

Workplace investigations

In some situations, we investigate possible breaches of workplace laws.

During a workplace investigation we collect and examine evidence to make decisions about:

- whether Australian workplace laws apply to the people involved
- what the law is (eg. if an industrial award or registered agreement applies and, if so, which one)
- whether the law has been followed
- if the law hasn't been followed, what needs to be done to fix it.

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When we investigate

Most requests for assistance we receive from people who have a workplace dispute are resolved through our voluntary processes such as mediation.

We investigate a small number of requests and are more likely to investigate if we decide:

- the claims are very serious
- the issue is widespread
- the people affected are vulnerable.

Employees or employers can also take their own legal action by:

- seeking independent legal advice
- using the small claims court process.

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What happens during a workplace investigation

Fair Work Inspectors (FWI) conduct workplace investigations. Inspectors are government officials who promote and monitor compliance with Australian workplace laws.

Collecting evidence

During an investigation, we collect evidence such as time and wages records, employment contracts and other documents depending on what's being investigated.

Often we will request that parties provide us with evidence. FWIs also have the power to require people to give us records or documents relating to the investigation. This is called giving someone a 'notice to produce'. They also have the power to enter premises, such as a workplace, in order to investigate and gather evidence.

We may offer witnesses (including the employer and employees) the opportunity to participate in a recorded interview. The recording will be considered as part of the evidence.

We expect that people who provide us with information, records or documents in an investigation give us accurate and complete information and material, or tell us if it is not.

FWO Notices

The Fair Work Ombudsman, Sandra Parker, and a small number of specified senior executives can decide to apply to the Administrative Appeals Tribunal for a 'FWO Notice' if they reasonably believe a person or business has information or documents that will help an investigation.

A FWO Notice is a written document. It can be used to require a person or business to:

- give information
- produce documents
- attend an interview to answer questions.

The information or documents must relate to suspected contraventions of the following kinds:

- underpaying wages or entitlements of employees
- deductions, cashbacks or requirements to spend money of employees
- entitlements in the National Employment Standards
- unfair dismissal or bullying of a worker
- unlawful discrimination in relation to employment
- coercion of an employee by an employer.

If the Administrative Appeals Tribunal approve our use of a FWO Notice:

- we have to give the person at least 14 days to comply
- someone required to answer questions in person is entitled to be legally represented and reimbursed for reasonable expenses
- the person or business can't be held liable for any loss, damage or injury to someone else because they provided information, produced documents or answered questions
- the answers given by someone in an interview can't be used as evidence in proceedings against that person (other than proceedings for giving false or misleading information or obstruction of a Commonwealth official).

This power will only be used when necessary. We report to the Commonwealth Ombudsman every time we use a FWO Notice and after interviewing a person.

There are significant penalties for not complying with a FWO Notice.

Read our [FWO Notices fact sheet \(www.fairwork.gov.au/how-we-will-help/templates-and-guides/fact-sheets/about-us/fwo-notices\)](http://www.fairwork.gov.au/how-we-will-help/templates-and-guides/fact-sheets/about-us/fwo-notices) and download our detailed [Guide to FWO Notices \(DOCX 730.4KB\) \(www.fairwork.gov.au/ArticleDocuments/725/guide-to-FWO-Notices.docx.aspx\)](http://www.fairwork.gov.au/ArticleDocuments/725/guide-to-FWO-Notices.docx.aspx) (PDF 552.8KB) (www.fairwork.gov.au/ArticleDocuments/725/Guide-to-FWO-Notices.pdf.aspx) and our [Examinee expenses guide and claim form \(DOCX 512.5KB\) \(www.fairwork.gov.au/ArticleDocuments/725/fwo-notices-examinee-expenses-guide-and-claim-form.docx.aspx\)](http://www.fairwork.gov.au/ArticleDocuments/725/fwo-notices-examinee-expenses-guide-and-claim-form.docx.aspx) (PDF 2.2MB) (www.fairwork.gov.au/ArticleDocuments/725/fwo-notices-examinee-expenses-guide-and-claim-form.pdf.aspx) .

What happens if someone doesn't comply with a requirement to provide information or records (including a FWO Notice)?

Penalties of up to \$133,200 (for an individual) or \$666,000 (for a company) can apply for not complying with a FWO Notice.

Penalties of up to \$13,320 (for an individual) or \$66,600 (for a company) can apply for:

- not providing documents or records by the due date in a notice to produce
- giving us information or producing documents or records knowing they are false or misleading
- intentionally hindering or obstructing officials from performing duties or exercising powers. This includes making it difficult for an inspector, an assistant or a senior officer to gather evidence.

See our [Powers of Fair Work Inspectors fact sheet \(www.fairwork.gov.au/how-we-will-help/templates-and-guides/fact-sheets/about-us/powers-of-fair-work-inspectors\)](http://www.fairwork.gov.au/how-we-will-help/templates-and-guides/fact-sheets/about-us/powers-of-fair-work-inspectors) for more information about the role and powers of FWIs.

Evaluation

We examine the evidence and the workplace laws and make decisions about:

- whether there is proof that someone has broken a workplace law
- if there is, what can be done to fix the issue.

We explain the decisions we make, and why, to the people involved.

Outcomes

We decide the most appropriate outcomes to follow an investigation. The outcomes will depend on matters including:

- the evidence available
- the contraventions identified (if any)

- the seriousness and extent of the contraventions
- the co-operation of the people involved.

