inform both the design and execution of a range of products (such as the FWO's suite of online resources), and the development and delivery of compliance activities (such as working with industry participants as part of FWO inquiry activities). During 2016-17 our engagement with regulated entities included collaborating on the:

- pilot Cleaning Accountability Framework (CAF) certification scheme – a multi-stakeholder initiative that aims to build a culture of compliance across cleaning supply chains
- development and delivery of new supply chain guides to help businesses avoid contracting risks

- design and delivery of three new online learning courses
- ongoing activities associated with inquiry activities, including the Harvest Trail initiative
- development and delivery of a range of local, state and national campaigns.

The FWO recognises that in 2017-18 there may be increased opportunities for co-design with potential legislative reforms and through our continued involvement in cross-portfolio initiatives, such as the Migrant Workers Taskforce.

The Fair Work Amendment (Protecting Vulnerable Workers) Bill 2017 was introduced to Parliament on 1 March 2017. In its current form, certain franchisors and holding companies become responsible for underpayments by their franchisees or subsidiaries where they knew, or reasonably ought to have known, about the contraventions and failed to take reasonable steps to prevent them. As these regulatory reforms are implemented, the FWO will actively consider how it can engage with stakeholders.

Case studies

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

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

2015-16 self-assessment rating	●	2016-17 self-assessment rating	●
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The FWO is committed to ensuring regulated entities have access to timely, useful, and reliable information and advice that supports compliance with workplace laws. As discussed in the previous section (1.1), FWO provides a range of channels through which regulated entities can obtain information and advice that is timely, useful and reliable. FWO also has a highly effective communications capability that is tailored to reach different audiences depending on the information needed (e.g. small businesses, customers from culturally and linguistically diverse backgrounds, and specific industries). As well as communicating with regulated entities regarding information available to them, the FWO also welcomes feedback on its services.

The FWO partnered with the Melbourne University Centre for Employment and Labour Relations to undertake a study into business awareness of, and responses to, the FWO and its enforcement activities. The research conducted tested the effectiveness of FWO's communication capability by measuring business awareness of, and responses to, the FWO. Published in January 2017, the [findings report](#) found awareness of the FWO amongst regulated entities was very high. Further, the use of media to publicise our activities appears to have enhanced both explicit and general deterrence of non-compliance.

Keeping the public informed

The FWO recognises that regular annual events impact regulated entities, including the annual wage review. In order to ensure regulated entities are able to access timely and reliable information about the annual wage review and associated changes to minimum pay rates, the FWO undertakes a range of activities in the lead-up to the decision taking effect on 1 July.

The implementation of the review involves significant updates across a range of FWO resources and provision of updated information and messaging to FWO staff. Central to this process is the Pay and Conditions Tool (PACT). PACT has 10 million possible rate

combinations and has handled over 10 million calculations since May 2015, including around five million in 2016-17.

Communication activities to ensure regulated entities are informed of and have easy access to updated minimum pay rates include:

- publishing information through social media accounts
- sending a series of email notifications to FWO subscribers, informing them of the national minimum wage decision, when the FWO pay tools are updated and when the decision takes effect
- updating messaging on the Fair Work Infoline and Small Business Helpline voice recordings (IVR) and
- publishing website news items and issuing media releases about the decision.

The FWO understands that regulated entities may require differing levels of information to help them comply with their obligations under workplace relations legislation. In September 2016, the FWO released the FWO Library, an online resource that provides customers with direct access to search the FWO’s collection of technical knowledge articles used by FWO staff. The FWO Library houses approximately 440 clear and concise knowledge articles that enable customers to understand and comply with workplace laws.

The FWO recognises opportunities for improvement that exist in expanding reach to communities that may experience increased levels of vulnerability and or lack of awareness of workplace relations regulatory requirements. The FWO will continue to explore new ways to undertake large-scale communication activities, including dedicated communication campaigns to increase awareness around specific regulatory requirements.

Further opportunities improvements in this area may include greater promotion of resources like the Library and Find my award, and additional enhancements to the My account online portal.

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

2015-16 self-assessment rating	●	2016-17 self-assessment rating	●
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The FWO recognises the importance of engaging with regulated entities and their representatives when designing products and services. Having previously identified this area as one in which improvements could be made, the FWO has sought to improve the

way in which it engages with regulated entities, recognising that stakeholder consultation supports the FWO across a range of initiatives. This includes:

- the promotion of compliance with workplace laws
- the promotion of industry-led accountability measures
- the opportunity to gain insight into the needs of the broader community
- the ability to better understand the effectiveness of the agency's programs and products
- the aptitude to increase awareness and reach into business communities across the country.

