

Date from	Date To	Total for Period	Classification
9/07/2019	8/07/2020	25	Unable to determine
9/07/2021	8/07/2022	15	APS 3 equivalent
9/07/2022	8/07/2023	9	APS 3 equivalent

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FWO		
Fin Year	Commencement	Termination
2015/2016	113	84
2016/2017	138	109
2017/2018	115	119
2018/2019	148	115
2019/2020	166	101
2020/2021	131	72
2021/2022	219	179
2022/2023	245	187
2023/2024	150	132
2024/2025	185	109
Grand Total	1610	1207

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FOI IA-2625

	2024-25	2023-24	2022-23	2021-22	2020-21	2019-20	2018-19	2017-18	2016-17	2015-16
TOTAL disputes completed	18,570	17,504	15,770	18,622	18,696	21,914	29,130	28,275	26,917	24,585
<i>Disputes completed: Dispute assistance</i>	17,142	13,469	12,234	14,425	14,495	19,544	27,874	27,074	25,332	10,256
<i>Disputes completed: Enforcement</i>	1,428	4,035	3,536	4,197	4,201	2,370	1,256	1,201	1,585	14,329

	2024-25	2023-24	2022-23	2021-22	2020-21	2019-20	2018-19	2017-18	2016-17	2015-16
Website visits	28,702,734	28,972,370	26,818,603	22,620,454	21,373,555	20,706,559	17,846,171	16,756,865	16,328,246	N/A
Website users	15,210,992	15,690,885	15,382,041	13,561,689	12,461,633	11,790,566	10,081,020	9,383,211	9,556,221	N/A

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CST – Early Intervention

s.22 - Irrelevant information



EIT CNet Outcomes and Forward Reasons

Before closing the RFA, or referring the RFA to another pathway, one of the following forward or closure reasons will be applied to the RFA along with written reasoning supporting this.

The table below provides an overview of the available options, and their applications.

s.22 - Irrelevant information



If you are closing an RFA, use one of the following Outcomes:

NB all RFAs closed in EIT should have the forward reason 'Referred to Early Intervention Team'.

The decision record examples below are a guide. CSOs should individually tailor decision records to articulate the decision according to the RFA and not be limited to the examples given below.

Possible scenarios in EIT	Outcome where RFA not suitable for a compliance pathway	Example of a suitable decision record	Cnet Outcome	Update Actions & Solutions
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s.22 - Irrelevant information

s.22 - Irrelevant information

Customer who initiated RFA is not contactable within three working days after the day initial attempts to contact have been made.	Attempt to contact at least three times, across different channels, over a period of at least three business days. Closure does not occur until the fifth business day e.g. a CSO leaves messages for a customer on a Friday and receives no response. The earliest the RFA can be closed is the Thursday of the following week. Finalise as unable to contact.	Employee did not contact me after 3 attempts at contact across different channels (phone/email/SMS). Closing on the 5 th business day since initial attempt at contact.	Unable to contact	<p>My account enquiry Despite attempts to contact you, we have been unable to reach you and your enquiry has now been closed.</p> <p>Other enquiries Unable to contact customer, enquiry closed.</p>
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s.22 - Irrelevant information

s.22 - Irrelevant information	s.4(2)(t) - Operations of agencies	s.22 - Irrelevant information
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Fair Work
OMBUDSMAN

RfA Assessment Process

Version 3.0

August 2021

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s.22 - Irrelevant information

Step 1 - Common scenarios and decision points

Scenario	Key Actions
s.22 - Irrelevant information	

s.22 - Irrelevant information	
Can't contact the employee	<ul style="list-style-type: none">- Try to make contact with the employee- Send Template email requesting contact- Try an additional two times whilst waiting for response to the email to make contact- If no response, record attempts- Record decision to close the matter in the Assessment Summary field- Close the matter as per Documenting Decisions guidance
s.22 - Irrelevant information	

3.4.6 Assessment Team – Common Scenarios & Decision points

Step 1 - Common scenarios and decision points

Scenario	Key Actions
s.22 - Irrelevant information	
Can't contact the employee	<ul style="list-style-type: none">• Try to contact the employee• Send an email requesting contact• Make two further contact attempts whilst waiting for response to the email• Record attempts• If no response, record decision to close the matter in the Assessment Summary field• Close the matter as per Documenting Decisions guidance
s.22 - Irrelevant information	

10. The date on which the FWO's Compliance and Enforcement Policy was instated. – March 2015

11. Amendment dates of the FWO's Compliance and Enforcement Policy.

	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025
Compliance and Enforcement Policy	5/03/2015	2/09/2016	1/07/2017	15/10/2018	8/02/2019	13/07/2020	25/08/2021 (website migration – not a document version update)	N/A	30/10/2023	12/06/2024	30/04/2025
	10/04/2015		19/09/2017	23/10/2018	16/07/2019	27/08/2020					
	13/04/2015										
	23/04/2015										
	5/05/2015										
	22/05/2015										

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Compliance and Enforcement Policy

Date of Publication - May 2015

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Australian Government

Fair Work
OMBUDSMAN

The Fair Work Ombudsman [FWO] is an independent statutory agency created by the *Fair Work Act 2009* [the Act]. The role of the FWO is to promote harmonious, productive and cooperative workplace relations, and to monitor, inquire into, investigate, and enforce compliance with relevant Commonwealth workplace laws.

This policy explains how we seek to ensure compliance with Commonwealth workplace laws. By Commonwealth workplace laws, we mean the Act, its regulations and the awards and agreements that set wages and conditions for Australian workplaces.

1. Our guiding principles

We want to promote a culture of compliance by equipping Australian workers and businesses with the information and support they need to make good choices in their workplaces.

Our work is guided by the following principles:

Principles	We:
Clear and effective communication	<ul style="list-style-type: none"> listen to the workplace concerns of workers and business provide advice that is easy to access, understand and apply
Professional customer service	<ul style="list-style-type: none"> deliver a consistent and professional experience in every customer interaction offer multiple ways to connect with us provide practical advice and assistance that is responsive, professional and impartial
Consistency	<ul style="list-style-type: none"> give practical advice which can be relied upon ensure a level playing field where the same rules apply to everyone apply the same assessment principles to each request for assistance consider the same range of factors in deciding how to treat a matter
Risk-based and proportionate	<ul style="list-style-type: none"> focus our compliance and enforcement efforts where there is serious non-compliance and where we can deliver the greatest benefit consider risk in terms of potential impact on the community, as well as the relative risk of exploitation individuals face encourage and empower employees and employers to resolve issues in their workplace, where appropriate

	offer a range of dispute resolution tools and resources
Open and transparent	<p>remain neutral and impartial</p> <p>give the parties the right to review all our decisions</p> <p>publish information on our compliance and enforcement activities in a format that is clear, understandable and accessible</p> <p>ensure our customers' private details are kept confidential</p>
Collaborative	<p>build relationships with stakeholders and the community based on trust and respect</p> <p>work with stakeholders to find solutions to workplace issues and opportunities to collaborate</p> <p>harness intelligence and insight from a range of sources including other government agencies to inform our compliance and enforcement activities</p> <p>listen to the community's expectations of us</p>
Continuous improvement	<p>measure the impact of our interactions with customers and use this information to improve our services</p> <p>seek feedback on our processes, policies and practices and make changes to improve them</p> <p>adopt leading technologies to transform our services to be more efficient and effective</p>
Affect cultural change	<p>develop solutions to address structural and behavioural drivers that lead to widespread non-compliance in certain industries and sectors</p> <p>focus our efforts on supporting productivity by preventing workplace disputes</p>

2. Advice, support and assistance

A core part of our role is providing practical workplace relations advice and assistance that is easy to access, understand and apply. Helping the community understand the workplace relations system is one of the ways that we support compliant, productive and inclusive workplaces.

This is why we provide the Fair Work Infoline and Small Business Helpline. We also provide information, tools and resources through our website (fairwork.gov.au), Facebook, Twitter,

LinkedIn and YouTube. These free tools and resources (which we continue to develop) are available 24/7 on our website and include:

An [online learning centre](#) that has video-based interactive courses to teach businesses and workers skills and strategies to help them at work
[fact sheets](#) about the minimum rights and obligations of businesses and workers, including information on the National Employment Standards, record-keeping and pay slips
[best practice guides](#) to help small to medium-sized businesses with implementing best practice workplace policies and procedures
[templates](#) that simplify the work in keeping employment records
 our [Pay Calculator](#) to help calculate modern award pay rates
[My account](#) which allows users to save tailored information such as pay rates and conditions of employment specific to their circumstances. Users can log into My account and view saved information at any time.

We encourage people to use our self-service tools and resources to find answers and have conversations in their workplaces. For most people, understanding workplace rights and obligations means that issues can be resolved at the workplace level without intervention from us. If we can't help you because the issue falls outside of our area of responsibility, we will refer you to the people who can.

CASE STUDY – Self help tools:

Jim is a mechanic at a local garage. Driving home from work, he heard on the radio that award rates of pay had recently gone up. Jim knew he was paid the old award rate, and he had not received an increase yet.

When he got home, Jim went to fairwork.gov.au to check his rate of pay. Using our pay calculator, he got the new award rate and printed a copy for his boss Miguel. Jim also completed our *Difficult conversations in the workplace* online learning course to prepare himself for a discussion with Miguel.

The next day at work, Jim found a good time to talk to Miguel about his pay. Miguel did not know about the increase, so Jim told him about the pay calculator and gave him the print out.

Miguel said he would need to check for himself. The following day, Miguel used the pay calculator and confirmed that Jim was right. As a result, Miguel organised for Jim's pay to be increased to the new award rate. Miguel also registered for My account and subscribed to our email updates to receive information on future pay increases.

3. Campaigns

Campaigns help us check, improve and maintain compliance with Commonwealth workplace laws in a targeted way.

We take a risk-based and proportionate approach to determining which industries, locations and workplace relations issues to focus on. This includes gathering intelligence to ensure our campaigns are evidence-based and deliver the greatest benefit.

An important part of our campaigns is gaining the support of, and working with, groups such as industry associations, employer representatives, unions and community groups.

During a campaign, we communicate with employers and employees about Commonwealth workplace laws. This communication can be through letters, phone calls, visits from our Fair Work Inspectors, social media, or our website fairwork.gov.au.

We also look at employee time and wage records to check compliance with Commonwealth workplace laws.

If we find that employers are not meeting their obligations, we work closely with them to help them fix any errors.

After each campaign, we release a report showing the results, insights and further actions on our website.

CASE STUDY - Campaign:

We conducted extensive research to identify industry sectors of non-compliance and/or those with a high number of vulnerable employees. The research indicated a need to focus on apprentices. We worked closely with industry stakeholders in planning and designing a national campaign targeting apprentices. The purpose of the campaign was to help businesses across a variety of industries understand and comply with workplace laws and to test levels of compliance.

Robert employs an apprentice in his hairdressing salon in Sydney. Through Facebook he saw that we were starting a national campaign targeting apprentices and requested our assistance to check he was complying with the law. As part of the campaign Fair Work Inspectors contacted more than 700 businesses, by mail and in person, to ensure employers like Robert were aware of their workplace obligations and to examine pay records.

Fair Work Inspectors checked that employers were paying the correct minimum hourly rate, penalty rates and allowances and were complying with pay slip and record-keeping requirements. These checks included site visits and where businesses were found to have made a mistake, Inspectors worked with them to fix errors and make any necessary back payments to employees. The most serious instances of non-compliance were considered for further action.

