



Australian Government

# Fair Work OMBUDSMAN



**ASIC**

Australian Securities & Investments Commission

## 2015/16 - FWO/ASIC RELATIONSHIP REPORT

The Fair Work Ombudsman (FWO) and the Australian Securities and Investments Commission (ASIC) continued to work closely together throughout 2015-16 to solidify our relationship. We sought to increase the level of understanding of each other's operations, business objectives and strategies. We specifically focused on ways to address the incidence and impact of company officers abusing corporations laws to avoid compliance with workplace laws. Together, we are aiming to build a culture of compliance with corporations and workplace laws.

Our joint priorities were:

### ■ **Combatting illegal phoenix activity**

- As the FWO generally cannot investigate or take action against companies that have entered liquidation, employee entitlements often remain unpaid. Illegal phoenix activity reduces FWO's ability to effectively regulate workplace laws. Directors and other officers involved in the activity may be in breach of their general director duties. ASIC has a number of strategies to deter illegal phoenix activity ranging from education, surveillance and compliance programs, working with (and referring to) other agencies such as the ATO and taking enforcement action where appropriate for breaches of the Corporations Act. ASIC also works with registered liquidators to assist them in actions against directors. Through our interactions, we have enhanced understanding across our agencies of how the risk of illegal phoenix activity manifests itself, what each agency is doing to combat misconduct and areas of intersection.

### ■ **Investigating labour supply chain practices**

- The FWO is concerned that some businesses that obtain labour through a supply chain of contractors are entering into arrangements that are based on exploiting and underpaying workers. This unlawful practice gives these business operators an unfair competitive advantage at the expense of workers and legitimate operators. ASIC intelligence indicates that labour hire is one of five key industries with the highest number of reported incidence for illegal phoenix activity. Directors and other officers of a company involved in illegal phoenix activity will deliberately seek to avoid detection by failing to update their business details, winding up or deregistering companies. Referrals from the FWO to ASIC have identified some alleged misconduct in this regard.

### ■ **Protecting vulnerable workers**

- Young workers and visa holders face barriers to understanding and enforcing their workplace rights and entitlements, due to youth, language and cultural differences and concerns about visa status. These workers are often engaged in highly competitive industries and within complex supply chains.

### ■ **Assisting small business by making compliance easier**

- FWO and ASIC are committed to making compliance easier for employers. Our agencies achieve this priority by collaboration and by providing information and support to employers about their obligations under both jurisdictions through joint campaigns and presentations and events related to small business.

In seeking to address these shared compliance priorities, in 2015-16, we:

■ **Formalised and strengthened our ongoing relationship and information sharing arrangements**

- FWO and ASIC formally shared information under the terms of our Exchange of Letters. FWO formally referred 18 individuals where there was alleged illegal phoenix activity including breaches of director duties, failing to update business details or making false statements to ASIC when doing so and/or operating when deregistered.
- FWO and ASIC have also shared information on how referrals are assessed to assist FWO's operational staff to identify individuals and entities suspected of relevant unlawful conduct.
- ASIC actioned requests to delay de-registration of companies pending the outcome of FWO investigations, thereby making it easier to potentially recover monies for employees.
- FWO shared its supply chain inquiry report findings, including:
  - FWO's strategic Inquiry into 7-Eleven, which identified the drivers of non-compliance in the 7-Eleven network; and
  - FWO's strategic Inquiry into the Baiada Group's procurement processes in NSW and formally referred specific concerns.
- In September 2015, the FWO was the first agency to make a request under the Phoenix Taskforce for information.

■ **Met on a regular basis and attended events regarding our mutual interests**

- The agencies held operational and strategic meetings throughout the year. Matters discussed included ongoing operational activities and matters of referral, strategic priorities and solutions to address illegal phoenix activity and non-compliance in supply chains, and opportunities to work together on shared compliance matters.
- The agencies jointly attended presentations and events to assist small business, including the Small Enterprise Association of Australia & New Zealand Conference (1 – 3 July 2015), the Council of Small Business Australia Summit (16 – 17 July 2015), the Small Business Festival Victoria (4 August 2015), the B2B Expo (27-28 April and 1-2 June 2016) and various state based whole of government networks.
- Both ASIC and FWO had ongoing involvement in multi-agency groups for small business including the Federal Regulators Advisory Group (25 August and 17 November), the Multi-Agency Small Business webinar (9 June 2016) and regular workshops and meetings for the ATO's Fix-it-Squads.
- In June 2016, Commissioner Tanzer met with the Fair Work Ombudsman to discuss ways in which the relationship between the FWO and ASIC could be further developed. From these discussions came the concept of a secondment arrangement to obtain a deeper understanding of each organisation's priorities and information requirements in respect of the referral of matters – and to facilitate the early identification of potential referrals.