Stakeholder consultation

In 2016-17, the FWO collaborated with a range of stakeholders across industry and not-for-profit sectors. This included, but was not limited to, the following industry and community organisations:

- Australian Chamber of Commerce and Industry
- Australian Council of Trade Unions
- Australian Industry Group
- National Farmers Federation
- Growcom
- Recruitment and Consulting Services Australia
- Australian Research Council
- Community Migrant Resource Centre
- Franchise Council of Australia
- Council of Small Business of Australia.

In 2016-17 the FWO launched the Record My Hours app, the main functionality of which was to automatically records an employee's work hours based on their location. Record My Hours was launched to assist employees to have an accurate record of hours worked, which is crucial for ensuring, and evidencing that employees receive the correct wages. Whilst designed primarily as a tool for employees, we recognise that the app has

implications for regulated entities, and we undertook to engage with key stakeholders as part of the launch of Record My Hours. Through this engagement with stakeholders, some concerns were raised around the apps functionality and we worked with these stakeholders to better understand and address these concerns.

Case studies

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

2015-16 self-assessment rating	●	2016-17 self-assessment rating	●
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The FWO understands that many regulated entities, in particular small and medium sized businesses, may need to invest heavily in ensuring compliance with regulatory requirements and on occasion mistakes are made and businesses get it wrong. Where a business fails to comply with workplace laws, the FWO takes a risk-based and proportionate approach to its compliance and enforcement efforts that considers the intent of the non-compliance and a business' pattern of compliance.

For the 2016-17 financial year, the FWO committed to a new corporate KPI that supports this commitment to proportionality:

The FWO takes a risk-based and proportionate approach to its compliance and enforcement activities

- at least 90% of requests for assistance involving a workplace dispute are finalised through education and dispute resolution services
- no more than 10% of requests for assistance involving a workplace dispute are finalised through compliance and enforcement tools.

This KPI was met in 2016-17 as outlined in the following table.

Activity	Achievement
Education and dispute resolution services	■ 94% of workplace disputes completed
Compliance and enforcement outcomes	■ 6% of workplace disputes completed

Strong action is necessary

The FWO is committed to ensuring regulated entities are operating on a level playing field. Where a business fails to comply with workplace laws and there is a risk of continued non-compliance, the FWO takes a proportional response to the use of a range of compliance

and enforcement tools. Where warranted, the FWO may use one or more compliance and enforcement tools across our compliance activities, including our proactive initiatives. In 2016-17 the following compliance and enforcement tools were used:

Compliance & enforcement tools	Achievement
Compliance Notices	■ 192 notices issued
Infringement Notices	■ 665 notices issued
Enforceable Undertakings	■ 40 executed
Litigation	■ 55 litigations commenced

Note: the data in this table includes compliance and enforcement tools used in relation to FWO initiated activities. In addition to these formal tools, the FWO issued a further 883 Letters of Caution.

As outlined in the FWO Litigation Policy, the use of litigation is informed by relevant public interest factors, including the seriousness and impact of the contravention, and the effect of litigation. The key aim of the FWO's enforcement activities, including litigation, is to achieve compliance with Commonwealth workplace laws. The research report from the University of Melbourne (cited earlier) suggests that there are 'ripple effects' following FWO compliance activities, including litigation, serving to increase awareness of the FWO amongst business.

One example of where a strong regulatory response was required involved the national cleaning company, Grouped Property Services Pty Ltd (GPS). Following an investigation into alleged non-compliance, the FWO commenced litigation after considering a range of factors, including:

- previous history of serious non-compliance, through various related entities
- the low skilled nature of the work
- that many of the complainants were from non-English speaking backgrounds
- the seriousness of the alleged contraventions, including underpayment of wages, sham contracting arrangements, adverse action, failure to provide payslips and failure to keep adequate records
- that at least one of the principals involved with GPS, and related entities, has long been aware of legal obligations for workers and, as decided recently by the courts, chose to make a calculated business decision not to abide by these legal obligations

