

FAIR WORK OMBUDSMAN

STATEMENT OF EXPECTATIONS – 2021

Ministerial Statements of Expectations provide greater clarity about government policies and objectives relevant to the regulator in carrying out its statutory functions. As the Australian Government Minister responsible for Industrial Relations, my responsibilities include administration of the *Fair Work Act 2009* (the Act). This statement sets out my expectations of the Fair Work Ombudsman (FWO).

Overview

The FWO is an independent statutory office under the Act. The FWO's purpose as the national workplace relations regulator is to promote harmonious, productive, cooperative and compliant workplace relations in Australia and compliance with the Act and fair work instruments.

Under the Act, the FWO's functions are to:

1. promote harmonious, productive and cooperative workplace relations, and compliance with the Act and fair work instruments, including by providing education, assistance and advice to employees, employers and outworkers and producing best practice guides to workplace relations or workplace practices
2. monitor compliance with the Act and fair work instruments
3. inquire into, and investigate, any act or practice that may be contrary to the Act, a fair work instrument or a safety net contractual entitlement
4. commence proceedings in a court, or make applications to the Fair Work Commission, to enforce the Act, fair work instruments and safety net contractual entitlements
5. refer matters to relevant authorities
6. represent employees or outworkers who are, or may become, a party to court proceedings or to a Fair Work Commission matter under the Act or a fair work instrument, if it considers that the representation will promote compliance with the Act or the fair work instrument
7. perform any other functions conferred by any Act.

The Government recognises and respects the independence of the FWO and its responsibility for regulation of the national workplace relations system. I expect the FWO to exercise its functions and powers in good faith and to the best of its ability.

Principles of regulator best practice

Under the *Regulator Performance Guide July 2021*, the principles of regulator best practice are:

1. **Continuous improvement and building trust:** regulators adopt a whole-of-system perspective, continuously improving their performance, capability and culture, to build trust and confidence in Australia's regulatory settings.
2. **Risk-based and data-driven:** regulators maintain essential safeguards, using data and digital technology to manage risks proportionately to minimise regulatory burden and to support those they regulate to comply and grow.
3. **Collaboration and engagement:** regulators are transparent and responsive, implementing regulations in a modern and collaborative way.

I expect the FWO to embed and act in accordance with the Government's principles of regulator best practice when conducting its operations, as well as strive for continuous improvement against these principles.

In exercising its functions and powers in accordance with these principles, I expect the FWO to:

1. Continuous improvement and building trust

- be transparent and accountable in performing their statutory functions, including through the publication of key compliance outcomes, Corporate Plan, Compliance and Enforcement Policy, and annual Compliance and Enforcement Priorities
- foster a culture of continuous improvement and innovation, including by regularly reviewing its compliance and enforcement approach, operating procedures and Corporate Plan to ensure it best supports the needs of the Australian community, and investing in staff, including by actively building staff capability and knowledge
- provide clear, concise, relevant and accessible information, resources and advice on workplace obligations and rights, including to encourage voluntary compliance, and
- share insights through the regulator cohort, including reflecting on best practice and lessons learned, including failures.

2. Risk-based and data-driven

- take a risk-based and data-driven approach to compliance and enforcement activities, centred on the establishment and maintenance of well-defined and clearly communicated Compliance and Enforcement Priorities, and a clearly articulated approach to risk and how this informs decision making.

3. Collaboration and engagement

- Open, transparent and consistent engagement with stakeholders including industry, government and the broader community is crucial to maintaining competent and innovative regulatory practices. Consequently, I expect the FWO to:
 - seek opportunities to engage and consult genuinely with stakeholders
 - be receptive to feedback and diverse stakeholder views
 - seek to increase transparency in decision-making processes
 - provide up-to-date, clear and accessible guidance and information to assist regulated entities with compliance
 - work collaboratively with Australian Government agencies to share information where appropriate, ideas and deliver initiatives and programs
 - work with stakeholders to promote harmonious, productive and cooperative workplace relations and compliance with the Fair Work Act and fair work instruments
 - identify opportunities for further collaboration with international counterparts, including through the Trans-Tasman Employment Regulators Forum.

Innovation and regulatory change

I expect the FWO to continually monitor the environment it operates in to ensure that regulatory approaches keep pace with changes in technology, industry practices and community expectations. I also expect the FWO to regularly review and, where necessary, adjust policies, protocols and operating procedures, to ensure it can respond to the changing social, technological and commercial context in which it operates.

The Government's policy priorities and objectives

Deregulation Agenda

The Deregulation Agenda is a key component of the Government's plan to support economic recovery by making it easier for businesses to grow and create jobs. Ensuring our regulatory settings are the best they can be helps boost productivity and competitiveness and supports well-functioning markets, business investment, job creation and growth.

Under the Deregulation Agenda, the Australian Government is taking a new whole-of-government approach to regulatory policy. This will focus on reducing barriers affecting Australia's productivity growth and competitiveness. It will also make sure regulations are well-designed, fit-for-purpose and support businesses to grow and create jobs.

I expect the FWO to contribute to the deregulation process by:

- seeking opportunities to remove duplication and streamline processes in order to improve efficiency and lift productivity
- acting in accordance with regulator best practice in its decision-making, policies, processes and communication practices, in order to maximise transparency and minimise compliance costs
- applying the *Regulator Performance Guide July 2021* to its regulatory functions to assess its performance and engagement with stakeholders
- incorporating regulator performance reporting into the entity's reporting processes, as required under the *Public Governance, Performance and Accountability Act 2013* and *Public Governance, Performance and Accountability Rule 2014*, in order to support greater transparency and accountability of regulator performance.

Relationship with Minister and portfolio

The FWO plays an essential role in ensuring that the Government and I, as the Minister for Industrial Relations, are well placed to respond promptly to issues related to the national workplace relations system. The Attorney-General's Department (the department) also supports and advises me by providing advice on policy development and the performance of the portfolio's regulatory systems. The department takes into account the knowledge and expertise of the FWO when considering changes to policy and legislation that impact on the national workplace relations system.

Accordingly, I expect the FWO to work collaboratively with the department on significant issues relating to strengthening compliance with national workplace relations law.

As the responsible Minister, I will provide an enabling environment for the FWO to consistently implement best practice by ensuring you are well informed of the Government's policy direction, as specific initiatives and strategies are being considered.