

## Speech to the Australian Labour and Employment Relations Association (ALERA) National Conference – 27 October 2023

**\*\*\*Check Against Delivery\*\*\***

I am excited to be here talking to you at the start of my term as the Fair Work Ombudsman.

The Australian Labour and Employment Relations Association does the important task of bringing together Government, worker and employer representatives, academics, government agencies and other stakeholders to discuss key workplace relations issues. There's a lot we can learn from each other.

I want to talk today about my reflections on the important role of the Office of the Fair Work Ombudsman – the role that the agency plays in the workplace relations system, my own personal experiences as a workplace relations practitioner, and what that experience has taught me about how workplace culture and cooperation can promote harmonious, productive, cooperative and compliant workplace relations – which you might know are part of the Fair Work Ombudsman's purpose and functions.

These functions contribute crucially to supporting national economic prosperity and social inclusion, which are the clearly articulated objects of the Fair Work Act. I am driven to approach our work with this important context in mind.

I firmly believe the Office of the Fair Work Ombudsman is an agency that makes a big difference to people's lives through protecting workers' rights and entitlements and bringing about continued and sustainable improvements in Australian workplaces.

This is a theme that has run through my 45 years of work in industrial relations.

I began my career in the union movement, at the Clothing and Allied Trades Union and later the Textile, Clothing and Footwear Union of Australia, working to address the exploitation of predominantly migrant women workers. That saw me join the governing body of the Australian Council of Trade Unions (ACTU), the ACTU Executive.

I went on to roles in corporate Australia, including as a Board member of large companies. This allowed me to see our workplace relations system from the perspective of employers and appreciate the many challenges inherent in managing a sizable and productive workforce.

Additionally, as a third-party neutral mediator in my own small consulting business CoSolve, and serving as Deputy President of the Fair Work Commission, I have worked to promote outcomes that are of mutual value to employers and employees through cooperative and collaborative approaches.

It is very early in my term as Fair Work Ombudsman.

My initial priority has been looking inwards – to meet my staff and understand all the cogs in this machine and how they work together to advance its purpose.

Now I am beginning to look outwards, meeting our stakeholders in the workplace community to understand their priorities.

I am pleased to say that within the Office of the Fair Work Ombudsman I have observed a group of people working hard and cohesively to achieve a purpose that is compatible with our stakeholders' shared priorities: maintaining workplace standards for Australian workers and ensuring a level playing field for compliant employers.

This purpose has been advanced under the capable leadership of my predecessor, Sandra Parker.

I want to build on this leadership to further this purpose. I am keen that the Office of the Fair Work Ombudsman continues to be seen as an impartial regulator that applies the law as it stands, as well as an important source of education and advice.

### **The non-compliance problem**

In the last two financial years, the Office of the Fair Work Ombudsman has returned more than \$1 billion to underpaid workers. There is more coming down the pipeline in the matters on our books and probably much more that we don't know about yet that we are working hard to uncover.

Sadly, at the heart of these recoveries is the personal impact on people's lives. This was \$1 billion workers didn't have to spend on themselves and their families as living costs soared.

The loss of income has a compounding effect, impacting a worker's self-esteem and their family's living standards and ability to take up opportunities and fully participate in our society. I think about the lost potential of missed study opportunities, the reduced capacity to access services others take for granted, or less time engaged in social and community activities.

The extent of our recoveries points to a significant gap between compliant workplace relations envisaged in the Fair Work Act and the current state of many workplaces.

Workers being denied their correct pay also has the potential to undo the good work of the workplace relations community in setting wages and workplace rights and obligations, including Government and Parliament developing and passing legislation, the Fair Work Commission consulting on and varying awards and reviewing wages, and unions and employers negotiating enterprise agreements in good faith.

It means businesses that are doing the right thing right across the economy are not competing on a level playing field and risks a race to the bottom through devaluing workers.

In some notoriously non-compliant sectors such as Fast Food, Restaurants and Cafés (FRAC) and Agriculture, both of which remain priorities for the Office of the Fair Work Ombudsman this year, employers who do the right thing by their workers can be driven out of business.

For example, in FRAC, the Office of the Fair Work Ombudsman recently released results of an audit of Melbourne's inner south and inner west food precincts that found 86% of the 82 businesses we investigated had breached workplace laws.

There are some areas where we see employers getting the fundamentals wrong.

We commonly find deficient pay slips or a lack of employment records. In our matter against the University of New South Wales, we allege the record keeping practices were so inadequate it was difficult to determine if underpayments occurred.

We have found workers who are threatened after raising issues. We allege that two casual academics at the University of Melbourne experienced adverse action for exercising a workplace right. Liability in the proceeding is now no longer contested, and the Court has recently made orders timetabling the matter toward a determination of penalties in relation to two contraventions of section 340 of the Fair Work Act.

Incorrect classification continues to be an issue. We recently accepted an Enforceable Undertaking from an employer, Brownport Almonds, which admitted to misclassifying its workers despite them doing duties of a higher classification.