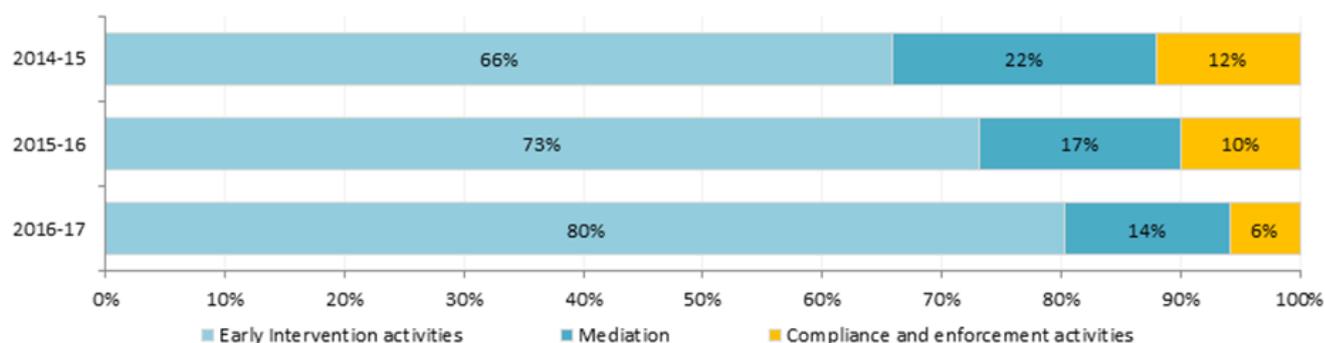
- there appeared to be phoenixing activity because entities related to GPS, and which GPS had purportedly engaged as labour hire companies, had gone into liquidation and failed to pay employees their entitlements.

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

2015-16 self-assessment rating	●	2016-17 self-assessment rating	●
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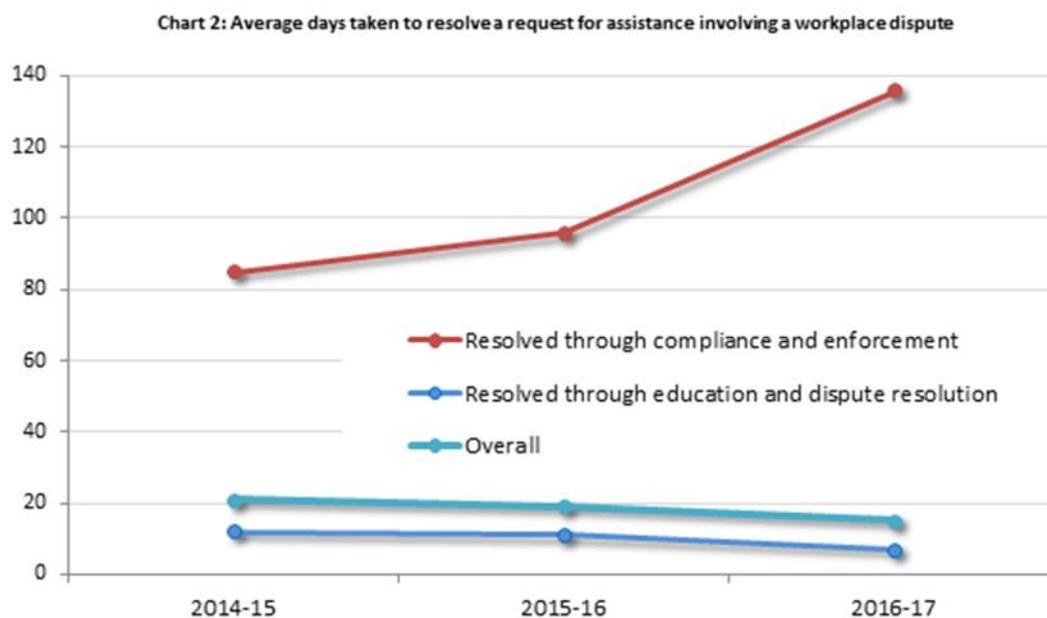
The FWO is committed to supporting regulated entities adhere to workplace laws through proactive monitoring activities and the resolution of workplace disputes. The FWO is cognisant of the impact that both compliance and enforcement activities can have on businesses and aims to resolve workplace issues with the most appropriate corrective action whilst considering regulatory burden.

The FWO is transforming the way it approaches resolving workplace disputes, placing an emphasis on early intervention activities and alternative dispute resolution methods to minimise dispute escalation. This approach has seen the FWO resolve more than 54 537 requests for assistance over the previous three years using these methods - an increase of 14% over the three-year period.



Each workplace relations matter is assessed on a case-by-case basis. Our range of early intervention treatments provide specialised services tailored to individual workplace issues using varying levels of intervention from empowering an employee to self-resolve to involving both parties to find a resolution to a workplace issue. Where early intervention treatments are unsuccessful, the FWO considers additional compliance activities to resolve a workplace issue. Circumstances and compliance history are carefully considered when determining the appropriate compliance approach, with a focus on promoting future compliance and engagement. This approach ensures more formal intervention is taken for matters where the seriousness of the non-compliance warrants such action.

Through applying a risk based approach to compliance and enforcement and working with parties to resolve requests for assistance in their earlier stages, workplace disputes were finalised in an average of 15 days during the 2016-17 financial year. This average has fallen considerably and thus reduced the impact on regulated entities.