Fair Work Inspectors also took the opportunity to assist employers to use the tools and resources available to help them manage their workplace and understand and comply with their obligations. In response to his request, Robert also received this assistance.

The campaign provided a useful snapshot of issues which will influence our decisions regarding apprentices. A campaign report containing a number of findings and recommendations was published on our website and provided to industry stakeholders.

4. Compliance partnerships

We encourage employers that want to publicly demonstrate their commitment to creating compliant, productive and inclusive Australian workplaces to enter into partnership agreements with us.

Compliance partnerships give employers, and importantly their staff, certainty that their systems and processes are working effectively and help build a culture of compliance. Their public commitment to compliance is also a competitive advantage that helps attract talent, instil confidence in customers and appeal to organisations in their supply chain. For example, compliance partnerships provide an opportunity for franchise operators and head contractors to work with franchisees and sub-contractors to drive workplace improvements throughout their supply chain.

Compliance partnerships can be tailored for individual businesses and circumstances and can include:

- employer initiatives to engage with employees
- self-audits
- the monitoring of contractors and franchisees
- ensuring effective dispute resolution processes
- implementing workplace relations training for key managers and staff.

Compliance partnerships are becoming increasingly popular with businesses who wish to make a strong and public commitment to their employees, contractors, customers and the broader community about compliance with workplace laws. Names of enterprises and/or their brands that have entered into a compliance partnership with the FWO can be found [on our website](http://www.fairwork.gov.au/about-us/our-role/enforcing-the-legislation/proactive-compliance-deeds): (<http://www.fairwork.gov.au/about-us/our-role/enforcing-the-legislation/proactive-compliance-deeds>)

CASE STUDY – Compliance partnership:

Franchisor Pty Ltd read about compliance partnerships on fairwork.gov.au and thought it would be a good program to be in to make a positive and public statement of its commitment to compliance with Commonwealth workplace laws.

Franchisor Pty Ltd approached us to find out what the arrangements would be.

After some discussion about the structure and relationships within the brand, Franchisor Pty Ltd entered into a compliance partnership which involved:

- establishing an employee enquiry line available to both direct employees and employees of franchisees
- establishing systems and processes to promote compliance and report on these
- conducting self-audits of employee entitlements of direct employees
- facilitating self-audits of employee entitlements of a sample of franchisees
- working with us to resolve workplace disputes if a request for assistance was received by us from an employee of a franchisee, and reporting the outcome to us
- reporting annually on the status of the compliance partnership.

Franchisor Pty Ltd's compliance partnership was published on the our website and was also the subject of a FWO media release, resulting in positive messages for Franchisor Pty Ltd's brand.

As a result of the compliance partnership, franchisees reported that they found compliance with workplace laws easier. They said that by better understanding their obligations they were able to focus on 'running their business'. The head franchisor also reported feedback that it had improved its public standing as an 'employer of choice' resulting in lower staff turnover costs because employees were confident that their employer was providing all their entitlements.

5. Early involvement

We receive a large number of telephone requests for assistance. Callers include employees and employers who have a concern about their workplace. In these situations we find that if we get involved early, we can help the parties resolve issues at the workplace level. We encourage and empower employees and employers to self-resolve issues in their workplace where possible. We can also offer a mediation service where both sides come up with solutions together that will work for them.

CASE STUDY – Early involvement:

Nadia called us and said she was being underpaid by her employer Robin. Nadia was unsure about how to raise this issue and did not want to upset her relationship with Robin as she was still working for the business.

We helped Nadia by advising her on the award and hourly rate of pay that applied. We encouraged Nadia to have a discussion with Robin to address the wages issues by giving her practical tips and guiding her through our online self-resolution tools, such as the *Difficult conversations in the workplace* online learning module.

Nadia emailed Robin with her concerns and met with Robin to discuss her situation. Robin wasn't sure about her obligations so she rang our Small Business Helpline to check what she had to do. After speaking with us, and Nadia, Robin raised Nadia's wages to the correct amount and back paid Nadia to fix the underpayment.

Our practical assistance empowered Nadia to resolve the issue directly with Robin without escalating it further. This also meant that Nadia was able to maintain a positive relationship with Robin.

6. Assessing requests for assistance involving workplace disputes

We receive many requests for assistance from workers who have a dispute about their wages or other issues with their employer. We describe the worker and the business in these cases as the parties to the request for assistance.

6.1 Assessment

When we receive a request for assistance or we are alerted to a possible workplace dispute, we consider how best we can help through an assessment of the issues by experienced officers.

We understand that not everyone needs the same type of assistance. Depending on the individual's circumstance, the issues at the workplace and the situation more generally, we provide a tailored response appropriate to the matter.

6.2 What do we consider?

In deciding how we will act, we consider the seriousness of the alleged conduct and the circumstances of the parties, as well as the practical issues involved in resolving the matter. This includes whether the request for assistance involves:

- public interest (where the community would expect us to be involved)
- a party facing significant barriers to resolving the matter themselves, for example, low levels of literacy or comprehension
- a small business owner, who has limited access to a human resources expert
- a party who has had previous issues with compliance
- an alleged breach appears to be deliberate
- sufficient information to support an argument that a breach has occurred
- confidentiality (where the employee does not want us to tell the business that a request came from them)
- the parties having made any attempts to resolve the matter
- breaches of monetary entitlements where the amount is significant
- minimum entitlements as opposed to above award conditions (we give priority to minimum entitlements, that is, entitlements set out in the Act, a Modern Award or Enterprise Agreement)
- an employment relationship that has ended, including how long ago the employment ended (we generally do not pursue matters that are more than two years old).

As an example, we would act differently in a case where a young person is being paid less than the minimum wage than in a case where an employee on above award wages hasn't received the bonus they are entitled to.

6.3 What action are we likely to take?

Where a request for assistance concerns wages or conditions and there appears to be no exploitation or deliberate non-compliance, we help the parties resolve the issue quickly and informally.

We have found that in most cases the issue can be resolved between the parties with some help from us. We want parties to resolve these matters with minimal expense, time and stress. A formal investigation is generally not the best approach in these cases. Rather we help the parties work through their issues together.

Typically this involves speaking to both parties and understanding each side's view. We help them understand how Commonwealth workplace laws apply to their situation and give both sides information about relevant awards or parts of the Act.

A request for assistance about a workplace dispute usually results in us taking one or more of the following actions:

- using the information provided in future education and compliance activities
- giving tailored advice to help parties deal with the matter and get a better understanding of Commonwealth workplace laws
- helping people to resolve an issue quickly and informally in the workplace by providing access to employment tools and resources
- referring the information to another government agency
- conducting an inquiry
- offering mediation
- conducting an investigation
- placing parties on notice about our concerns and the possibility of future action if the conduct continues or happens again
- assisting an employee to take their own action (such as through a small claims court)
- determining that there is no action required at this time.

In all cases the information given to us is important, and helps us to determine our current and future activities.

We find that most matters can be resolved through mediation.

7. Mediation

Mediation is a free, simple, confidential and voluntary process conducted by an accredited impartial mediator.

Mediation is a two-way process that gives parties the opportunity to discuss their dispute and find mutually acceptable solutions. Many requests for assistance we receive are suitable for mediation and most mediations lead to a resolution.

As a guide, mediation is suitable where:

- the employee still works for the employer
- there is conflicting evidence (e.g. one word against the other)
- there is little or no evidence (e.g. no records of additional hours worked)
- there are issues about final entitlements (e.g. payment in lieu of notice and annual leave)
- the employee is award-free or there are issues about common law contracts or above award entitlements
- the employer has withheld money or made deductions from wages
- there are allegations of property taken from the employer
- there is a classification dispute, or
- the employee and employer seek a quick solution to an issue.

Mediation is an easy process held over the telephone. It usually takes less than 90 minutes. The mediator takes a neutral stance while helping parties to reach a settlement on the day of the mediation; however it is the parties who control the outcome. For more information visit the [mediation page](#) on our website (www.fairwork.gov.au/mediation).

CASE STUDY - Mediation:

Fatima worked at Ying's hairdressing salon and says that Ying owes her one week's wages. Fatima and Ying were friends before this issue arose, and both wanted to mediate the issue. In mediation, Fatima said that she was disappointed with Ying. Ying explained that her ex-husband looked after the payroll and when they divorced, she was left to deal with everything without any help and had been unable to fix Fatima's wages.

After discussion, Fatima said she was upset because she wanted Ying to take some responsibility for what happened. Ying apologised and said the business was struggling. Fatima and Ying agreed that it was hard to earn money as a business or as an employee. Through mediation, Fatima and Ying agreed to resolve this matter by having the wages paid in instalments to Fatima. Both were happy with this outcome.

8. Promoting compliance – what to expect

One of our main roles is to promote compliance with Commonwealth workplace laws.

Our inquiries and investigations are important ways we obtain evidence of serious non-compliance. We measure the seriousness of non-compliance by the potential impact it has on an individual, group or market. We may decide to conduct an inquiry or investigation where the available evidence suggests there is:

- exploitation of vulnerable workers (e.g. aged, young, overseas)
- significant public interest or concern (e.g. pregnancy and age discrimination)
- blatant disregard for the law, or a court or commission order
- deliberate distortion of a level playing field to gain a commercial advantage (e.g. large scale non-compliance that distorts the labour market), or
- an opportunity to provide an educative or deterrent effect.

We regularly review our compliance priorities to meet the changing needs of the Australian community. These are the areas we consider to be **serious non-compliance priorities**.

While we focus on these priority areas, we continue to monitor compliance more broadly and take action where needed. Deliberate or repeated breaches of Commonwealth workplace laws are treated seriously.

CASE STUDY – Promoting compliance:

Lina went on unpaid parental leave following the birth of her child. After six months, she advised her employer Justine that she was ready to return to work. Justine told Lina that she had been replaced with another person, and there was no job for Lina.

Lina requested our assistance. We investigated the matter and explained the relevant workplace laws to Justine, including the pregnancy discrimination provisions of the Act. As a result, Justine made changes to her business so that she followed the law. These changes included training her managers, guaranteeing that employees would return to their old position after parental leave, communicating better with pregnant employees, and developing internal policies and a toolkit to help all her staff understand parental leave. As a result of Justine's response, we did not need to take any further enforcement action.

8. Inquiring into a matter

We sometimes receive information from the media or the public which suggests non-compliance. We often decide to inquire initially into the matter rather than commence an investigation. In doing so, we encourage all parties involved to speak with us and provide information that supports their point of view. Our focus is on helping the parties, where possible, to comply with the law and resolve the matter quickly and informally.

During such an inquiry we may ask parties to provide evidence such as time and wage records, or other documents. Where an inquiry finds deliberate or repeated breaches of Commonwealth workplace laws, the matter will be treated seriously and investigated. Where evidence is disputed, parties may be encouraged to resolve the matter through a small claims procedure.

In other situations, where we believe that the information we have received from the public warrants detailed research, we may decide to conduct a comprehensive Inquiry. This type of inquiry reviews allegations of serious non-compliance with Commonwealth workplace laws by looking at information about what has happened or is happening in a particular workplace, industry, supply chain or labour market. After our review, we form recommendations and actions based upon our findings, including the possibility of an enforcement outcome. We also publish the findings from this type of inquiry on our website.

CASE STUDY – Inquiry:

We launched an Inquiry following a significant increase in the number of requests for assistance received from hotel housekeepers. The focus of the Inquiry was the misclassification of hotel housekeepers as independent contractors, when in fact they were employees.