We often find there are employers that seek the benefits of annualised salaries but don't follow through by checking that workers are getting their minimum entitlements. The issue of whether annualised salaries were sufficient to satisfy their minimum award entitlements is the subject of allegations in our current Coles and Woolworths litigations.

Another problem is workers doing long hours for low, flat rates of pay. A company called Winit (AU) Trade Pty Ltd was recently penalised \$550,000 for underpaying employees who worked up to 60- or 70-hour weeks and were paid flat rates of pay.

Whether these issues are caused by behaviour that is inadvertent, reckless or intentional, our purpose is to protect workers' rights and conditions at the individual level and maintain workplace standards for the collective good of a labour market strongly rooted in compliant workplace relations that ensures a level playing field for businesses and contributes to economic prosperity and social inclusion.

### **A culture of workplace compliance**

At the heart of this is the need to create a culture of workplace compliance that flows through all levels of a workplace. The most obvious benefit of this being that workers are paid correctly, but also importantly that their full set of rights are recognised, including those that support flexibility, equality, job security, and protecting an employee's right to make a complaint or enquiry about their employment.

There are also many other benefits. Think about the increased employee trust in the business and management, the greater accountability and transparency across the business, a positive work environment that is enjoyable for employees and will attract new staff, and a strengthened reputation with consumers and the marketplace. This is all critical to organisational success.

There are around 14.1 million workers and roughly one million employers that make up the Fair Work Ombudsman's regulated community, so clearly it is a big job to build cultural change.

Our strategy is to educate as well as enforce.

The education piece is vitally important. We provide a wealth of free information, advice and resources to help employers meet their obligations in the first place, and to help workers understand their rights and obligations. We invest significantly to ensure these resources are practical, informative and up to date, including reflecting any upcoming changes to workplace obligations.

Just as important is the promotion piece. We heavily promote our activities in the media to make sure employers understand the risks and consequences of being found to have ripped off their workers.

On the other side of the coin, we promote our information and resources through various channels, including social media, paid advertising, email subscriber notifications and our website.

We also run webinars and engage with stakeholders including the community, unions and employer groups to promote awareness of changes and seek feedback on our approach.

### **Collaboration and joint responsibility**

The Office of the Fair Work Ombudsman has around 1,000 staff across 22 locations implementing this strategy; however, I see all parts of the workplace relations system as having an important role to play in creating this culture of compliance, including employers and employer groups, employees and trade unions, community groups and representatives of vulnerable workers, academics, and government agencies.

Employers have the legal responsibility to apply the correct terms and conditions of employment. They need to invest in the people, processes and systems to ensure they are doing so.

Equally, their boards and committees need to take workplace compliance very seriously. This includes drawing on the considerable expertise of external service providers to set up assurance systems and conduct regular audits – and not before it's too late such as through an Enforceable Undertaking with the Office of the Fair Work Ombudsman.

Employer organisations know their sectors. They can educate and advise their members, offer compliance services and reward compliant employers in their sectors with quality assurance recognition.

Upon commencing as the Fair Work Ombudsman, I have been heartened to discover that the agency's compliance campaigns do in fact find that employers that are members of employer groups are more likely to be compliant with workplace laws.

Trade unions are another source of industrial relations expertise. They can advise and educate their members, responsibly exercise their statutory right of entry to provide compliance services and identify non-compliant employers, and act on behalf of their members to negotiate remediation, and, if necessary, litigate to restore compliance.

Community-based organisations with a specific focus on particular groups of workers – for example, migrant workers, disabled workers or young workers – are trusted by vulnerable people and can educate, advise and represent them.

And then there is also a role for academia and research organisations to assess the validity of the various approaches and ensure we are led by the evidence.

When I have been meeting with stakeholders over the last few weeks, it has been illuminating hearing about the deep knowledge that all the IR stakeholders bring to the table regarding their specific patch.

I think about the possibilities of leveraging all the good work that is underway to maximise the impact of our efforts, rather than working in parallel or in overlapping ways.

To foster a culture of workplace compliance, I would like to see greater collaboration and joint responsibility between all the actors in the workplace community. It's in the intersection between stakeholders in the workplace relations community where the solutions lie.

The Office of the Fair Work Ombudsman has been embracing the principles of co-enforcement for some time and engaging with stakeholders. We helped establish the Cleaning Accountability Framework, which celebrates its tenth birthday this year.

The agency has also at different points had reference groups on FRAC and Horticulture to guide and shape our activities in these sectors.

However, I would like to take this collaboration to the next level, with the Office of the Fair Work Ombudsman maintaining its place as the independent and impartial regulator, but acknowledging that we do not hold all the keys to unlocking more compliant and harmonious workplaces.

What could this look like? I say "could" rather than "should" because I am not unilaterally announcing anything. There is still a lot of listening internally and externally to inform what this might look like in practice.

This is the direction I would like to take the agency and the workplace community, and by definition it depends upon your cooperation – with each other and with us.

ALERA's National Conference is the perfect opportunity to air these initial thoughts because you are the workplace community, and it is with you that we must engage to realise our statutory mandate.