Case studies

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				✓	✓		

KPI 4 – Compliance and monitoring approaches are streamlined and coordinated

Measure 4.1 – The FWO takes a coordinated approach to delivering its services

2015-16 self-assessment rating	●	2016-17 self-assessment rating	●
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The FWO takes an informed and evidence based approach to prioritising and coordinating its dispute resolution and monitoring activities. This approach uses internal intelligence and data, commissioned research, and other publicly available information, to identify and understand systemic non-compliance, particularly that which impacts vulnerable individuals or particular labour market sectors. Resources can then be directed towards activities and services that will deliver the greatest benefit and have the greatest impact. This may include:

- employee cohorts with the greatest vulnerability, in particular, migrant workers and young workers
- industries or subsectors with high levels of non-compliance
- supporting small business to comply.

The FWO's coordinated approach to compliance and monitoring is demonstrated by an agile ability to respond to data and intelligence trends, alleged large scale non-compliance or significant public concern through instigating an inquiry or campaign. Findings, recommendations and actions are available in reports published on our website at the conclusion of an activity.

The FWO's ability to coordinate service delivery through an informed approach that identifies the most appropriate response may include specific compliance activities regarding a particular entity or brand.

In the case of Pizza Hut, the FWO commenced an activity following analysis of internal data trends and external media coverage suggesting widespread wage underpayment and potential misclassification of workers as independent contractors.

The FWO identified a number of issues including non-compliance, misclassification of delivery drivers and underpayments. Additionally, Pizza Hut did not have any process or system in place to test whether franchisees were applying the relevant industrial instrument

correctly. The activity resulted in a number of enforcement outcomes, including three enforceable undertakings, 11 infringement notices and 11 compliance notices.

As well as publishing reports of broader campaign and inquiry work, the FWO may decide to publish activity findings involving particular businesses. This supports the development of sustainable self-monitoring arrangements and assists compliance with workplace laws by enhancing general and specific deterrence.

The FWO published the [Pizza Hut activity findings](#) in January 2017.

Identified opportunities for improvements in this area may include post-implementation review of activities to assess the FWO's effectiveness as a regulator.

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

2015-16 self-assessment rating	●	2016-17 self-assessment rating	●
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The FWO works in a collaborative manner with other regulators, government agencies and industry bodies.

This collaboration is frequently demonstrated through FWO's participation in inter-agency forums. For example, the FWO is a member agency of the Horticulture Workers Interagency Group (HWIG). The HWIG involves federal and Queensland state government regulators and authorities who have a common interest in addressing worker exploitation on Queensland farms. The group formation addresses multi-jurisdictional issues detected in the course of the FWO's Harvest Trail Inquiry. The FWO has participated in a range of educational events across regional Queensland as part of the HWIG.

The FWO is a member in the following inter-agency groups:

- Black Economy Taskforce
- Migrant Workers Taskforce
- Taskforce Cadena
- Phoenix Taskforce.

Memoranda of understandings

The FWO has MoUs with the organisations listed below. These allow the FWO to work with the organisations to minimise regulatory burden.

Government

- Australian Taxation Office (ATO)
- Australian Defence Force
- Department of Immigration and Border Protection
- Fair Work Commission
- Victorian Registration and Qualifications Authority
- Australian Securities and Investments Commission (ASIC)
- South Australian Department of State Development.

Non-government

- Accommodation Association of Australia
- Australian Hotels Association
- Australian Security Industry Association Limited
- National Union of Workers
- Restaurant and Catering Association
- Shop Distributive and Allied Employees Association
- Recruitment and Consulting Services 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 4.1			✓				✓
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

2015-16 self-assessment rating	●	2016-17 self-assessment rating	●
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The FWO continues to meet government requirements for the publication of annual reports and Portfolio Budget Statements on www.fairwork.gov.au. In 2016-17 the FWO also published the following documents 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.

Activities	Achievements published
Campaign reports present the results of each campaign activity and where applicable include compliance and non-compliance rates and main contravention types.	■ Five 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.	■ One Inquiry report
Activity reports of findings following compliance activities involving particular businesses may be published where there are allegations of serious non-compliance and it's in the public interest.	■ Two Activity reports
Litigation outcomes include information on the nature of the proceedings, the decision and penalties ordered.	■ 52 litigation outcomes

Enforceable undertakings are written undertakings, (enforceable in a court), which are made by agreement with a party where the FWO reasonably believes that person has contravened the *Fair Work Act 2009* (Fair Work Act).

■ 33 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.

■ Three compliance partnerships

Fair Work Ombudsman Natalie James and other senior executives deliver speeches at leading industrial relations conferences and events, keeping stakeholders informed of the role and activities of the FWO.

■ 13 speech transcripts

Media releases provide summaries of key activities and events, including legislative changes, campaign and inquiry launches and reports, commencement and conclusion of litigation, entering of enforceable undertakings and assisted voluntary recoveries.

