

Recognition for in-house legal team allows Agency to prosecute its own cases

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The Fair Work Ombudsman has gained approval to use in-house lawyers to conduct all its civil penalty litigations.

The Federal Government has granted the national employment regulator a 12-month approval to use in-house lawyers under paragraph 5 of the Legal Services Directions 2005.

Attorney-General Robert McClelland first approved the use of in-house lawyers in 2008 for court matters involving employee underpayments.

The approval has now been broadened to allow the Fair Work Ombudsman's legal team to run all its cases.

In addition, in-house lawyers will also be able to conduct enforcement proceedings to recover outstanding Court penalties.

Since it was established on July 1, 2009, the Fair Work Ombudsman has put 106 matters into court and obtained civil penalties totalling more than \$4.2 million.

The Fair Work Ombudsman has a team of 37 lawyers headed by its Sydney-based Chief Counsel, Janine Webster.

Formerly the agency's Executive Director of National Litigation, Ms Webster has a Bachelor of Law with honours and a Bachelor of Commerce from the University of Wollongong.

Her team comprises a Director of Legal Practice, Special Counsel, seven principal lawyers, 12 senior lawyers, 16 lawyers and four support staff.

Ms Webster says the Fair Work Ombudsman has so far filed 49 matters using in-house lawyers, 23 of which have been finalised and were successful.

She does not intend to use her in-house lawyers for every matter, but says it is important for the Agency to have the flexibility to do so where appropriate.

"There will always be a need for external firms to conduct some of our work where it is outside our expertise or existing resources don't permit the proper conduct of a matter," Ms Webster said.

"However, in a specialised environment such as our own, that should be the exception rather than the rule – and when we do, we will expect value for money."

Ms Webster said she and her staff were delighted to receive the Attorney-General's approval, which she says recognises the Agency's professionalism, skills and expertise.

She says the decision has the potential to offer significant cost savings to the Fair Work Ombudsman.

The Fair Work Ombudsman's Legal Group had a budget of \$3.8 million for external legal spend in 2010-11, down from more than \$5 million the previous financial year.

Ms Webster says the reduced spend is "largely attributable to the fact that a significant number of matters are now run in-house".

Based on a "blended hourly rate" of \$150 an hour for its own lawyers, compared to an average rate of \$303 an hour for an external lawyer, \$418 for a senior associate or \$515 for a partner, the Fair Work Ombudsman estimates it can halve the cost of running a litigation in the Federal Magistrates Court.

"The cost savings have, and will, free up additional resources to conduct more litigation," Ms Webster said.

However, she said the external expenditure did not include the in-house cost of the Fair Work Ombudsman's legal team preparing the substantive parts of documentation required for litigation, such as pleadings, affidavits and submissions.

Ms Webster said allowing the Agency to run its own litigations had assisted the Fair Work Ombudsman to attract and retain skilled and talented lawyers.

"Maintaining an in-house practice means that lawyers are able to maintain and build upon their litigation skills and keep them current,

which has proven to be very important in the retention of valuable skilled staff," she said.

The Fair Work Ombudsman's Litigation Policy can be found in the [guidance notes \(www.fairwork.gov.au/about-us/our-policies/our-policies\)](http://www.fairwork.gov.au/about-us/our-policies/our-policies) of the Fair Work Ombudsman website.

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