Outcomes of an investigation can include:

- No further action - for example, if:
 - there is not enough evidence to prove that someone has broken a law
 - the business has closed down
 - the employer can't be found.
- Contravention letter - telling the person who has broken the law which law/s they have broken and how they can to fix the issue
- Letter of caution - giving the person who has broken the law a formal warning, which we might rely on in the future if they break the law again
- [Compliance notice \(www.fairwork.gov.au/About-us/Our-role/enforcing-the-legislation/compliance-notices\)](http://www.fairwork.gov.au/About-us/Our-role/enforcing-the-legislation/compliance-notices)
- [Infringement notice \(www.fairwork.gov.au/About-us/Our-role/enforcing-the-legislation/infringement-notices\)](http://www.fairwork.gov.au/About-us/Our-role/enforcing-the-legislation/infringement-notices)
- [Enforceable undertaking \(www.fairwork.gov.au/About-us/Our-role/enforcing-the-legislation/Enforceable-undertakings/default\)](http://www.fairwork.gov.au/About-us/Our-role/enforcing-the-legislation/Enforceable-undertakings/default)
- [Compliance Partnerships \(www.fairwork.gov.au/about-us/our-role/enforcing-the-legislation/compliance-partnerships/default\)](http://www.fairwork.gov.au/about-us/our-role/enforcing-the-legislation/compliance-partnerships/default)
- [Referral to small claims \(www.fairwork.gov.au/how-we-will-help/how-we-help-you/help-resolving-workplace-issues/working-with-you-to-resolve-workplace-issues\)](http://www.fairwork.gov.au/how-we-will-help/how-we-help-you/help-resolving-workplace-issues/working-with-you-to-resolve-workplace-issues)
- [FWO litigation \(www.fairwork.gov.au/About-us/Our-role/enforcing-the-legislation/Litigation/default\)](http://www.fairwork.gov.au/About-us/Our-role/enforcing-the-legislation/Litigation/default)

Disagreement with the outcome

If an employer or employee disagrees with the outcome of a workplace investigation, they can tell us why and we can talk about it.

If an employer or employee still disagrees with the outcome, they can:

- ask us to review the investigation
- dispute the matter in court (if we or another party chooses to take action in court).

Failure to fix an error

If the evidence shows that a workplace law has been broken, we will ask that the error is fixed, where possible. This often means asking an employer to pay back wages that are owed.

If the person or company that has broken the law refuses to fix the problem, the case may be referred to court for further action or the employee or employer can take their own legal action in a small claims court.

Find out more about:

- [small claims \(www.fairwork.gov.au/how-we-will-help/how-we-help-you/help-resolving-workplace-issues/working-with-you-to-resolve-workplace-issues\)](http://www.fairwork.gov.au/how-we-will-help/how-we-help-you/help-resolving-workplace-issues/working-with-you-to-resolve-workplace-issues)
- [FWO litigation \(www.fairwork.gov.au/About-us/Our-role/enforcing-the-legislation/Litigation/default\)](http://www.fairwork.gov.au/About-us/Our-role/enforcing-the-legislation/Litigation/default)

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Where to get help during an investigation

If you have any questions or concerns during a workplace investigation, you should contact the FWI assigned to your case. FWIs:

- are neutral - they don't represent employers or employees, they simply enforce workplace laws
- can tell employers and employees what will happen during the workplace investigation
- can give employers and employees information about workplace laws.

Explore this website to get more information about workplace laws.

Employer organisations, unions or other legal professionals may also be able to give advice on workplace rights and obligations.

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Requesting a review

We welcome your feedback about your experience with us. You can request a review if you:

- are not satisfied with the process
- do not agree with the outcome
- think the Fair Work Inspector was unprofessional.

To find out more about how to request a review, visit our [Feedback page \(www.fairwork.gov.au/contact-us/online-enquiries/feedback\)](http://www.fairwork.gov.au/contact-us/online-enquiries/feedback)

Help for small business

- Find tools, resources and information you might need on our [Small business page \(www.fairwork.gov.au/Find-help-for/Small-business/default\)](http://www.fairwork.gov.au/Find-help-for/Small-business/default) .

You might also be interested in

- Read past [Inquiry reports \(www.fairwork.gov.au/about-us/access-accountability-and-reporting/inquiry-reports\)](http://www.fairwork.gov.au/about-us/access-accountability-and-reporting/inquiry-reports)
- Find out more about our role in [Enforcing the legislation \(www.fairwork.gov.au/about-us/our-role/enforcing-the-legislation/default\)](http://www.fairwork.gov.au/about-us/our-role/enforcing-the-legislation/default)
- Learn about Australian workplace [Legislation \(www.fairwork.gov.au/about-us/legislation/legislation\)](http://www.fairwork.gov.au/about-us/legislation/legislation)

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Contact us

Fair Work Online: www.fairwork.gov.au

Fair Work Infoline: 13 13 94

Need language help?

Contact the Translating and Interpreting Service (TIS) on 13 14 50

Hearing & speech assistance

Call through the National Relay Service (NRS):

For TTY: 13 36 77. Ask for the Fair Work Infoline 13 13 94

Speak & Listen: 1300 555 727. Ask for the Fair Work Infoline 13 13 94

The Fair Work Ombudsman is committed to providing advice that you can rely on. The information contained on this website is general in nature. If you are unsure about how it applies to your situation you can call our Infoline on 13 13 94 or speak with a union, industry association or workplace relations professional. Visitors are warned that this site may inadvertently contain names or pictures of Aboriginal and Torres Strait Islander people who have recently died.