■ 212 media releases

The FWO publishes information provided or accessed under its Information Access Policy including Freedom of Information requests in its Annual Report.

■ See External Scrutiny section

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

2015-16 self-assessment rating	●	2016-17 self-assessment rating	●
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The FWO ensures it is a transparent, accountable and effective regulator, by continuing to make the following key policies publically available on the FWO’s website. The FWO’s

approach to accountability encompasses corporate planning processes, standards for investigation, and public reporting of decisions and outcomes.

Published strategies	Description
Corporate Plan	Sets out the agency's strategic direction. It outlines purpose, vision, setting, priorities and activities, and targets for measuring success.
Strategic Intent	States the FWO's vision, which is to be valued by the community for supporting compliant, productive and inclusive workplaces. This document highlights the agency's focus, priorities and strategies to achieve the vision.
Compliance and Enforcement Policy	Sets out the principles 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 the FWO in commencing litigation proceedings for a contravention or proposed contravention.
Information Access Policy	Outlines how the FWO deals with requests for information in accordance with the <i>Freedom of Information Act 1982</i> .
Privacy Policy	Outlines how the FWO handles and discloses personal information in accordance with the <i>Privacy Act 1988</i> .
Feedback and Complaints Management Policy	Outlines how the FWO responds to feedback, service complaints and requests for review. The policy provides information on the way requests are prioritised and potential actions. The FWO uses feedback to develop strategies to continuously improve and enhance services, and provide opportunities to innovate and improve the agency's operational effectiveness.

An area that has been foreshadowed as an opportunity for improvement, is that the FWO expects to undertake a comprehensive review of existing policies and explore developing new strategies to reflect potential changes from the Fair Work Amendment (Protecting Vulnerable Workers) Bill. In doing so, the principles and measures outlines in the Regulator Performance Framework will be a consideration as part of this program of works.

Case studies

Note: case studies are not applicable to measures under this KPI.

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

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

2015-16 self-assessment rating	●	2016-17 self-assessment rating	●
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During the 2016-17 financial year the FWO reviewed its existing organisation structure and recognised the need to establish a group focussed on stakeholder engagement strategy. This dedicated stakeholder engagement function will make it easier for stakeholders and regulated entities to contribute to FWO's operations.

Complaints, feedback and information access

The FWO recognises the importance of continuously seeking feedback from stakeholders and regulated entities to inform improvement of products and services. In 2016-17, the FWO's dedicated Complaints, Feedback and Information Access Team (CFIA) reviewed feedback mechanisms available to customers. Following this, the agency developed and launched a streamlined and accessible online feedback service via FWO's website. This tool allows regulated entities to easily provide feedback regarding services, make a service complaint, or request a review. CFIA reviewed the relevant information on the website to ensure clarity, and the FWO's Feedback and Complaints Management policy remains available [via the Feedback webpage](#). CFIA also amended the FWO's correspondence to parties to include information about the new feedback function.

The streamlined internal information capture enables the FWO to more efficiently identify opportunities for operational improvement based on feedback from regulated entities and other customers.

The use of litigation to clarify the operation of workplace laws

For some years now, the FWO has monitored third party involvement in contraventions of workplace laws. In 2016-17, the FWO was involved in a number of matters involving third parties, including Fair Work Ombudsman v Blue Impression Pty Ltd & Ors. As outlined in our annual report, the Federal Circuit Court of Australia established an accounting firm was accessorially liable for contraventions committed by their client in the fast food industry.

This was the first time the FWO initiated proceedings against an accounting firm that was acting as an external service provider to an employer.

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

2015-16 self-assessment rating	●	2016-17 self-assessment rating	●
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The FWO continues to work with government and other agencies to identify improvements to the regulatory framework, including ways to make compliance easier for regulated entities. In 2016-17, the FWO participated in a number of reviews or inquiries of workplace laws led by Taskforces and other regulators, government, or parliament. This included:

- appearing at, and filing a submission to the Senate inquiry into the *Fair Work Amendment (Protecting Vulnerable Workers) Bill 2017*
- appearing at the Senate inquiry into corporate avoidance of the *Fair Work Act 2009*
- filing a submission to the Fair Work Commission in response to proposed transitional arrangements for the variation of Sunday penalty rates in some modern awards following the FWC’s decision in [2017] FWCFB 1001 (the Penalty Rates Decision) and
- filing a submission for the Government’s consultation on targeted law reform to address corporate misuse of the Fair Entitlements Guarantee (FEG) scheme and to improve the recovery of FEG payments.

Where appropriate, the FWO also shares information with other government departments and agencies to inform improvements to the regulatory framework and policy development. Through its active participation in the Migrant Workers’ Taskforce, the FWO has committed to certain activities involving the sharing of information, intelligence and feedback concerning regulated entities.

