

Media Policy

Why and how do we engage with media?

In our Compliance and Enforcement Policy,¹ the Fair Work Ombudsman (**FWO**) recognises that informing the public through various media channels regarding our operational activities is an essential part of the work we do because it:

- promotes voluntary compliance with Commonwealth workplace relations laws
- ensures transparency, accountability and public confidence in the regulator
- ensures the public is informed of compliance and enforcement activities undertaken by the FWO that are of significant interest
- acts as an effective deterrent (general and specific) to non-compliance²
- serves an educative purpose in our efforts to promote the benefits of productive, cooperative and harmonious workplaces.

In deciding whether to comment publicly and in what form, we consider a range of factors such as the nature of the matter, who the statement is likely to impact and how it furthers the FWO's objectives. At all times we:

- consider the likely and possible risk and consequences of making or not making a public comment
- weigh up the public interest, deterrence and risks associated with both making or not making a statement.

Our guiding principles when communicating with the public via the media are that the information is:

- accurate
- fair and balanced
- appropriate and relevant

¹ <https://www.fairwork.gov.au/about-us/our-vision/compliance-and-enforcement-policy>.

² Australian Law Reform Commission Report, *Principled Regulation, Federal Civil & Administrative Penalties in Australia*, Report 95, March 2003; *Fair Work Ombudsman v South Jin Pty Ltd (No 2)* [2016] FCA 832 at [82]; *Fair Work Ombudsman v Happy Cabby Pty Ltd & Anor* [2013] FCCA 397 at [108]; and *Fair Work Ombudsman v Cleaners New South Wales Pty Ltd* [2009] FMCA 683 at [25].

- readily accessible
- not at risk of prejudicing any ongoing compliance activities (e.g. audits, investigations)
- not at risk of interfering with a fair hearing and the administration of justice or in any way prejudicial to the outcome of any legal proceedings
- fair in its disclosure of persons (corporate or natural) that are not the direct subject of any compliance activity or enforcement action (i.e. 'third parties').

In some situations, particularly with respect to privacy concerns, the FWO may use its discretion to keep certain matters confidential or provide a party advance notice of the public comment, for example, a media statement.

It is not our practice to:

- disclose information which may cause prejudice to ongoing compliance activities or court proceedings
- state the exact residential address of parties (e.g. we only state the relevant suburb for a party to the proceedings to avoid misidentification) or to identify witnesses by name (other than a party to the proceedings)
- represent information as facts or findings if they are allegations which have yet to be decided (i.e. we will use the term 'alleged')
- make comments on the respective strengths or weaknesses of the parties' evidence during an investigation or before a case is decided by the court
- use descriptive words which are not neutral, or which may prejudice the public as to a party prior to the conclusion of a court hearing
- refer to the conduct of a named third party where the information could be misleading, unfair or prejudicial
- use media releases to gain any tactical advantage in an ongoing proceeding.

Timing and content of media statements

The FWO typically makes comment and releases public statements in relation to:

- information products
- education resources
- stakeholder relationships
- awareness raising campaigns
- compliance activities
- enforcement outcomes
- legal proceedings.

Legal proceedings

The FWO will usually issue a media statement in relation to legal proceedings:

- at the commencement of an action after the pleadings have been filed and the parties to the proceedings have been notified and served
- after a decision or finding is made (usually after a penalty decision)
- when there is a public interest.

The FWO is aware that disclosing information on a legal proceeding, before the proceeding is finalised, requires particular care in order to ensure that it causes neither prejudice to the proceedings and/or any ongoing compliance activity involving other or related entities. When we report on a legal matter before the proceedings are finalised, we may:

- identify the parties to the action, including their names, trading names, suburb of residence/operation, and the industry of any related business
- refer to the content alleged in the originating pleadings, including:
 - the alleged period of time or nature of the work
 - some or all of the alleged breaches
 - the quantum of any amount which is being claimed on behalf of employees;
- identify the potential maximum penalties for the alleged breaches
- say when the matter is in court and which court it is in
- advise on the status of any court proceedings (for instance, the outcome of an interlocutory application or the purpose of the next court hearing).

