

## Speech to the Ai Group PIR Conference – 1 August 2023

Good morning, I'm Kristen Hannah, the acting Fair Work Ombudsman. Thank you for the invitation to talk to you today, I'm happy to be here with you again.

I'm sure you've heard that Anna Booth has been appointed as the next Fair Work Ombudsman and will be beginning her term a month from now on the first of September. We look forward to welcoming Anna.

We have an important role in the Australian workplace relations landscape. We provide assistance, education and advice to ensure workplace participants understand their workplace obligations and entitlements. We also enquire into and regulate compliance and enforcement with the Fair Work Act and associated instruments.

Today I am pleased to be able to share with you some of our compliance outcomes over the last year as well as some of the new education and advice resources we've developed to assist workplaces to implement recent workplace relations changes in a constructive, well-informed and compliant matter.

### 2022-23 Recoveries

For those of you that were here last year, you might remember FWO returned record recoveries of over \$532 million to more than 384,000 workers in 2021-22.

In 2022-23 we recovered another half a billion dollars in unpaid entitlements – or to be more precise - \$509 million for just over a quarter of a million workers.

Large corporate and university underpayments continued to comprise a large amount of our recoveries, accounting for \$317 million.

As this figure suggests, underpayments in the large corporate and university sectors generate a significant amount of work for the FWO. The majority of matters are self-reported and more disclosures are continuing to be made.

Over the last year, we have accepted more Enforceable Undertakings including from David Jones, Politix, Crown Melbourne and Perth, Suncorp, RSL Life Care Limited, Uniting AgeWell, and Apollo Health. We also commenced litigation against Super Retail Group and its subsidiaries Super Cheap Auto, Rebel Sport, SRG Leisure Retail (BCF and Ray's Outdoors), and Macpac Retail.

We also accepted Enforceable Undertakings from the University of Technology Sydney, the University of Newcastle, and Charles Sturt University.

Many of the issues we've seen in the university sector impact on casual staff. There are issues not just in payroll investment, but with poor governance and oversight, a lack of centralised human resources operating across faculties, and control over human resources and pay being dealt with by academic managers.

We were pleased to see that the interim Australian Universities Accord report recently released by the Government called for immediate action to address staff underpayments including improving governance and systems. The interim report draws out a number of factors that have contributed to the problem and how they're linked.

### **Outcomes for vulnerable workers**

This multitude of factors leading to underpayments is something we see in other sectors as well. While the factors themselves will look different in different industries, we seek to use a multi-faceted, nuanced and strategic approach to many of the problematic industries that rate highly on our risk radar.

In sectors that our evidence tells us are at high risk of non-compliance, like fast food, restaurants and cafés, otherwise known as FRAC, and agriculture, we seek to use the enforcement tools available to us to enact sustainable change.

A great example is two of our recent matters involving franchised networks, using the franchisor provisions in the Fair Work Act to allege the head franchisors involved are legally liable for alleged contraventions by their franchisees.

As the workplace regulator we are committed to ensuring franchisors are held to account if they fail to take action to prevent or address non-compliance in their networks, especially when vulnerable workers are involved.

These matters are before the court so I'll be careful in my comments, but it's important that businesses are aware of their responsibilities, even when they're one step removed from being the direct employer.

In the first matter filed in February this year, we are alleging that head franchisor 85 Degrees Coffee, the head franchisor of the 85 Degrees Daily Café brand, is liable for contraventions by eight franchisees in Sydney. Nine staff were allegedly underpaid over \$32,000, and 20 staff – including the nine allegedly underpaid – were affected by alleged record-keeping and pay slip contraventions. The staff included young workers and visa holders.

We allege 85 Degrees should reasonably have known its franchisees would underpay the workers and breach other requirements because it had been on notice about compliance issues for many years through an Enforceable Undertaking with us and subsequent proactive FWO audits we conducted.

Our court action against 85 Degrees is not the first time we've taken the company to court. Last November, we secured over \$475,000 in penalties against 85 Degrees for underpaying eight workers who the company directly employed. The employees were Taiwanese students aged between 20 and 22 employed under the guise of a purported internship. Each of the students was underpaid by over \$50,000. This was our second largest court penalty against a single company.