In October 2016 the FWO submitted the recommendations of the 417 Inquiry Report to the Taskforce for consideration. Those recommendations included reviewing and enhancing information sharing between regulators. The FWO chairs a working group including the Australian Border Force, the DIBP, ATO and DOE to support and implement this recommendation.

As part of the Migrant Workers’ Taskforce workplan, the FWO is partnering with DIBP and ATO to identify opportunities for better ways to share, capture and analyse information and intelligence to improve the regulatory framework as it relates to migrant workers. To

progress this task, the FWO has participated in a cross agency workshop, and is contributing to a paper to be delivered at the December 2017 meeting of the Migrant Workers' Taskforce.

Case studies

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			✓				

Overall assessment

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:

1. Ensuring compliance and enforcement activities are conducted in a manner that is minimally disruptive to business operations, whilst meeting regulatory obligations. This has been achieved by:

- reducing regulatory burden associated with compliance by supporting customers to resolve workplace disputes through a range of tailored early intervention activities and educational products
- working in partnership with regulated entities to support sustainable and long-term compliance with workplace laws.

2. Ensuring actions undertaken to address requests for assistance are proportionate to the risks identified through rigorously assessing each request and applying the most appropriate dispute resolution method. This has been achieved by:

- early resolution of workplace disputes, with 94% of requests for assistance resolved through education and dispute resolution methods
- thorough assessment of matters deemed suitable for the use of compliance tools in accordance with the FWO's litigation and compliance and enforcement policies.

3. The strategic identification of areas and industries most susceptible to non-compliance with workplace laws. This approach recognises inquiry and campaign activities can create additional regulatory burden, so the agency focuses efforts on specific areas to achieve the greatest benefit. Further, targeted education activities to promote awareness of workplace laws, and the early detection of non-compliance, reduces financial and non-financial costs for regulated entities over the long term. The FWO achieved this measure by:

- identifying areas where non-compliance is of most concern through reviewing intelligence received and conducting or commissioning further research and stakeholder consultation
- continuing to undertake research and consultation throughout campaign development and design to ensure the activities will deliver the greatest benefit
- undertaking long-term inquiry activities to identify and address the drivers of non-compliance within industries.

4. Using technology to streamline and improve processes so it is easier for regulated entities to access information they require to understand and comply with workplace laws.

This has been achieved by:

- designing and delivering new tools to help build accountability in labour supply chains
- providing streamlined technical advice through online tools like the FWO Library
- developing and launching three new online learning modules, providing regulated entities with access to best practice workplace relations training.

The FWO has continued to support the broader Australian community by participating in a range of events affecting workplace relations matters, including senate inquiries, inter-agency working groups and taskforces, and educational events. The FWO has established mechanisms to enhance stakeholder engagement with regulated entities and is committed to the ongoing review and assessment of its regulatory activities.

Appendix - Regulator performance case studies

Case study 1 - New supply chain guides to help businesses avoid contracting risks

The FWO developed new tools to help build accountability in labour supply chains. Evidence shows cost pressures from the top of the supply chain can potentially result in non-compliant practices further down the chain. Accessorial liability provisions in the Fair Work Act provide an opportunity to look beyond the traditional employer-employee relationship. The FWO can hold people and businesses accountable for non-complaint practices and behaviour throughout the supply chain.

The FWO developed the educational resources with key industry participants and worked alongside professional experts from the University of Technology. There were a total of 48 industry, business and government stakeholders involved across five different industries. FWO intelligence indicated the represented industries had high levels of labour supply arrangements and included:

- horticulture
- poultry processing
- security
- trolley collection
- charity collection.

The four new practical guides are specifically designed to help regulated entities monitor and manage their contract arrangements and to ensure every single worker in their contracting network is paid fairly and appropriately.

The FWO launched the four new guides on 4 May 2017. They were accessed 2750 times between 4 May and 31 June 2017.

Case study 2 - Empowering businesses with the skills they need to engage in good workplace practices

In 2016 the FWO released three new online learning courses, designed to empower business with the skills they need to engage in good workplace practices. Each of the new courses contain a 'toolkit' so learners can access other educative resources and government and industry sites for further assistance.

The new courses include:

- Diversity and discrimination
- Workplace flexibility
- Managing employees

The FWO chose the topics following desktop intelligence gathering; including an analysis of Australian government, industry and academic reports, and an analysis of internal data. In addition, post-course surveys and mailbox feedback provided first-hand insights from online learning users about the relevance of the proposed topics.

During the scoping and developmental stages, the FWO was committed to engaging with regulated entities and their representatives.