We sought to identify the scale and cause of the misclassification, and determine how to ensure hotel operators correctly classify housekeepers in the future.

The Inquiry included unannounced visits by Fair Work Inspectors to several major hotels, interviewing housekeepers, issuing Notices to Produce documents, assessing contracts and interviewing procurement managers.

At two of the hotel groups, the Inquiry found evidence of contraventions of the Act concerning misclassification. The housekeepers at these hotels were being denied applicable penalty rates, regular patterns of work and accrual of leave entitlements due to their misclassification as independent contractors.

The Inquiry also found evidence of sham contracting arrangements at a major hotel group involving contracted cleaners. The cleaners were predominantly international students on visas working solely for a particular hotel with no autonomy in their day to day work. They were receiving a flat rate of pay and having to pay for the cost of chemicals, uniforms and administration fees.

In our preliminary findings report we recommended a range of compliance and enforcement outcomes including Letters of Caution, Compliance Notices, an Enforceable Undertaking and litigation against the respective hotel brands.

The report also recommended steps to improve compliance such as how hotels can enhance the management of their procurement practices within their supply chain including ensuring the principal contractors and sub-contractors comply with the law.

9. Investigating a matter

In circumstances which involve serious non-compliance we may conduct an investigation. This happens only in a very small number of cases.

An investigation is where a Fair Work Inspector considers allegations and gathers and examines evidence to determine if there have been breaches of Commonwealth workplace laws.

We do not represent any party. All investigations are impartial and the Fair Work Inspector will rely on the evidence available when making a decision.

We will always provide each party the opportunity to be heard during an investigation. We also use discretion to decide on the best process or reach the best outcome for an investigation.

In an investigation, a Fair Work Inspector can use powers under the Act to visit workplaces, interview people or require records or documents to be provided.

During an investigation, we expect all people to:

- always tell us the truth
- fully disclose all relevant matters from the outset of the investigation
- provide us with relevant information as it comes to hand
- respond in a timely manner to our requests.

The Fair Work Inspector handling the investigation will update the parties with developments at regular intervals.

The Fair Work Inspector will advise parties of investigation findings in writing and include details of how the outcome was decided. The findings will be provided within seven working days of the Fair Work Inspector's decision.

We seek to be reasonable and proportionate when conducting investigations. The average duration of an investigation is three months.

CASE STUDY – Investigation:

Ishan's employees had taken unprotected industrial action and he was successful in obtaining an order from the Fair Work Commission that required the employees to return to work. The industrial action caused his business significant economic loss.

However, Ishan kept paying his employees during the unprotected industrial action, which is not allowed under the Act. We investigated and Ishan said that due to the nature of the industrial action, it was hard for him to tell which employees had participated. We found that Ishan's business had a history of responding to industrial action by requesting certain orders from the Fair Work Commission, but the business itself did not have proper processes and systems in place to identify the people who took part in unprotected industrial action.

We were mindful of the cost to the business that had been caused by the industrial action. We also needed the business to fix the issue, and not breach the Act again.

Ishan formally agreed to introduce processes and systems to manage compliance with industrial action obligations, so that he would comply with the Act in future. This outcome reinforced the importance and integrity of the industrial action provisions of the Act, while acknowledging no formal penalty was needed to seek compliance from Ishan.

Our responses following an investigation typically include:

10.1 Findings letter

A findings letter is sent to the parties setting out what we found from the evidence gathered in an investigation. It tells a party what we have found, what they need to do next, and what we intend to do.

For instance, we may find there was no evidence of any breaches. At other times, we may find breaches and will ask the party to fix these (e.g. by back paying an employee).

CASE STUDY – Findings letter:

Pauline, a part-time employee, had worked for a coffee shop for over 12 months. Pauline asked us for help because she received less than the award pay rate and was not paid extra for working on the weekend.

A Fair Work Inspector investigated the matter, gathering evidence including documents and statements from Pauline, her employer Chris, and a witness. The Fair Work Inspector assessed the evidence and found a number of breaches. The Fair Work Inspector sent a findings letter to Chris and Pauline. The findings letter detailed the award obligations on minimum pay rates, and the penalty rates for weekends and evening work. The findings letter also explained the website tools that could help Chris to pay staff correctly, and asked Chris to back pay Pauline \$850 to make good the underpayment. Chris paid Pauline and now knows about the tools on the website that will assist compliance in the future.

10.2 Tailored small claims assistance

Sometimes a request for assistance involving a workplace dispute is assessed as suitable for an employee to seek their own recovery of unpaid entitlements through specified courts.

These small claims applications have low fees and are dealt with by the courts less formally than other applications made to courts. The small claims process is a fast and efficient way of resolving a dispute.

When deciding whether to refer an employee to a small claims process we consider:

the amount of money being claimed

how serious the allegations are

whether the money being claimed is related to a common law contract or an above award payment

whether attempts at voluntary recovery (such as mediation) have been made

whether evidence is being disputed or there are written records

the employee's ability to follow the small claims process

whether the employment period ended more than two years ago.

When parties are referred to the small claims process we assist by directing them to tools and resources that explain the small claims process and help them to calculate minimum employment entitlements. These resources are available [on our website \(www.fairwork.gov.au/smallclaims\)](http://www.fairwork.gov.au/smallclaims).

In some cases where we have found that an employee is owed money, we may assist them through the small claims procedure, for example, by helping with the small claims application. The level of assistance is considered on a case by case basis. For example, we may give greater help to a person with low literacy skills or from a culturally and linguistically diverse background.

CASE STUDY - Small claims:

George is a sales representative and earns \$60,000 per year which is significantly higher than the minimum award entitlement for his job. George advised us that he was owed \$2,000 for working extra hours.

George kept diary notes for some of the extra hours and said he was told to work these hours by his employer Mariana. Mariana disputed that the business owed George any money or that George was directed to work the extra hours. They were unable to agree on a resolution.

We explained the small claims process to both George and Mariana and encouraged them to try and resolve the issues once more between themselves in order to avoid the court process.

We showed George how to complete a small claims application form, how to present written evidence and how to set out calculations of what he believed was owing to him.

We advised Mariana on how to defend a small claims application and how to present written evidence.

We also explained to both parties that they may need to give verbal evidence in court about whether George was directed to work extra hours.

10.3 Letter of caution

A letter of caution is a written warning given to a party when we have found breaches and want to put them on notice that future breaches could result in us seeking financial penalties.

A letter of caution is typically used to encourage compliance in the dispute before us and to ensure future activities of the party are monitored in case of future non-compliance.

CASE STUDY - Letter of caution:

Peng worked in sales for five months, but did not receive a regular income during that time. He was told that he was engaged as an independent contractor on a commission-only basis. He received \$1,600 in commission over the five months.

We investigated and considered all the evidence. We found that Peng was an employee under an award, and not an independent contractor. His employer Bertrand had seriously breached the award, the Act and failed to provide many entitlements due to Peng including wages, allowances and annual leave. Bertrand claimed he had been unaware of the possibility Peng may have been an employee.

Bertrand agreed to pay the entitlements owing to Peng as an employee. Due to the significant breaches, we gave Bertrand a letter of caution, advising him that we would take any further breaches into account when deciding whether to start litigation or other enforcement action against him in the future.

10. Promoting compliance - enforcement outcomes

An enforcement outcome is where we decide that formal action under the Act is the appropriate response to breaches we have found.

There are four enforcement outcomes available to us at law. The Act sets out the legal requirements for each enforcement outcome, as well as things such as time limits and what powers courts have to make orders and impose financial penalties.

11.1 Infringement Notice

An Infringement Notice is a fine given for breaching the record-keeping or pay slip requirements of the Act and the Regulations.

Infringement Notices can be issued up to 12 months after the breach occurred.

We have discretion over whether an Infringement Notice is issued and the amount of the fine (up to the legal maximum). We will consider matters such as:

- whether the breach impedes a Fair Work Inspector's ability to find or calculate underpayments
- whether the breach meant that an employee did not have information needed to recover entitlements
- whether the employer has a history of breaching time and wage record-keeping or pay slip requirements
- whether the breach was deliberate to avoid obligations under Commonwealth workplace laws
- whether the breach had significant implications, for example an employee being unable to secure a loan due to lack of pay records.

The current maximum fines in Infringement Notices for each breach of a record-keeping or pay slip obligation are:

- \$510 for an individual or \$2,550 for a body corporate for breaches of the Act
- \$340 for an individual or \$1,700 for a body corporate for breaches of the Regulations.

If an employer thinks a mistake occurred and they have not breached record-keeping or pay slip obligations they can make an application to us to have the Infringement Notice reconsidered and withdrawn.

CASE STUDY - Infringement Notice:

Valentina worked for a company as a full-time administrative assistant. She was concerned that her pay had not increased after she turned 18. She thought she was still being paid the 17-year old rate, but she could not be sure as her employer Karl had not given her pay slips for seven months. She also worked some overtime, but was not always paid for this.

Valentina sought our assistance, and we found that Karl had not paid Valentina the correct entitlements. Karl paid Valentina the money owing, and agreed he had overlooked her award increase when she turned 18.

We also gave Karl's company two Infringement Notices for \$850 each, which represents one third of the maximum amount. This amount was settled on because Karl did not have a history of non-compliance. The first Infringement Notice was because Karl failed to keep proper records of Valentina's overtime hours, which may have caused Valentina to miss out on some entitlements. The second Infringement Notice was for failing to give Valentina pay slips, which meant she could not be sure of the gross wages or overtime paid to her each week.

These breaches of the Act by Karl's company resulted in total fines of \$1700 to be paid within 28 days. We also gave Karl information and templates to help him in complying with his pay slip and record-keeping obligations in the future.

11.2 Compliance Notice

A Compliance Notice is a written notice that legally requires a person to do certain things to fix breaches of the Act.

A Compliance Notice can be used where a Fair Work Inspector reasonably believes that a person has breached a term of the National Employment Standards, a modern award, enterprise agreement or other instrument that specifies wage rates and entitlements.

We typically issue Compliance Notices where an employer hasn't agreed to, or we suspect the employer won't, rectify an alleged breach. A person who has received a Compliance Notice may seek a review through the courts.

The decision to issue a Compliance Notice is not taken lightly, as a failure to do what the Compliance Notice requires in the time stated is likely to result in us starting legal proceedings in a court. We can take action for both the original breaches and the failure to comply with the Compliance Notice. A failure to comply can result in significant financial penalties of up to \$25,500 for a company and \$5,100 for an individual.

When considering whether to issue a Compliance Notice, a Fair Work Inspector will consider:

- the nature and extent of the breaches
- the level of cooperation from the employer
- whether the Compliance Notice will achieve a better and/or faster outcome
- the desire to bring about a cost effective and quick resolution to recover underpayments owed to individuals.

CASE STUDY - Compliance Notice:

A Fair Work Inspector investigated a matter involving Moshe, a 19 year old working in a child care centre. The investigation found that over six months his employer Stella had underpaid Moshe \$2,300 in wages and annual leave on termination.

Stella told the Fair Work Inspector that she would not pay as Moshe had not been a hard worker and did not deserve any more money. The Fair Work Inspector ensured Stella knew she legally had to make the payment, and explained that issues with Moshe's performance needed to be dealt with during her employment and were not a reason to pay less than the legal minimum. Stella still refused to pay the money owing.