■ **Found new opportunities to collaborate**

- FWO and ASIC have found new opportunities to collaborate through a joined-up campaign.
- In May 2016, our agencies jointly audited 50 businesses in the Brisbane CBD across various sectors, including retail, hospitality, fast food and real estate.
- The campaign primarily focused on businesses with first-time company directors. The visits were co-ordinated to minimise the time impact on small businesses, which would otherwise face separate visits from the two agencies.
- Fair Work Inspectors conducted checks and provided education to ensure employers were paying the correct minimum hourly rates, penalty rates, allowances and loadings, providing meal breaks and meeting their record-keeping and pay-slip obligations.

- ASIC analysts provided education and raised awareness with small business about their compliance obligations as directors of incorporated entities, as well as promoting the tools and resources that ASIC has available for small business.
  - The FWO is currently conducting follow up activities with ASIC regarding the campaign. A joint campaign report will be published upon the conclusion of the campaign.
  - On 26 May 2016, FWO and ASIC published a joint media release on the campaign (**Attachment A**).
- **Participated in the whole of government approach to combatting illegal phoenix activity**
- The FWO and ASIC are active members of the Phoenix Taskforce, along with 21 other government agencies. The Phoenix Taskforce brings together key federal and state agencies to combat fraudulent phoenix activity by developing and using sophisticated data matching tools to identify, manage and monitor suspected fraudulent phoenix operators.
  - The agencies attended the whole of government construction industry roundtable meeting in November 2015 to discuss the impact of phoenix activity.
  - The FWO has taken a number of creative steps to ensure there are deterrents against directors deliberately avoiding lawful employee entitlements through the illegitimate use of corporate structures. The FWO frequently uses the accessorial liability provisions of the Fair Work Act to bring to account directors involved in contraventions of workplace laws, and to obtain orders for penalties and injunctions against them. The FWO has also been successful in obtaining orders for a director to back-pay employees' wages.
- **Future activities**
- FWO and ASIC are committed to strengthening collaborative working relationships during the 2016 / 17 financial year.
  - So that the FWO and ASIC have a better understanding of their respective regulatory functions and achieve more effective outcomes, there will be an exchange of staff (secondment) to each agency.
  - The FWO and ASIC will continue to consult regularly to find new and improved ways to educate and regulate corporate entities and officers in respect of workplace obligations arising under Commonwealth law.



Fair Work  
OMBUDSMAN



Australian Securities & Investments Commission

## Media Release

26 May, 2016

### Spot checks for 50 Brisbane employers

The Fair Work Ombudsman and the Australian Securities and Investments Commission (ASIC) will jointly audit 50 businesses in Brisbane as part of a new campaign.

The Agencies will visit businesses in the **Brisbane CBD, Fortitude Valley, South Brisbane and West End** on May 30 and 31.

Fair Work inspectors will check employers are paying the correct minimum hourly rates, penalty rates, allowances and loadings and providing appropriate meal breaks.

Compliance with record-keeping and pay-slip obligations will also be monitored.

ASIC analysts will conduct site visits of incorporated entities where directors are present; educate and raise awareness with small business about their compliance obligations as directors of incorporated entities and promote the tools and resources that ASIC has available for small business.

The visits have been co-ordinated in order to minimise the time impact on small businesses, which would otherwise face separate visits from the two Agencies. The campaign is focusing on employers across various sectors, including retail, hospitality, fast food and real estate and businesses have been notified of the visits in advance.

Businesses will be randomly selected but there will be a focus on businesses with first-time company directors, to ensure they understand their lawful obligations and develop good compliance habits from an early stage.

Fair Work Ombudsman Natalie James says one of the aims of the campaign is to ensure employers are aware of their workplace responsibilities and how the Agency can assist them to access, understand and apply information to build a culture of compliance.

"It's important we check that workers are being paid correctly, but we also want to be pro-active about ensuring employers understand their obligations," she said.

"Inspectors will offer tailored assistance to rectify any non-compliance issues and put processes in place to ensure employers get things right in the future."

ASIC Commissioner Greg Tanzer said: "We recognise that in today's economic environment, some small businesses may feel challenged simply keeping track of their obligations, and that's why we seek to provide assistance in ensuring they can keep up to date and compliant without undue impact on the business."

Employers and employees seeking assistance from the Fair Work Ombudsman can visit [www.fairwork.gov.au](http://www.fairwork.gov.au) or call the Fair Work Infoline on **13 13 94**. An interpreter service is also available by calling **13 14 50**.

Employers seeking assistance from ASIC can visit [www.asic.gov.au](http://www.asic.gov.au) or call the ASIC Customer Contact Centre by calling 1300 300 630.

#### Media inquiries:

Fair Work Ombudsman – Ryan Pedler 0411 430 902, [ryan.pedler@fwo.gov.au](mailto:ryan.pedler@fwo.gov.au)

ASIC – Gervase Greene 0466 568 152, [gervase.greene@asic.gov.au](mailto:gervase.greene@asic.gov.au)