The Diversity and discrimination and Workplace flexibility courses were co-branded and co-designed with the Australian Human Rights Commission (AHRC) and the Workplace Gender Equality Authority (WGEA). AHRC and WGEA were heavily involved in drafting and finalising content for the courses, as well as providing guidance on its interactive activities and learning outcomes.

The course toolkits include direct links to co-branded resources and relevant pages on the AHRC and WGEA websites, further reducing unnecessary regulation for users.

Market testing with small business owners and managers ensure the courses meet audience needs. The courses tested well at the prototype stage, achieving a favourable reaction from users. This included an indication that more than 40% of those tested would be very likely to recommend the course to a friend or colleague.

The online learning courses are interactive and use a range of methods to demonstrate concepts that support regulated entities in understanding their compliance obligations and, importantly, support good workplace practices.

Case study 3 - Regulators working together – ASIC and FWO joint initiatives

ASIC and FWO both play an important role in educating businesses, as well as ensuring compliance with relevant laws. Both agencies generally do this separately. Where a business falls under both jurisdictions, they would generally engage with the two agencies on two separate occasions if selected for an education or compliance interaction.

Leveraging off the positive outcomes from the FWO/ASIC Queensland campaign, the FWO/ASIC – Melbourne Metro Joint Initiative was another opportunity for the two regulators to collaborate. As outlined in the FWO Small Business Strategy 2014-16, the FWO is committed to reducing the regulatory impost on small business and providing businesses with an opportunity to access the advice and support they need from two agencies during the course of a single interaction.

In June 2017, FWO inspectors partnered with ASIC analysts from the Small Business Compliance & Deterrence team to visit around 50 businesses. For FWO inspectors this involved assessing time and wage records against pay slip and record-keeping requirements of the Fair Work Act, the Fair Work Regulations 2009 (the Regulations) and minimum award entitlements. For ASIC, the objective was to educate small business directors about their compliance obligations as directors of incorporated entities.

Phoenix Taskforce

The FWO contributes to the whole of Government approach to combat illegal phoenix activity, including via the inter-agency Phoenix Taskforce forum.

The Phoenix Taskforce brings together key Government agencies to facilitate the effective exchange of information and a collaborative approach to mitigate and deter fraudulent phoenix activity. The taskforce consists of 21 Australian, state and territory government, agencies, including the ATO, ASIC, Australian Federal Police, Department of Immigration and Border Protection and some State Revenue offices.

2017 Small business joint agency webinar

In 2017 the FWO teamed up with ASIC, the Australian Competition and Consumer Commission (ACCC), the ATO and the Australian Small Business and Family Enterprise Ombudsman (ASBFEO) to present a free interactive webinar designed to support and inform the small business community.

This year the topics related to the theme of “Levelling the playing field for small business.”

FWO and ASIC have also worked collaboratively in delivering seminars to support the small business community, including attendance at the:

- National Franchising & Business Opportunity Expo
- Victorian Small Business Festival 2016
- B2B Small Business Expo
- Bizlinks (Western Australia) Regional
- Bizlinks (South Australia) Roadshow
- Bizlink Forum (Queensland).

Case study 4 - Supporting long term compliance through relationship management

Compliance Partnerships enable the FWO and businesses to work together in a positive and constructive way to promote and increase compliance with workplace laws. A Compliance Partnership is an agreement between an employer and the FWO that outlines how the business will implement and/or maintain and enhance employment-related practices in their business and work with FWO to ensure and promote their compliance with Australian workplace laws.

Unlike an enforceable undertaking, which is a legislative enforcement provision, a Compliance Partnership is a common law agreement where a regulated entity wants to be proactive and actively manage risks around workplace laws. Compliance Partnerships are often entered into by major brands with responsibility for a supply chain or service networks. It demonstrates their commitment to sustainable and long-term adherence with workplace laws and can strengthen the brand's ethical reputation.

Entering into a Compliance Partnership commits the business to certain actions that may include:

- resolving workplace issues directly with employees
- self-auditing pay and record-keeping
- reviewing and monitoring supply chain and franchise relationships
- providing appropriate workplace relations training for key staff.

In 2016-17 the FWO entered into formal Proactive Compliance Deeds with the following businesses:

- Foodco Group Pty Ltd
- 7-Eleven Store Pty Ltd
- CW Retail Services Pty Ltd (Chemist Warehouse).

All Compliance Partnerships are available on FWO's website at - [List of Proactive Compliance Deeds](#).

Enforceable undertakings – ensuring ongoing compliance with workplace laws

Enforceable undertakings (EUs) are a legislative tool under section 715 of the Fair Work Act. The FWO uses EUs when someone (usually an employer) has breached workplace laws, the breach is serious and they acknowledge this, accept responsibility and agree to fix the problem. In these circumstances, the FWO can accept a legally binding written undertaking from the person about the breaches. An EU can be an alternative to legal proceedings.