The Fair Work Inspector then gave Stella a Compliance Notice that said she needed to make payment within a set timeframe. The Fair Work Inspector made it clear that if Stella did not make the payment by the due date she may face penalties in a court. Stella researched her obligations and realised that she did need to pay Moshe the minimum pay rates and annual leave, even if she had concerns about Moshe's work. Stella decided to pay Moshe the full amount owing by the due date in the Compliance Notice.

11.3 Enforceable Undertaking

When we believe that someone has seriously breached the Act, the breach is serious and they acknowledge this, accept responsibility and agree to fix the harm, we can accept a written undertaking from the person about the breaches.

The key difference between an Enforceable Undertaking and a Compliance Notice is an Enforceable Undertaking involves not only the payment of all monies owed but admission

and contrition from the party who has breached the law. In addition, an Enforceable Undertaking covers a broader range of conduct and broader remedies.

We use Enforceable Undertakings where an employer has acknowledged they've breached the law, accepted responsibility and agreed to cooperate with us and fix the problem.

Many of the initiatives included in Enforceable Undertakings help to build a greater understanding of workplace responsibilities, motivate the company to do the right thing and help them avoid making the same mistake again.

Enforceable Undertakings are set out in a publicly available and legally binding document. Importantly, we can take legal action in a court to enforce the terms of an Enforceable Undertaking if it is not complied with.

Enforceable Undertakings typically operate for a period of between 2 – 5 years and often include terms about fixing loss or damage caused (e.g. by paying compensation or back pay). They also deal with future compliance and what the person will do in the future to prevent more breaches, such as training sessions for senior managers. Enforceable Undertakings also require people to report on compliance at specific times or when a particular action is undertaken, such as a self-audit.

We may offer a person the option to enter into an Enforceable Undertaking as an alternative to us starting legal proceedings. We also consider offers from people of entering into an Enforceable Undertaking in response to breaches we have found.

When deciding whether to enter into an Enforceable Undertaking, we consider:

the nature, extent and seriousness of the breaches

the prior compliance history of the person

whether the person admits the breaches and what they propose to do to fix or prevent breaches, beyond just complying with minimum standards in future

the attitude of the respondent

whether the undertakings are relevant to the breaches and will achieve positive outcomes for employees and/or the community

whether an undertaking is a superior outcome over litigation, including whether it brings specific and general deterrence and promotes compliance with the Act.

CASE STUDY - Enforceable Undertaking:

Jill had paid her employees flat rates of pay that did not meet the minimum award provisions. A Fair Work Inspector found that the total underpayments to Jill's employees over a year were more than \$50,000.

Jill cooperated with us during the investigation, and admitted all the breaches. She entered into an Enforceable Undertaking with us, in which she agreed to pay the full amounts owing to all employees under an instalment plan. She also agreed in the Enforceable Undertaking to make a written apology to employees, and take all reasonable steps to ensure that she met her workplace obligations in the future, including participating in workplace relations training.

Jill's actions were made public on our website through the terms of the Enforceable Undertaking.

11. Litigation

In the most serious instances of non-compliance we take cases to court to enforce the law or seek a penalty. We call these court cases litigations. Cases that are suitable for litigation typically involve a combination of the following factors:

deliberate and/or repeated non-compliance, measured by the impact the non-compliance has on an individual, business, group or market

exploitation of vulnerable workers

failure to cooperate and fix breaches after being given the opportunity to do so

parties with a prior history of breaches who have not taken adequate steps to ensure compliance despite being advised of the consequences in the past.

Litigation is an essential enforcement action for three reasons:

1. enforcing the law and obtaining court orders sends a powerful public message to others not to engage in similar conduct (general deterrence)
2. stopping people from engaging in unlawful behaviour now and in the future makes the need to comply real for individuals (specific deterrence)
3. clarifying the law helps the community understand what are the various obligations and rights arising from Commonwealth workplace laws.

Legal action is taken where we have sufficient evidence and, on balance, we consider it is in the public interest and a proper response to the conduct. Detailed information about how we make decisions to start litigation is set out in our [Guidance Note 1 - Litigation Policy](#):

(<http://www.fairwork.gov.au/about-us/policies-and-guides/internal-policies-and-plans#guidenote>)

Where a court determines that breaches have occurred, a range of outcomes are available to the court. We will ask the court for outcomes that balance our aims of general and specific deterrence with the issues relevant in a case. In addition to financial penalties, we may seek other orders including back pay or compensation, injunctions, and/or requirements to undertake training or implement other practices to address the breaches.

CASE STUDY – Litigation:

We had dealt with a number of requests for assistance from former employees about the same employer 12 months earlier. Underpayments had occurred and they were voluntarily fixed.

So when we were contacted again by employees from this employer the Fair Work Inspector organised a meeting with the business owner to get their side of the story. The employer acknowledged that employees had been underpaid and said they would provide the relevant time and wage records.

When the records were not forthcoming, the Fair Work Inspector made a formal request for the records in the form of a Notice to Produce documents under the Act. A few months later some records were provided.

The Fair Work Inspector contacted the employer in person, via phone and by email to access the rest of the records. After using what was available to calculate amounts owing, the Fair Work Inspector attempted to inform the employer of the findings by mail, email and phone.

In total, the Fair Work Inspector initiated 33 separate and largely unsuccessful points of contact with the employer over a 16 month period in an attempt to resolve the matter.

The employer blatantly refused to engage with us and rectify problems that the employer acknowledged did occur, leaving us with few options other than to progress to court.

In the end, nearly two years after the requests for assistance had been made, the Federal Court ruled that the employer needed to back pay over \$12,000 to nine staff, including two junior employees, as well as ordering the company to pay penalties of over \$19,000, and the Director almost \$4,500.

12. Publication of enforcement outcomes

We publish information regarding our enforcement activities on our website. This forms an important part of our role in ensuring compliance with Commonwealth workplace laws by:

- enhancing general and specific deterrence

- informing and educating the community, or people in the same and similar industries, of the nature and outcome of enforcement activities

- providing advice about to how to prevent similar breaches.

Information we publish will be fair and accurate. We may decide to publish information on our website, including by issuing media releases. Information may also be used in reports, presentations or other educative material.

In litigation matters we may publicise the decision to commence proceedings, the lodgement of court documents, milestones during proceedings, directions hearings, and/or decisions (whether there are financial penalties or orders or neither). We will publish information if we believe that publicising any or all of these stages will support compliance with Commonwealth workplace laws.

We publish this information for two reasons:

visibility of our enforcement activity sends a powerful message of deterrence to others
clarification of the law and the level of penalties that certain breaches incur can help people understand the seriousness of breaking the law.

13. Working with other agencies

We are not always the agency best placed to deal with an issue. For example, a number of authorities specialise in handling superannuation, visa issues or bullying.

Where we believe another agency can provide greater assistance, we will refer the issue as early as possible.

We may share information with other government agencies or departments where authorised by the Act. For example, we may share information where disclosure is necessary, appropriate, or likely to assist administration or enforcement of a law of the Commonwealth, a State or a Territory.

Examples of agencies we may share information with include Fair Work Building and Construction, the Australian Taxation Office and the Department of Immigration and Border Protection. We also receive information from these government agencies at times which assists us do our work.

14. Feedback

We encourage feedback on any matter, and invite people to contact us at yourfeedback@fwo.gov.au

If a person requests a review of our actions and is not satisfied with the result of our review, they can contact the Commonwealth Ombudsman on 1300 362 072, or at www.ombudsman.gov.au.

Compliance and Enforcement Policy

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Australian Government

Fair Work
OMBUDSMAN

The Fair Work Ombudsman [FWO] is an independent statutory agency created by the *Fair Work Act 2009* [the Act]. The role of the FWO is to promote harmonious, productive and cooperative workplace relations, and to monitor, inquire into, investigate, and enforce compliance with relevant Commonwealth workplace laws.

This policy explains how we seek to ensure compliance with Commonwealth workplace laws. By Commonwealth workplace laws, we mean the Act, its regulations and the awards and agreements that set wages and conditions for Australian workplaces.

1. Our guiding principles

We want to promote a culture of compliance by equipping Australian workers and businesses with the information and support they need to make good choices in their workplaces.

Our work is guided by the following principles:

Principles	We:
Clear and effective communication	<ul style="list-style-type: none"> ■ listen to the workplace concerns of workers and business ■ provide advice that is easy to access, understand and apply
Professional customer service	<ul style="list-style-type: none"> ■ deliver a consistent and professional experience in every customer interaction ■ offer multiple ways to connect with us ■ provide practical advice and assistance that is responsive, professional and impartial
Consistency	<ul style="list-style-type: none"> ■ give practical advice which can be relied upon ■ ensure a level playing field where the same rules apply to everyone ■ apply the same assessment principles to each request for assistance ■ consider the same range of factors in deciding how to treat a matter
Risk-based and proportionate	<ul style="list-style-type: none"> ■ focus our compliance and enforcement efforts where there is serious non-compliance and where we can deliver the greatest benefit ■ consider risk in terms of potential impact on the community, as well as the relative risk of exploitation individuals face ■ encourage and empower employees and employers to resolve issues in their workplace,

	<p>where appropriate</p> <ul style="list-style-type: none"> ■ offer a range of dispute resolution tools and resources
Open and transparent	<ul style="list-style-type: none"> ■ remain neutral and impartial ■ give the parties the right to review all our decisions ■ publish information on our compliance and enforcement activities in a format that is clear, understandable and accessible ■ ensure our customers' private details are kept confidential
Collaborative	<ul style="list-style-type: none"> ■ build relationships with stakeholders and the community based on trust and respect ■ work with stakeholders to find solutions to workplace issues and opportunities to collaborate ■ harness intelligence and insight from a range of sources including other government agencies to inform our compliance and enforcement activities ■ listen to the community's expectations of us
Continuous improvement	<ul style="list-style-type: none"> ■ measure the impact of our interactions with customers and use this information to improve our services ■ seek feedback on our processes, policies and practices and make changes to improve them ■ adopt leading technologies to transform our services to be more efficient and effective
Affect cultural change	<ul style="list-style-type: none"> ■ develop solutions to address structural and behavioural drivers that lead to widespread non-compliance in certain industries and sectors ■ focus our efforts on supporting productivity by preventing workplace disputes

2. Advice, support and assistance

A core part of our role is providing practical workplace relations advice and assistance that is easy to access, understand and apply. Helping the community understand the workplace relations system is one of the ways that we support compliant, productive and inclusive workplaces.

This is why we provide the Fair Work Infoline and Small Business Helpline. We also provide information, tools and resources through our website (fairwork.gov.au), Facebook, Twitter, LinkedIn and YouTube. These free tools and resources (which we continue to develop) are available 24/7 on our website and include:

- an [online learning centre](#) that has video-based interactive courses to teach businesses and workers skills and strategies to help them at work
- [fact sheets](#) about the minimum rights and obligations of businesses and workers, including information on the National Employment Standards, record-keeping and pay slips
- [best practice guides](#) to help small to medium-sized businesses with implementing best practice workplace policies and procedures
- [templates](#) that simplify the work in keeping employment records
- our [Pay Calculator](#) to help calculate modern award pay rates
- [My account](#) which allows users to save tailored information such as pay rates and conditions of employment specific to their circumstances. Users can log into My account and view saved information at any time.

We encourage people to use our self-service tools and resources to find answers and have conversations in their workplaces. For most people, understanding workplace rights and obligations means that issues can be resolved at the workplace level without intervention from us. If we can't help you because the issue falls outside of our area of responsibility, we will refer you to the people who can.