In July, we also commenced legal action against the Australian franchisor of the Bakers Delight chain, alleging it is legally liable for extensive underpayments at three Hobart stores formerly operated by one of its franchisees.

We are alleging 142 staff were underpaid \$1.25 million between July 2017 and October 2020. Over half of the staff were young workers, and several were visa holders.

We allege that as the head franchisor, Bakers Delight Holdings, is liable for just over \$642,000 in underpayments that occurred after February 2019 because it became aware the franchisee operating the stores had been underpaying staff but failed to take preventative action. Therefore, it either knew or should reasonably have known that further underpayments would occur and failed to take reasonable steps.

In addition, we are taking legal action against the individuals that owned and managed the stores, and their company, for the alleged underpayments, as well as allegedly committing a range of other contraventions including providing us with false records and failing to comply with Notices to Produce documents.

Both of these franchisor litigations involved vulnerable young workers and visa holders. Holding franchisors to account is important to generate systemic change through franchisor networks that will lead to ongoing future compliance. This is important as a means of influencing better workplace outcomes for workers, especially those who are vulnerable and less likely to know their rights, raise issues or seek help.

Another way we do this is by targeting and designing investigations for problematic industries. A good example is our rolling program of unannounced audits in the FRAC sector over the past several years, specifically targeting areas with 'cheap eats' havens. These are areas where meal costs are low and have not risen in line with other precincts or minimum wages.

We've visited every capital city and multiple regional centres, most recently in Newcastle, Perth and Melbourne, and we will be undertaking more. The element of surprise, coupled with good intelligence about where the problems are, make these very effective activities.

Our highest penalty on record of \$891,000 against the operators of three Hero Sushi takeaway outlets was the result of underpayments uncovered by Fair Work Inspectors when undertaking a proactive activity targeting sushi businesses.

We recently released results from our Melbourne inner south and inner west food precincts audit, which recovered over \$680,000 for just over 1,000 workers. 86% of the 82 businesses that we've completed investigations into had breached workplace laws.

We issued 68 Compliance Notices and 32 infringement notices. The most common breaches were underpaying penalty rates, failing to pay minimum wages (including casual loading), and record-keeping contraventions. The businesses we targeted had a history of non-compliance, we'd received anonymous tip-offs about them, or they employed visa holders.

Agriculture is another industry that employs high levels of visa holders that we're active in.

In June this year we commenced legal action against Lotus Farm, a tomato and cucumber producer in Victoria. Our investigation commenced after two Vietnamese-speaking former employees, who had worked as pickers and packers on the farm, sought our assistance.

We are alleging the employees were underpaid over \$28,000 between June 2017 and September 2020. We further allege that the underpayment was a result of the employees being paid flat hourly rates of \$13 to \$14 per hour, well below the minimum hourly casual rates in the Horticulture Award.

Other alleged contraventions include providing us with false pay slips, failing to make and keep required records, and unlawful deductions from one employee's wages. In this matter we will seek that the court apply the reverse onus provisions of the Fair Work Act so that the company should have to disprove the allegations.

### **Education and advice**

I've spent a bit of time talking about some of our recent compliance and litigation work this year. However, as a regulator we also recognise that prevention is better than cure, so we put a huge amount of effort into our education and advice function to help ensure the community is informed and has access to the information they need and can rely on to get it right.

In 2022-23, our website was visited 26.8 million times – a 19% increase on the previous year – reflecting strong demand for our digital tools and resources. Similarly, use of our Pay and Conditions Tool increased by 13% to nearly 6.4 million sessions. The tool, like all of our other resources, is updated regularly as pay rates change, such as following a relevant FWC or court decision, and customers are notified of these changes via email subscriptions.

People are also using our anonymous report tool more than ever to tip us off about workplace issues – last year we received more than 14,000 anonymous reports, a 12% increase on the year before. This information helps form an evidence and intelligence base that informs our proactive compliance work and ultimately leads to some of the litigation outcomes I mentioned earlier.

Our website has tailored information for key sectors and cohorts that we've identified over the years require more assistance to help them understand their obligations.

For example, we have sections with information and resources dedicated for the FRAC sector, which includes resources such as an interactive tool to help employees and employers understand the Fast Food and Restaurant awards and annualised wage arrangement rules under the Restaurant Award.