Where a court has made a decision/finding in relation to a matter, the FWO may:

- identify the outcome of court proceedings, any findings of fact of the court, quote from the judgment or make comment on information which is in the public domain
- identify the parties who were the subject of the proceedings
- identify (subject to the principles in this document) third parties not the subject of the proceedings but who may have been otherwise materially involved in the matter
- comment on the FWO's views about the matter and its relevance to the FWO's objectives as contained in the *Fair Work Act 2009*.

Compliance activities and enforcement outcomes

The FWO issues media statements on its compliance activities and enforcement outcomes.

The FWO will confirm the existence of an investigation, audit or inquiry where it is in the public interest to do so having regard to the principles set out above.

Any public comment regarding compliance activities that are underway are carefully made to protect the integrity of the compliance activity. Where the FWO does confirm the existence of a compliance activity, it does not mean that an adverse finding will be necessarily made.

The FWO will not usually issue a media release in relation to a specific infringement notice (**IN**) or compliance notice (**CN**) where the recipient/s have complied with the terms of the CN or IN. Complying with the terms set out in a CN or IN does not constitute admission of liability by the recipient or an adverse finding of non-compliance with workplace relations laws. Generally, we do not issue media releases identifying parties in respect of a CN or IN that has been complied with but we do regularly publish reports and make statements that refer to overall compliance statistics.

To ensure full transparency and accountability, the FWO issues a media statement when it has entered into an enforceable undertaking (**EU**) or a Proactive Compliance Deed (**PCD**). The public statement may contain the following:

- the background of the matter/activity as described in the EU or PCD
- where relevant, details on previous non-compliance relating to the entities involved or admissions made, as set out in the EU or PCD
- the key features of the EU or the PCD.

The FWO will publish a copy of the EU or PCD on the FWO website. The FWO will exercise its discretion to redact parts of the EU or PCD when it contains personal information, such as the name or contact information of underpaid employees.

The FWO will also issue a media statement concerning the status of an EU or PCD if it is in the public interest to do so.

Information, awareness and education products

The FWO will comment on a range of initiatives and campaigns designed to inform, raise awareness and educate workplace participants such as tools for making and maintaining records.

The FWO will also comment on general workplace relations issues and news, such as modern award variations, that it considers will build a culture of compliance.

Identifying third parties

The FWO may name a third party in relation to a matter to advance its primary objective of ensuring compliance with the *Fair Work Act 2009*.

A third party may be named because its conduct, behaviour or practices are relevant to alleged breaches of workplace laws, such as a party that has contracts under which the workers provide services or products to it, albeit through other entities.

In such cases, we will consider whether it is in the public interest to name a third party to demonstrate instances of businesses/persons that are benefiting from the labour and/or the non-compliance and thus deter others from similar behaviour.

Likewise, it may also be appropriate to refer to a third party that has worked constructively to ensure future compliance within its supply chain or service network, to promote how other businesses may influence workplace compliance within their operating model.

When considering whether to name a third party the FWO will, in addition to the guiding principles and practices set out above, take into account:

- the extent to which naming the third party will influence the regulated community to facilitate compliant labour supply chains or service networks
- the extent to which the third party has benefited from the non-compliance
- the role of the third party in creating the non-compliance and/or allowing its continuation
- the degree to which the third party has engaged with the FWO as part of its investigation into the alleged non-compliance
- measures the third party has put in place to address similar issues or practices in business operations in which they have an interest (or preventative measures to ensure similar breaches do not arise).

If a third party is named, the context and circumstances of the party's involvement will be described in neutral language. The FWO will be fair and accurate in its statements regarding the role of the third party, including any commendation that is considered warranted.