CASE STUDY – Self help tools:

Jim is a mechanic at a local garage. Driving home from work, he heard on the radio that award rates of pay had recently gone up. Jim knew he was paid the old award rate, and he had not received an increase yet.

When he got home, Jim went to fairwork.gov.au to check his rate of pay. Using our pay calculator, he got the new award rate and printed a copy for his boss Miguel. Jim also completed our *Difficult conversations in the workplace* online learning course to prepare himself for a discussion with Miguel.

The next day at work, Jim found a good time to talk to Miguel about his pay. Miguel did not know about the increase, so Jim told him about the pay calculator and gave him the print out.

Miguel said he would need to check for himself. The following day, Miguel used the pay calculator and confirmed that Jim was right. As a result, Miguel organised for Jim's pay to be increased to the new award rate. Miguel also registered for My account and subscribed to our email updates to receive information on future pay increases.

3. Campaigns

Campaigns help us check, improve and maintain compliance with Commonwealth workplace laws in a targeted way.

We take a risk-based and proportionate approach to determining which industries, locations and workplace relations issues to focus on. This includes gathering intelligence to ensure our campaigns are evidence-based and deliver the greatest benefit.

An important part of our campaigns is gaining the support of, and working with, groups such as industry associations, employer representatives, unions and community groups.

During a campaign, we communicate with employers and employees about Commonwealth workplace laws. This communication can be through letters, phone calls, visits from our Fair Work Inspectors, social media, or our website fairwork.gov.au.

We also look at employee time and wage records to check compliance with Commonwealth workplace laws.

If we find that employers are not meeting their obligations, we work closely with them to help them fix any errors.

After each campaign, we release a report showing the results, insights and further actions on our website.

Documents released by the Fair Work Ombudsman under the Freedom of Information Act

CASE STUDY - Campaign:

We conducted extensive research to identify industry sectors of non-compliance and/or those with a high number of vulnerable employees. The research indicated a need to focus on apprentices. We worked closely with industry stakeholders in planning and designing a national campaign targeting apprentices. The purpose of the campaign was to help businesses across a variety of industries understand and comply with workplace laws and to test levels of compliance.

Robert employs an apprentice in his hairdressing salon in Sydney. Through Facebook he saw that we were starting a national campaign targeting apprentices and requested our assistance to check he was complying with the law. As part of the campaign Fair Work Inspectors contacted more than 700 businesses, by mail and in person, to ensure employers like Robert were aware of their workplace obligations and to examine pay records.

Fair Work Inspectors checked that employers were paying the correct minimum hourly rate, penalty rates and allowances and were complying with pay slip and record-keeping requirements. These checks included site visits and where businesses were found to have made a mistake, Inspectors worked with them to fix errors and make any necessary back payments to employees. The most serious instances of non-compliance were considered for further action.

Fair Work Inspectors also took the opportunity to assist employers to use the tools and resources available to help them manage their workplace and understand and comply with their obligations. In response to his request, Robert also received this assistance.

The campaign provided a useful snapshot of issues which will influence our decisions regarding apprentices. A campaign report containing a number of findings and recommendations was published on our website and provided to industry stakeholders.

4. Compliance partnerships

We encourage employers that want to publicly demonstrate their commitment to creating compliant, productive and inclusive Australian workplaces to enter into partnership agreements with us.

Compliance partnerships give employers, and importantly their staff, certainty that their systems and processes are working effectively and help build a culture of compliance. Their public commitment to compliance is also a competitive advantage that helps attract talent, instil confidence in customers and appeal to organisations in their supply chain. For example, compliance partnerships provide an opportunity for franchise operators and head contractors to work with franchisees and sub-contractors to drive workplace improvements throughout their supply chain.

Compliance partnerships can be tailored for individual businesses and circumstances and can include:

- employer initiatives to engage with employees
- self-audits
- the monitoring of contractors and franchisees
- ensuring effective dispute resolution processes
- implementing workplace relations training for key managers and staff.

Compliance partnerships are becoming increasingly popular with businesses who wish to make a strong and public commitment to their employees, contractors, customers and the broader community about compliance with workplace laws. Names of enterprises and/or their brands that have entered into a compliance partnership with the FWO can be found [on our website: \(http://www.fairwork.gov.au/about-us/our-role/enforcing-the-legislation/proactive-compliance-deeds\)](http://www.fairwork.gov.au/about-us/our-role/enforcing-the-legislation/proactive-compliance-deeds)

CASE STUDY – Compliance partnership:

Franchisor Pty Ltd read about compliance partnerships on fairwork.gov.au and thought it would be a good program to be in to make a positive and public statement of its commitment to compliance with Commonwealth workplace laws.

Franchisor Pty Ltd approached us to find out what the arrangements would be.

After some discussion about the structure and relationships within the brand, Franchisor Pty Ltd entered into a compliance partnership which involved:

- establishing an employee enquiry line available to both direct employees and employees of franchisees
- establishing systems and processes to promote compliance and report on these
- conducting self-audits of employee entitlements of direct employees
- facilitating self-audits of employee entitlements of a sample of franchisees
- working with us to resolve workplace disputes if a request for assistance was received by us from an employee of a franchisee, and reporting the outcome to us
- reporting annually on the status of the compliance partnership.

Franchisor Pty Ltd's compliance partnership was published on the our website and was also the subject of a FWO media release, resulting in positive messages for Franchisor Pty Ltd's brand.

As a result of the compliance partnership, franchisees reported that they found compliance with workplace laws easier. They said that by better understanding their obligations they were able to focus on 'running their business'. The head franchisor also reported feedback that it had improved its public standing as an 'employer of choice' resulting in lower staff turnover costs because employees were confident that their employer was providing all their entitlements.

5. Early involvement

We receive a large number of telephone requests for assistance. Callers include employees and employers who have a concern about their workplace. In these situations we find that if we get involved early, we can help the parties resolve issues at the workplace level. We encourage and empower employees and employers to self-resolve issues in their workplace where possible. We can also offer a mediation service where both sides come up with solutions together that will work for them.

CASE STUDY – Early involvement:

Nadia called us and said she was being underpaid by her employer Robin. Nadia was unsure about how to raise this issue and did not want to upset her relationship with Robin as she was still working for the business.

We helped Nadia by advising her on the award and hourly rate of pay that applied. We encouraged Nadia to have a discussion with Robin to address the wages issues by giving her practical tips and guiding her through our online self-resolution tools, such as the *Difficult conversations in the workplace* online learning module.

Nadia emailed Robin with her concerns and met with Robin to discuss her situation. Robin wasn't sure about her obligations so she rang our Small Business Helpline to check what she had to do. After speaking with us, and Nadia, Robin raised Nadia's wages to the correct amount and back paid Nadia to fix the underpayment.

Our practical assistance empowered Nadia to resolve the issue directly with Robin without escalating it further. This also meant that Nadia was able to maintain a positive relationship with Robin.

6. Assessing requests for assistance involving workplace disputes

We receive many requests for assistance from workers who have a dispute about their wages or other issues with their employer. We describe the worker and the business in these cases as the parties to the request for assistance.

6.1 Assessment

When we receive a request for assistance or we are alerted to a possible workplace dispute, we consider how best we can help through an assessment of the issues by experienced officers.

We understand that not everyone needs the same type of assistance. Depending on the individual's circumstance, the issues at the workplace and the situation more generally, we provide a tailored response appropriate to the matter.

6.2 What do we consider?

In deciding how we will act, we consider the seriousness of the alleged conduct and the circumstances of the parties, as well as the practical issues involved in resolving the matter. This includes whether the request for assistance involves:

- public interest (where the community would expect us to be involved)
- a party facing significant barriers to resolving the matter themselves, for example, low levels of literacy or comprehension
- a small business owner, who has limited access to a human resources expert
- a party who has had previous issues with compliance
- an alleged breach appears to be deliberate
- sufficient information to support an argument that a breach has occurred
- confidentiality (where the employee does not want us to tell the business that a request came from them)
- the parties having made any attempts to resolve the matter
- breaches of monetary entitlements where the amount is significant
- minimum entitlements as opposed to above award conditions (we give priority to minimum entitlements, that is, entitlements set out in the Act, a Modern Award or Enterprise Agreement)
- an employment relationship that has ended, including how long ago the employment ended (we generally do not pursue matters that are more than two years old).

As an example, we would act differently in a case where a young person is being paid less than the minimum wage than in a case where an employee on above award wages hasn't received the bonus they are entitled to.

6.3 What action are we likely to take?

Where a request for assistance concerns wages or conditions and there appears to be no exploitation or deliberate non-compliance, we help the parties resolve the issue quickly and informally.

We have found that in most cases the issue can be resolved between the parties with some help from us. We want parties to resolve these matters with minimal expense, time and stress. A formal investigation is generally not the best approach in these cases. Rather we help the parties work through their issues together.

Typically this involves speaking to both parties and understanding each side's view. We help them understand how Commonwealth workplace laws apply to their situation and give both sides information about relevant awards or parts of the Act.

A request for assistance about a workplace dispute usually results in us taking one or more of the following actions:

- using the information provided in future education and compliance activities
- giving tailored advice to help parties deal with the matter and get a better understanding of Commonwealth workplace laws
- helping people to resolve an issue quickly and informally in the workplace by providing access to employment tools and resources
- referring the information to another government agency
- conducting an inquiry
- offering mediation
- conducting an investigation
- placing parties on notice about our concerns and the possibility of future action if the conduct continues or happens again
- assisting an employee to take their own action (such as through a small claims court)
- determining that there is no action required at this time.

In all cases the information given to us is important, and helps us to determine our current and future activities.

We find that most matters can be resolved through mediation.

7. Mediation

Mediation is a free, simple, confidential and voluntary process conducted by an accredited impartial mediator.

Mediation is a two-way process that gives parties the opportunity to discuss their dispute and find mutually acceptable solutions. Many requests for assistance we receive are suitable for mediation and most mediations lead to a resolution.

As a guide, mediation is suitable where:

- the employee still works for the employer
- there is conflicting evidence (e.g. one word against the other)
- there is little or no evidence (e.g. no records of additional hours worked)
- there are issues about final entitlements (e.g. payment in lieu of notice and annual leave)
- the employee is award-free or there are issues about common law contracts or above award entitlements
- the employer has withheld money or made deductions from wages
- there are allegations of property taken from the employer
- there is a classification dispute, or
- the employee and employer seek a quick solution to an issue.

Mediation is an easy process held over the telephone. It usually takes less than 90 minutes. The mediator takes a neutral stance while helping parties to reach a settlement on the day of the mediation; however it is the parties who control the outcome. For more information visit the [mediation page](http://www.fairwork.gov.au/mediation) on our website (www.fairwork.gov.au/mediation).

CASE STUDY - Mediation:

Fatima worked at Ying's hairdressing salon and says that Ying owes her one week's wages. Fatima and Ying were friends before this issue arose, and both wanted to mediate the issue. In mediation, Fatima said that she was disappointed with Ying. Ying explained that her ex-husband looked after the payroll and when they divorced, she was left to deal with everything without any help and had been unable to fix Fatima's wages.

After discussion, Fatima said she was upset because she wanted Ying to take some responsibility for what happened. Ying apologised and said the business was struggling. Fatima and Ying agreed that it was hard to earn money as a business or as an employee. Through mediation, Fatima and Ying agreed to resolve this matter by having the wages paid in instalments to Fatima. Both were happy with this outcome.