Many of the initiatives included in EUs help to build a greater understanding of workplace responsibilities, motivate the company to do the right thing and help them avoid making the same mistake again.

Obligations typically included in EUs include:

- back-paying employees that have been underpaid
- a commitment to attend workplace relations training
- developing systems and processes to ensure ongoing compliance
- future self-audits of employee entitlements
- apologies to affected employees
- accessing the FWO's online tools and resources to help build future self-reliance.

In July 2016, the FWO audited Soul Food Design Depot & Gallery Pty Ltd (the employer) as part of the Mid-Western Regional Campaign. The audit found the employer failed to comply with the correct minimum hourly rates and penalty rates, with 24 workers underpaid more than \$22,000.

In early 2017, the employer entered into an EU with the FWO. The undertakings include rectifying underpayments by way of a payment plan, undertaking workplace training, issuing apologies to employees, arranging self-audits by an independent third party and developing systems to ensure ongoing compliance with workplace laws.

The employer has shown a strong commitment to the EU and, to date, they have met all obligations on time. They also completed a portion of the required training components ahead of schedule and demonstrated a genuine interest in understanding their obligations in detail.

In addition, the employer has been responsive to feedback provided on obligations and made improvements when requested. They have taken the opportunity of having a dedicated Compliance Relationship Manager at the FWO to address questions and enhance knowledge for long-term compliance with workplace laws.

Read more in the [Media release - Soul Food Enforceable Undertaking](#)

Case study 5 - National Compliance Monitoring Campaign

The National Compliance Monitoring program supports FWO's commitment to creating a culture of ongoing compliance with Australian workplace laws.

The campaign assessed whether businesses found to have errors in previous campaigns were now compliant.

FWO analysed data from a range of previous campaigns to identify non-compliant businesses. This included time and wage records from 891 businesses, with Fair Work Inspectors paying particular attention to the errors identified for each business the first time.

The campaign found 69% of businesses reaudited are now fully complying with all workplace relations obligations. For further errors, the agency applied a proportionate response, with Fair Work Inspectors considering the reasons for the non-compliance to determine appropriate action.

The campaign identified that compliant businesses are now using FWO resources designed to support business. Many are small businesses that often do not have the benefit of dedicated human resources or payroll staff. Making changes to systems and processes to ensure compliance allows regulated entities to focus on other important areas of their business.

The National Compliance Monitoring Campaign is continuing as an ongoing program.

Case study 6 - Mediation Online Booking System

The FWO is investing in technology to streamline processes, and develop customer centric digital solutions. In 2016-17, through a series of projects, the FWO leveraged technology to re-design the mediation booking processes. The end-to-end digital service now enables disputing parties - who may not wish to communicate with each other - to find a mutually convenient time to access mediation. It has significantly reduced the manual work for FWO customers and staff. It also allows connections between different systems (including between the FWO's systems and customer devices) so that all parties receive automatic updates as required. The connected data enables customers to link appointments with their own calendar systems. Importantly, attendance at appointments has significantly improved.

Regulated entities report that the system is simple and easy to use. It provides the flexibility to select a suitable conference time from a range of options. The system's efficiency means improved access to mediation services for customer. There are additional internal efficiencies, in the past, FWO staff manually registered around 4500 matters per annum. Mediators can now quickly respond, ensuring that regulated entities have disputes quickly and informally resolved.

Since July 2016, the booking system has confirmed 2000 bookings.

Case study 7 - Understanding the environment – working with partners to make compliance easier

As part of an ongoing commitment to engage with regulated entities, including those in multicultural communities, FWO has engaged with key Korean peak bodies as part of a Korean Australian Engagement Strategy. FWO had examined persistent underpayment matters involving Korean visa holders, and received intelligence about minimum award rates being undercut because they paid a 'going rate' for overseas workers. Recognising a need to increase education, FWO wrote to peak bodies in the Korean communities, seeking their support to raise awareness of Australian workplace laws.

The resulting, consultative community partnership sought to better understand the needs of the Korean community and seek guidance on developing initiatives to ensure effective and tailored communication with businesses.

In April 2017, Deputy FWO Kristen Hannah launched a business booklet to assist business owners in the Korean community to comply with their obligations. The launch took place at the 2017 Korean-Australian Business Forum, with 60 small business owners attending from the Korean community.

The FWO promoted further web-based and hard copy in-language resources via a range of mediums to provide the Korean community with more avenues to access the information. Promotion took place on social media, via the community stakeholders, and at a seminar organised by the Korean Consulate in June 2017.

Korean language resources are available on www.fairwork.gov.au and engagement with stakeholders, like FWO's work with the Chinese community, is ongoing.