Our Horticulture Showcase includes information and resources for horticulture employers and employees, self-audit tools and templates for hiring pieceworkers as well as a dedicated automated translator function.

Our Small Business Showcase brings together information for small business operators to understand their workplace rights and obligations throughout the lifecycle of employing staff.

We've also got resources for franchisors, including a 'Guide to promoting workplace compliance in your franchise network', and for franchisees, including a franchisee workplace essentials online course.

We are constantly reviewing and adding to our information and extensive suite of resources to make sure they're up-to-date and practical.

Our education tools and resources are designed with, and for, the target audience and we use behavioural economics to encourage them to act on the information and advice we provide. Understanding when and how people make decisions that affect their compliance helps us design education initiatives that encourage compliant behaviour.

Of course, the equally important thing about having the resources available is that the workplace community knows about them, particularly when there are changes to workplace laws.

We use a range of channels to promote our information and let people know about changes to their entitlements and obligations and the information and services available to help.

These channels include our website, social media, email subscription service, paid search online advertising and newsletters, as well as community engagement activities such as events and webinars.

It's important that our information also reaches culturally and linguistically diverse workplace participants, whether they are employers or employees. As well as having a range of professionally translated information and resources available in more than 31 languages, we also have an automatic translation tool function on our website and a free interpreter service is available for any interaction with us.

We promote our in-language information and resources widely, for example through radio advertisements, YouTube videos and in-language social media, including on community social media groups.

For example, in March this year we ran a communications campaign in eight languages across multiple social media platforms targeting international students, which sought to support international students and raise awareness about our role as a trusted source of workplace information and assistance.

We also provide resources to and communicate with intermediary bodies as well as collaborating with government and community networks.

### **Paid FDV Leave**

An area where collaboration has been significant, is addressing the impacts of family and domestic violence. As a result of important changes to legislation passed last year, as of today, all national system employees can access ten days of Paid Family and Domestic Violence Leave. The entitlement takes effect for small business today, while all other national system employees have had the paid leave since 1 February this year.

There has been significant cross-government work, in consultation with key stakeholders, to assist business, especially small businesses, understand and implement this important new entitlement.

Just this morning, a new podcast developed by Lifeline and the Department of Social Services called 'Small business, big impact', went live. Through a series of interviews with experts, each episode covers various elements of the impact of family and domestic violence on those who experience it, how employers might identify signs of this violence, and where to refer people for expert support.

The FWO has also launched some updated resources, which build on the extensive information that is already available on our website about how to provide and access paid Family and Domestic Violence Leave. These were developed in consultation with the Department of Social Services, who manage the 1800RESPECT service, and a range of other stakeholders and experts:

Our Family and Domestic Violence Leave fact sheet contains information and examples to support employers and employees in understanding and applying this new entitlement – including how it accrues, how it is paid, how it should be recorded on pay slips, eligibility, evidence and privacy requirements,

Our Small Business Guide to Family and Domestic Violence includes information on supporting employees experiencing family or domestic violence leave, managing these issues in the workplace, and developing a workplace response to family and domestic violence, and

Our Difficult conversations in the workplace online learning course provides tips for having sensitive conversations around family and domestic violence and pathways to further help and support.

We've promoted the changes and our information and resources through various channels both in English and other languages. We have information available on our website in-language too.

Importantly, our resources include pathways to 1800Respect, which provides support for people affected by family or domestic violence. I encourage anyone with questions about how to deal



with family and domestic violence issues to contact this helpline. This fantastic resource is also available for employers.

### **Concluding remarks**

To conclude my remarks today, I note again the recovery of over half a billion dollars in unpaid entitlements for the second year in a row is another important achievement for the workplace community. Moreover, we are continuing to use all the powers available to us to enforce compliance, especially where that non-compliance impacts vulnerable workers.

In our experience, staying up-to-date and getting compliance right from the get-go can prevent workplace issues down the track.

The workplace relations environment is never static. Our extensive tools and resources are here to assist the workplace community navigate recent and upcoming changes to the Fair Work Act and understand their workplace rights and responsibilities.

We always encourage workplace participants to subscribe to our email updates and follow us on social media to stay up-to-date with changes and this year it's as important as ever.

Thank you for the opportunity to talk to you today. I believe there is time for questions, which I am happy to take.