8. Promoting compliance – what to expect

One of our main roles is to promote compliance with Commonwealth workplace laws.

Our inquiries and investigations are important ways we obtain evidence of serious non-compliance. We measure the seriousness of non-compliance by the potential impact it has on an individual, group or market. We may decide to conduct an inquiry or investigation where the available evidence suggests there is:

- exploitation of vulnerable workers (e.g. aged, young, overseas)
- significant public interest or concern (e.g. pregnancy and age discrimination)
- blatant disregard for the law, or a court or commission order
- deliberate distortion of a level playing field to gain a commercial advantage (e.g. large scale non-compliance that distorts the labour market), or
- an opportunity to provide an educative or deterrent effect.

We regularly review our compliance priorities to meet the changing needs of the Australian community. These are the areas we consider to be **serious non-compliance priorities**.

While we focus on these priority areas, we continue to monitor compliance more broadly and take action where needed. Deliberate or repeated breaches of Commonwealth workplace laws are treated seriously.

CASE STUDY – Promoting compliance:

Lina went on unpaid parental leave following the birth of her child. After six months, she advised her employer Justine that she was ready to return to work. Justine told Lina that she had been replaced with another person, and there was no job for Lina.

Lina requested our assistance. We investigated the matter and explained the relevant workplace laws to Justine, including the pregnancy discrimination provisions of the Act. As a result, Justine made changes to her business so that she followed the law. These changes included training her managers, guaranteeing that employees would return to their old position after parental leave, communicating better with pregnant employees, and developing internal policies and a toolkit to help all her staff understand parental leave. As a result of Justine's response, we did not need to take any further enforcement action.

9. Inquiring into a matter

We sometimes receive information from the media or the public which suggests non-compliance. We often decide to inquire initially into the matter rather than commence an investigation. In doing so, we encourage all parties involved to speak with us and provide information that supports their point of view. Our focus is on helping the parties, where possible, to comply with the law and resolve the matter quickly and informally.

During such an inquiry we may ask parties to provide evidence such as time and wage records, or other documents. Where an inquiry finds deliberate or repeated breaches of Commonwealth workplace laws, the matter will be treated seriously and investigated. Where evidence is disputed, parties may be encouraged to resolve the matter through a small claims procedure.

In other situations, where we believe that the information we have received from the public warrants detailed research, we may decide to conduct a comprehensive Inquiry. This type of inquiry reviews allegations of serious non-compliance with Commonwealth workplace laws by looking at information about what has happened or is happening in a particular workplace, industry, supply chain or labour market. After our review, we form recommendations and actions based upon our findings, including the possibility of an enforcement outcome. We also publish the findings from this type of inquiry on our website.

CASE STUDY – Inquiry:

We launched an Inquiry following a significant increase in the number of requests for assistance received from hotel housekeepers. The focus of the Inquiry was the misclassification of hotel housekeepers as independent contractors, when in fact they were employees.

We sought to identify the scale and cause of the misclassification, and determine how to ensure hotel operators correctly classify housekeepers in the future.

The Inquiry included unannounced visits by Fair Work Inspectors to several major hotels, interviewing housekeepers, issuing Notices to Produce documents, assessing contracts and interviewing procurement managers.

At two of the hotel groups, the Inquiry found evidence of contraventions of the Act concerning misclassification. The housekeepers at these hotels were being denied applicable penalty rates, regular patterns of work and accrual of leave entitlements due to their misclassification as independent contractors.

The Inquiry also found evidence of sham contracting arrangements at a major hotel group involving contracted cleaners. The cleaners were predominantly international students on visas working solely for a particular hotel with no autonomy in their day to day work. They were receiving a flat rate of pay and having to pay for the cost of chemicals, uniforms and administration fees.

In our preliminary findings report we recommended a range of compliance and enforcement outcomes including Letters of Caution, Compliance Notices, an Enforceable Undertaking and litigation against the respective hotel brands.

The report also recommended steps to improve compliance such as how hotels can enhance the management of their procurement practices within their supply chain including ensuring the principal contractors and sub-contractors comply with the law.

10. Investigating a matter

In circumstances which involve serious non-compliance we may conduct an investigation. This happens only in a very small number of cases.

An investigation is where a Fair Work Inspector considers allegations and gathers and examines evidence to determine if there have been breaches of Commonwealth workplace laws.

We do not represent any party. All investigations are impartial and the Fair Work Inspector will rely on the evidence available when making a decision.

We will always provide each party the opportunity to be heard during an investigation. We also use discretion to decide on the best process or reach the best outcome for an investigation.

In an investigation, a Fair Work Inspector can use powers under the Act to visit workplaces, interview people or require records or documents to be provided.

During an investigation, we expect all people to:

- always tell us the truth
- fully disclose all relevant matters from the outset of the investigation
- provide us with relevant information as it comes to hand
- respond in a timely manner to our requests.

The Fair Work Inspector handling the investigation will update the parties with developments at regular intervals.

The Fair Work Inspector will advise parties of investigation findings in writing and include details of how the outcome was decided. The findings will be provided within seven working days of the Fair Work Inspector's decision.

We seek to be reasonable and proportionate when conducting investigations. The average duration of an investigation is three months.

CASE STUDY – Investigation:

Ishan's employees had taken unprotected industrial action and he was successful in obtaining an order from the Fair Work Commission that required the employees to return to work. The industrial action caused his business significant economic loss.

However, Ishan kept paying his employees during the unprotected industrial action, which is not allowed under the Act. We investigated and Ishan said that due to the nature of the industrial action, it was hard for him to tell which employees had participated. We found that Ishan's business had a history of responding to industrial action by requesting certain orders from the Fair Work Commission, but the business itself did not have proper processes and systems in place to identify the people who took part in unprotected industrial action.

We were mindful of the cost to the business that had been caused by the industrial action. We also needed the business to fix the issue, and not breach the Act again.

Ishan formally agreed to introduce processes and systems to manage compliance with industrial action obligations, so that he would comply with the Act in future. This outcome reinforced the importance and integrity of the industrial action provisions of the Act, while acknowledging no formal penalty was needed to seek compliance from Ishan.

Our responses following an investigation typically include:

10.1 Findings letter

A findings letter is sent to the parties setting out what we found from the evidence gathered in an investigation. It tells a party what we have found, what they need to do next, and what we intend to do.

For instance, we may find there was no evidence of any breaches. At other times, we may find breaches and will ask the party to fix these (e.g. by back paying an employee).

CASE STUDY – Findings letter:

Pauline, a part-time employee, had worked for a coffee shop for over 12 months. Pauline asked us for help because she received less than the award pay rate and was not paid extra for working on the weekend.

A Fair Work Inspector investigated the matter, gathering evidence including documents and statements from Pauline, her employer Chris, and a witness. The Fair Work Inspector assessed the evidence and found a number of breaches. The Fair Work Inspector sent a findings letter to Chris and Pauline. The findings letter detailed the award obligations on minimum pay rates, and the penalty rates for weekends and evening work. The findings letter also explained the website tools that could help Chris to pay staff correctly, and asked Chris to back pay Pauline \$850 to make good the underpayment. Chris paid Pauline and now knows about the tools on the website that will assist compliance in the future.

10.2 Tailored small claims assistance

Sometimes a request for assistance involving a workplace dispute is assessed as suitable for an employee to seek their own recovery of unpaid entitlements through specified courts.

These small claims applications have low fees and are dealt with by the courts less formally than other applications made to courts. The small claims process is a fast and efficient way of resolving a dispute.

When deciding whether to refer an employee to a small claims process we consider:

- the amount of money being claimed
- how serious the allegations are
- whether the money being claimed is related to a common law contract or an above award payment
- whether attempts at voluntary recovery (such as mediation) have been made
- whether evidence is being disputed or there are written records
- the employee's ability to follow the small claims process
- whether the employment period ended more than two years ago.

When parties are referred to the small claims process we assist by directing them to tools and resources that explain the small claims process and help them to calculate minimum employment entitlements. These resources are available [on our website \(www.fairwork.gov.au/smallclaims\)](http://www.fairwork.gov.au/smallclaims).

In some cases where we have found that an employee is owed money, we may assist them through the small claims procedure, for example, by helping with the small claims application. The level of assistance is considered on a case by case basis. For example, we may give greater help to a person with low literacy skills or from a culturally and linguistically diverse background.

CASE STUDY - Small claims:

George is a sales representative and earns \$60,000 per year which is significantly higher than the minimum award entitlement for his job. George advised us that he was owed \$2,000 for working extra hours.

George kept diary notes for some of the extra hours and said he was told to work these hours by his employer Mariana. Mariana disputed that the business owed George any money or that George was directed to work the extra hours. They were unable to agree on a resolution.

We explained the small claims process to both George and Mariana and encouraged them to try and resolve the issues once more between themselves in order to avoid the court process.

We showed George how to complete a small claims application form, how to present written evidence and how to set out calculations of what he believed was owing to him.

We advised Mariana on how to defend a small claims application and how to present written evidence.

We also explained to both parties that they may need to give verbal evidence in court about whether George was directed to work extra hours.

10.3 Letter of caution

A letter of caution is a written warning given to a party when we have found breaches and want to put them on notice that future breaches could result in us seeking financial penalties.

A letter of caution is typically used to encourage compliance in the dispute before us and to ensure future activities of the party are monitored in case of future non-compliance.

CASE STUDY - Letter of caution:

Peng worked in sales for five months, but did not receive a regular income during that time. He was told that he was engaged as an independent contractor on a commission-only basis. He received \$1,600 in commission over the five months.

We investigated and considered all the evidence. We found that Peng was an employee under an award, and not an independent contractor. His employer Bertrand had seriously breached the award, the Act and failed to provide many entitlements due to Peng including wages, allowances and annual leave. Bertrand claimed he had been unaware of the possibility Peng may have been an employee.

Bertrand agreed to pay the entitlements owing to Peng as an employee. Due to the significant breaches, we gave Bertrand a letter of caution, advising him that we would take any further breaches into account when deciding whether to start litigation or other enforcement action against him in the future.

11. Promoting compliance - enforcement outcomes

An enforcement outcome is where we decide that formal action under the Act is the appropriate response to breaches we have found.

There are four enforcement outcomes available to us at law. The Act sets out the legal requirements for each enforcement outcome, as well as things such as time limits and what powers courts have to make orders and impose financial penalties.

11.1 Infringement Notice

An Infringement Notice is a fine given for breaching the record-keeping or pay slip requirements of the Act and the Regulations.

Infringement Notices can be issued up to 12 months after the breach occurred.

We have discretion over whether an Infringement Notice is issued and the amount of the fine (up to the legal maximum). We will consider matters such as:

- whether the breach impedes a Fair Work Inspector's ability to find or calculate underpayments
- whether the breach meant that an employee did not have information needed to recover entitlements
- whether the employer has a history of breaching time and wage record-keeping or pay slip requirements
- whether the breach was deliberate to avoid obligations under Commonwealth workplace laws
- whether the breach had significant implications, for example an employee being unable to secure a loan due to lack of pay records.

The current maximum fines in Infringement Notices for each breach of a record-keeping or pay slip obligation are:

- \$540 for an individual or \$2,700 for a body corporate for breaches of the Act
- \$360 for an individual or \$1,800 for a body corporate for breaches of the Regulations.

If an employer thinks a mistake occurred and they have not breached record-keeping or pay slip obligations they can make an application to us to have the Infringement Notice reconsidered and withdrawn.

CASE STUDY - Infringement Notice:

Valentina worked for a company as a full-time administrative assistant. She was concerned that her pay had not increased after she turned 18. She thought she was still being paid the 17-year old rate, but she could not be sure as her employer Karl had not given her pay slips for seven months. She also worked some overtime, but was not always paid for this. Valentina sought our assistance, and we found that Karl had not paid Valentina the correct entitlements. Karl paid Valentina the money owing, and agreed he had overlooked her award increase when she turned 18.

We also gave Karl's company two Infringement Notices for \$900 each, which represents one third of the maximum amount. This amount was settled on because Karl did not have a history of non-compliance. The first Infringement Notice was because Karl failed to keep proper records of Valentina's overtime hours, which may have caused Valentina to miss out on some entitlements. The second Infringement Notice was for failing to give Valentina pay slips, which meant she could not be sure of the gross wages or overtime paid to her each week.

These breaches of the Act by Karl's company resulted in total fines of \$1800 to be paid within 28 days. We also gave Karl information and templates to help him in complying with his pay slip and record-keeping obligations in the future.

11.2 Compliance Notice

A Compliance Notice is a written notice that legally requires a person to do certain things to fix breaches of the Act.

A Compliance Notice can be used where a Fair Work Inspector reasonably believes that a person has breached a term of the National Employment Standards, a modern award, enterprise agreement or other instrument that specifies wage rates and entitlements.

We typically issue Compliance Notices where an employer hasn't agreed to, or we suspect the employer won't, rectify an alleged breach. A person who has received a Compliance Notice may seek a review through the courts.

The decision to issue a Compliance Notice is not taken lightly, as a failure to do what the Compliance Notice requires in the time stated is likely to result in us starting legal proceedings in a court. We can take action for both the original breaches and the failure to comply with the Compliance Notice. A failure to comply can result in significant financial penalties of up to \$27,000 for a company and \$5,400 for an individual.

When considering whether to issue a Compliance Notice, a Fair Work Inspector will consider:

- the nature and extent of the breaches
- the level of cooperation from the employer
- whether the Compliance Notice will achieve a better and/or faster outcome
- the desire to bring about a cost effective and quick resolution to recover underpayments owed to individuals.

CASE STUDY - Compliance Notice:

A Fair Work Inspector investigated a matter involving Moshe, a 19 year old working in a child care centre. The investigation found that over six months his employer Stella had underpaid Moshe \$2,300 in wages and annual leave on termination.

Stella told the Fair Work Inspector that she would not pay as Moshe had not been a hard worker and did not deserve any more money. The Fair Work Inspector ensured Stella knew she legally had to make the payment, and explained that issues with Moshe's performance needed to be dealt with during her employment and were not a reason to pay less than the legal minimum. Stella still refused to pay the money owing.

The Fair Work Inspector then gave Stella a Compliance Notice that said she needed to make payment within a set timeframe. The Fair Work Inspector made it clear that if Stella did not make the payment by the due date she may face penalties in a court. Stella researched her obligations and realised that she did need to pay Moshe the minimum pay rates and annual leave, even if she had concerns about Moshe's work. Stella decided to pay Moshe the full amount owing by the due date in the Compliance Notice.

11.3 Enforceable Undertaking

When we believe that someone has seriously breached the Act, the breach is serious and they acknowledge this, accept responsibility and agree to fix the harm, we can accept a written undertaking from the person about the breaches.

The key difference between an Enforceable Undertaking and a Compliance Notice is an Enforceable Undertaking involves not only the payment of all monies owed but admission and contrition from the party who has breached the law. In addition, an Enforceable Undertaking covers a broader range of conduct and broader remedies.

We use Enforceable Undertakings where an employer has acknowledged they've breached the law, accepted responsibility and agreed to cooperate with us and fix the problem.

Many of the initiatives included in Enforceable Undertakings help to build a greater understanding of workplace responsibilities, motivate the company to do the right thing and help them avoid making the same mistake again.

Enforceable Undertakings are set out in a publicly available and legally binding document. Importantly, we can take legal action in a court to enforce the terms of an Enforceable Undertaking if it is not complied with.

Enforceable Undertakings typically operate for a period of between 2 – 5 years and often include terms about fixing loss or damage caused (e.g. by paying compensation or back pay). They also deal with future compliance and what the person will do in the future to prevent more breaches, such as training sessions for senior managers. Enforceable Undertakings also require people to report on compliance at specific times or when a particular action is undertaken, such as a self-audit.

We may offer a person the option to enter into an Enforceable Undertaking as an alternative to us starting legal proceedings. We also consider offers from people of entering into an Enforceable Undertaking in response to breaches we have found.

Documents released by the Fair Work Ombudsman under the Freedom of Information Act

When deciding whether to enter into an Enforceable Undertaking, we consider:

- the nature, extent and seriousness of the breaches
- the prior compliance history of the person
- whether the person admits the breaches and what they propose to do to fix or prevent breaches, beyond just complying with minimum standards in future
- the attitude of the respondent
- whether the undertakings are relevant to the breaches and will achieve positive outcomes for employees and/or the community
- whether an undertaking is a superior outcome over litigation, including whether it brings specific and general deterrence and promotes compliance with the Act.

CASE STUDY - Enforceable Undertaking:

Jill had paid her employees flat rates of pay that did not meet the minimum award provisions. A Fair Work Inspector found that the total underpayments to Jill's employees over a year were more than \$50,000.

Jill cooperated with us during the investigation, and admitted all the breaches. She entered into an Enforceable Undertaking with us, in which she agreed to pay the full amounts owing to all employees under an instalment plan. She also agreed in the Enforceable Undertaking to make a written apology to employees, and take all reasonable steps to ensure that she met her workplace obligations in the future, including participating in workplace relations training.

Jill's actions were made public on our website through the terms of the Enforceable Undertaking.

12. Litigation

In the most serious instances of non-compliance we take cases to court to enforce the law or seek a penalty. We call these court cases litigations. Cases that are suitable for litigation typically involve a combination of the following factors:

- deliberate and/or repeated non-compliance, measured by the impact the non-compliance has on an individual, business, group or market
- exploitation of vulnerable workers
- failure to cooperate and fix breaches after being given the opportunity to do so

- parties with a prior history of breaches who have not taken adequate steps to ensure compliance despite being advised of the consequences in the past.

Litigation is an essential enforcement action for three reasons:

1. enforcing the law and obtaining court orders sends a powerful public message to others not to engage in similar conduct (general deterrence)
2. stopping people from engaging in unlawful behaviour now and in the future makes the need to comply real for individuals (specific deterrence)
3. clarifying the law helps the community understand what are the various obligations and rights arising from Commonwealth workplace laws.

Legal action is taken where we have sufficient evidence and, on balance, we consider it is in the public interest and a proper response to the conduct. Detailed information about how we make decisions to start litigation is set out in our [Guidance Note 1 - Litigation Policy](#):

(<http://www.fairwork.gov.au/about-us/policies-and-guides/internal-policies-and-plans#guidenote>)

Where a court determines that breaches have occurred, a range of outcomes are available to the court. We will ask the court for outcomes that balance our aims of general and specific deterrence with the issues relevant in a case. In addition to financial penalties, we may seek other orders including back pay or compensation, injunctions, and/or requirements to undertake training or implement other practices to address the breaches.

CASE STUDY – Litigation:

We had dealt with a number of requests for assistance from former employees about the same employer 12 months earlier. Underpayments had occurred and they were voluntarily fixed.

So when we were contacted again by employees from this employer the Fair Work Inspector organised a meeting with the business owner to get their side of the story. The employer acknowledged that employees had been underpaid and said they would provide the relevant time and wage records.

When the records were not forthcoming, the Fair Work Inspector made a formal request for the records in the form of a Notice to Produce documents under the Act. A few months later some records were provided.

The Fair Work Inspector contacted the employer in person, via phone and by email to access the rest of the records. After using what was available to calculate amounts owing, the Fair Work Inspector attempted to inform the employer of the findings by mail, email and phone. In total, the Fair Work Inspector initiated 33 separate and largely unsuccessful points of contact with the employer over a 16 month period in an attempt to resolve the matter.

The employer blatantly refused to engage with us and rectify problems that the employer acknowledged did occur, leaving us with few options other than to progress to court. In the end, nearly two years after the requests for assistance had been made, the Federal Court ruled that the employer needed to back pay over \$12,000 to nine staff, including two junior employees, as well as ordering the company to pay penalties of over \$19,000, and the Director almost \$4,500.

13. Publication of enforcement outcomes

We publish information regarding our enforcement activities on our website. This forms an important part of our role in ensuring compliance with Commonwealth workplace laws by:

- enhancing general and specific deterrence
- informing and educating the community, or people in the same and similar industries, of the nature and outcome of enforcement activities
- providing advice about to how to prevent similar breaches.

Information we publish will be fair and accurate. We may decide to publish information on our website, including by issuing media releases. Information may also be used in reports, presentations or other educative material.

In litigation matters we may publicise the decision to commence proceedings, the lodgement of court documents, milestones during proceedings, directions hearings, and/or decisions (whether there are financial penalties or orders or neither). We will publish information if we believe that publicising any or all of these stages will support compliance with Commonwealth workplace laws.

We publish this information for two reasons:

- visibility of our enforcement activity sends a powerful message of deterrence to others
- clarification of the law and the level of penalties that certain breaches incur can help people understand the seriousness of breaking the law.

14. Working with other agencies

We are not always the agency best placed to deal with an issue. For example, a number of authorities specialise in handling superannuation, visa issues or bullying.

Where we believe another agency can provide greater assistance, we will refer the issue as early as possible.

We may share information with other government agencies or departments where authorised by the Act. For example, we may share information where disclosure is necessary, appropriate, or likely to assist administration or enforcement of a law of the Commonwealth, a State or a Territory.

Examples of agencies we may share information with include Fair Work Building and Construction, the Australian Taxation Office and the Department of Immigration and Border Protection. We also receive information from these government agencies at times which assists us do our work.

15. Feedback

We encourage feedback on any matter, and invite people to contact us at yourfeedback@fwo.gov.au

If a person requests a review of our actions and is not satisfied with the result of our review, they can contact the Commonwealth Ombudsman on 1300 362 072, or at www.ombudsman.gov.au.

Compliance and Enforcement Policy

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Australian Government

Fair Work
OMBUDSMAN

The Fair Work Ombudsman [FWO] is an independent statutory agency created by the *Fair Work Act 2009* [the Act]. The role of the FWO is to promote harmonious, productive and cooperative workplace relations, and to monitor, inquire into, investigate, and enforce compliance with relevant Commonwealth workplace laws.

This policy explains how we seek to ensure compliance with Commonwealth workplace laws. By Commonwealth workplace laws, we mean the Act, its regulations and the awards and agreements that set wages and conditions for Australian workplaces.

1. Our guiding principles

We want to promote a culture of compliance by equipping Australian workers and businesses with the information and support they need to make good choices in their workplaces.

Our work is guided by the following principles:

Principles	We:
Clear and effective communication	<ul style="list-style-type: none"> ■ listen to the workplace concerns of workers and business ■ provide advice that is easy to access, understand and apply
Professional customer service	<ul style="list-style-type: none"> ■ deliver a consistent and professional experience in every customer interaction ■ offer multiple ways to connect with us ■ provide practical advice and assistance that is responsive, professional and impartial
Consistency	<ul style="list-style-type: none"> ■ give practical advice which can be relied upon ■ ensure a level playing field where the same rules apply to everyone ■ apply the same assessment principles to each request for assistance ■ consider the same range of factors in deciding how to treat a matter
Risk-based and proportionate	<ul style="list-style-type: none"> ■ focus our compliance and enforcement efforts where there is serious non-compliance and where we can deliver the greatest benefit ■ consider risk in terms of potential impact on the community, as well as the relative risk of exploitation individuals face ■ encourage and empower employees and employers to resolve issues in their workplace,

	<p>where appropriate</p> <ul style="list-style-type: none"> ■ offer a range of dispute resolution tools and resources
Open and transparent	<ul style="list-style-type: none"> ■ remain neutral and impartial ■ give the parties the right to review all our decisions ■ publish information on our compliance and enforcement activities in a format that is clear, understandable and accessible ■ ensure our customers' private details are kept confidential
Collaborative	<ul style="list-style-type: none"> ■ build relationships with stakeholders and the community based on trust and respect ■ work with stakeholders to find solutions to workplace issues and opportunities to collaborate ■ harness intelligence and insight from a range of sources including other government agencies to inform our compliance and enforcement activities ■ listen to the community's expectations of us
Continuous improvement	<ul style="list-style-type: none"> ■ measure the impact of our interactions with customers and use this information to improve our services ■ seek feedback on our processes, policies and practices and make changes to improve them ■ adopt leading technologies to transform our services to be more efficient and effective
Affect cultural change	<ul style="list-style-type: none"> ■ develop solutions to address structural and behavioural drivers that lead to widespread non-compliance in certain industries and sectors ■ focus our efforts on supporting productivity by preventing workplace disputes

2. Advice, support and assistance

A core part of our role is providing practical workplace relations advice and assistance that is easy to access, understand and apply. Helping the community understand the workplace relations system is one of the ways that we support compliant, productive and inclusive workplaces.

This is why we provide the Fair Work Infoline and Small Business Helpline. We also provide information, tools and resources through our website (fairwork.gov.au), Facebook, Twitter, LinkedIn and YouTube. These free tools and resources (which we continue to develop) are available 24/7 on our website and include:

- an [online learning centre](#) that has video-based interactive courses to teach businesses and workers skills and strategies to help them at work
- [fact sheets](#) about the minimum rights and obligations of businesses and workers, including information on the National Employment Standards, record-keeping and pay slips
- [best practice guides](#) to help small to medium-sized businesses with implementing best practice workplace policies and procedures
- [templates](#) that simplify the work in keeping employment records
- our [Pay Calculator](#) to help calculate modern award pay rates
- [My account](#) which allows users to save tailored information such as pay rates and conditions of employment specific to their circumstances. Users can log into My account and view saved information at any time.

We encourage people to use our self-service tools and resources to find answers and have conversations in their workplaces. For most people, understanding workplace rights and obligations means that issues can be resolved at the workplace level without intervention from us. If we can't help you because the issue falls outside of our area of responsibility, we will refer you to the people who can.

CASE STUDY – Self help tools:

Jim is a mechanic at a local garage. Driving home from work, he heard on the radio that award rates of pay had recently gone up. Jim knew he was paid the old award rate, and he had not received an increase yet.

When he got home, Jim went to fairwork.gov.au to check his rate of pay. Using our pay calculator, he got the new award rate and printed a copy for his boss Miguel. Jim also completed our *Difficult conversations in the workplace* online learning course to prepare himself for a discussion with Miguel.

The next day at work, Jim found a good time to talk to Miguel about his pay. Miguel did not know about the increase, so Jim told him about the pay calculator and gave him the print out.

Miguel said he would need to check for himself. The following day, Miguel used the pay calculator and confirmed that Jim was right. As a result, Miguel organised for Jim's pay to be increased to the new award rate. Miguel also registered for My account and subscribed to our email updates to receive information on future pay increases.

3. Campaigns

Campaigns help us check, improve and maintain compliance with Commonwealth workplace laws in a targeted way.

We take a risk-based and proportionate approach to determining which industries, locations and workplace relations issues to focus on. This includes gathering intelligence to ensure our campaigns are evidence-based and deliver the greatest benefit.

An important part of our campaigns is gaining the support of, and working with, groups such as industry associations, employer representatives, unions and community groups.

During a campaign, we communicate with employers and employees about Commonwealth workplace laws. This communication can be through letters, phone calls, visits from our Fair Work Inspectors, social media, or our website fairwork.gov.au.

We also look at employee time and wage records to check compliance with Commonwealth workplace laws.

If we find that employers are not meeting their obligations, we work closely with them to help them fix any errors.

After each campaign, we release a report showing the results, insights and further actions on our website.

CASE STUDY - Campaign:

We conducted extensive research to identify industry sectors of non-compliance and/or those with a high number of vulnerable employees. The research indicated a need to focus on apprentices. We worked closely with industry stakeholders in planning and designing a national campaign targeting apprentices. The purpose of the campaign was to help businesses across a variety of industries understand and comply with workplace laws and to test levels of compliance.

Robert employs an apprentice in his hairdressing salon in Sydney. Through Facebook he saw that we were starting a national campaign targeting apprentices and requested our assistance to check he was complying with the law. As part of the campaign Fair Work Inspectors contacted more than 700 businesses, by mail and in person, to ensure employers like Robert were aware of their workplace obligations and to examine pay records.

Fair Work Inspectors checked that employers were paying the correct minimum hourly rate, penalty rates and allowances and were complying with pay slip and record-keeping requirements. These checks included site visits and where businesses were found to have made a mistake, Inspectors worked with them to fix errors and make any necessary back payments to employees. The most serious instances of non-compliance were considered for further action.

Fair Work Inspectors also took the opportunity to assist employers to use the tools and resources available to help them manage their workplace and understand and comply with their obligations. In response to his request, Robert also received this assistance.

The campaign provided a useful snapshot of issues which will influence our decisions regarding apprentices. A campaign report containing a number of findings and recommendations was published on our website and provided to industry stakeholders.

4. Compliance partnerships

We encourage employers that want to publicly demonstrate their commitment to creating compliant, productive and inclusive Australian workplaces to enter into partnership agreements with us.

Compliance partnerships give employers, and importantly their staff, certainty that their systems and processes are working effectively and help build a culture of compliance. Their public commitment to compliance is also a competitive advantage that helps attract talent, instil confidence in customers and appeal to organisations in their supply chain. For example, compliance partnerships provide an opportunity for franchise operators and head contractors to work with franchisees and sub-contractors to drive workplace improvements throughout their supply chain.

Compliance partnerships can be tailored for individual businesses and circumstances and can include:

- employer initiatives to engage with employees
- self-audits
- the monitoring of contractors and franchisees
- ensuring effective dispute resolution processes
- implementing workplace relations training for key managers and staff.

Compliance partnerships are becoming increasingly popular with businesses who wish to make a strong and public commitment to their employees, contractors, customers and the broader community about compliance with workplace laws. Names of enterprises and/or their brands that have entered into a compliance partnership with the FWO can be found [on our website: \(http://www.fairwork.gov.au/about-us/our-role/enforcing-the-legislation/proactive-compliance-deeds\)](http://www.fairwork.gov.au/about-us/our-role/enforcing-the-legislation/proactive-compliance-deeds)

CASE STUDY – Compliance partnership:

Franchisor Pty Ltd read about compliance partnerships on fairwork.gov.au and thought it would be a good program to be in to make a positive and public statement of its commitment to compliance with Commonwealth workplace laws.

Franchisor Pty Ltd approached us to find out what the arrangements would be.

After some discussion about the structure and relationships within the brand, Franchisor Pty Ltd entered into a compliance partnership which involved:

- establishing an employee enquiry line available to both direct employees and employees of franchisees
- establishing systems and processes to promote compliance and report on these
- conducting self-audits of employee entitlements of direct employees
- facilitating self-audits of employee entitlements of a sample of franchisees
- working with us to resolve workplace disputes if a request for assistance was received by us from an employee of a franchisee, and reporting the outcome to us
- reporting annually on the status of the compliance partnership.

Franchisor Pty Ltd's compliance partnership was published on the our website and was also the subject of a FWO media release, resulting in positive messages for Franchisor Pty Ltd's brand.

As a result of the compliance partnership, franchisees reported that they found compliance with workplace laws easier. They said that by better understanding their obligations they were able to focus on 'running their business'. The head franchisor also reported feedback that it had improved its public standing as an 'employer of choice' resulting in lower staff turnover costs because employees were confident that their employer was providing all their entitlements.

5. Early involvement

We receive a large number of telephone requests for assistance. Callers include employees and employers who have a concern about their workplace. In these situations we find that if we get involved early, we can help the parties resolve issues at the workplace level. We encourage and empower employees and employers to self-resolve issues in their workplace where possible. We can also offer a mediation service where both sides come up with solutions together that will work for them.

CASE STUDY – Early involvement:

Nadia called us and said she was being underpaid by her employer Robin. Nadia was unsure about how to raise this issue and did not want to upset her relationship with Robin as she was still working for the business.

We helped Nadia by advising her on the award and hourly rate of pay that applied. We encouraged Nadia to have a discussion with Robin to address the wages issues by giving her practical tips and guiding her through our online self-resolution tools, such as the *Difficult conversations in the workplace* online learning module.

Nadia emailed Robin with her concerns and met with Robin to discuss her situation. Robin wasn't sure about her obligations so she rang our Small Business Helpline to check what she had to do. After speaking with us, and Nadia, Robin raised Nadia's wages to the correct amount and back paid Nadia to fix the underpayment.

Our practical assistance empowered Nadia to resolve the issue directly with Robin without escalating it further. This also meant that Nadia was able to maintain a positive relationship with Robin.

6. Assessing requests for assistance involving workplace disputes

We receive many requests for assistance from workers who have a dispute about their wages or other issues with their employer. We describe the worker and the business in these cases as the parties to the request for assistance.

6.1 Assessment

When we receive a request for assistance or we are alerted to a possible workplace dispute, we consider how best we can help through an assessment of the issues by experienced officers.

We understand that not everyone needs the same type of assistance. Depending on the individual's circumstance, the issues at the workplace and the situation more generally, we provide a tailored response appropriate to the matter.

6.2 What do we consider?

In deciding how we will act, we consider the seriousness of the alleged conduct and the circumstances of the parties, as well as the practical issues involved in resolving the matter. This includes whether the request for assistance involves:

- public interest (where the community would expect us to be involved)
- a party facing significant barriers to resolving the matter themselves, for example, low levels of literacy or comprehension
- a small business owner, who has limited access to a human resources expert
- a party who has had previous issues with compliance
- an alleged breach appears to be deliberate
- sufficient information to support an argument that a breach has occurred
- confidentiality (where the employee does not want us to tell the business that a request came from them)
- the parties having made any attempts to resolve the matter
- breaches of monetary entitlements where the amount is significant
- minimum entitlements as opposed to above award conditions (we give priority to minimum entitlements, that is, entitlements set out in the Act, a Modern Award or Enterprise Agreement)
- an employment relationship that has ended, including how long ago the employment ended (we generally do not pursue matters that are more than two years old).

As an example, we would act differently in a case where a young person is being paid less than the minimum wage than in a case where an employee on above award wages hasn't received the bonus they are entitled to.

6.3 What action are we likely to take?

Where a request for assistance concerns wages or conditions and there appears to be no exploitation or deliberate non-compliance, we help the parties resolve the issue quickly and informally.

We have found that in most cases the issue can be resolved between the parties with some help from us. We want parties to resolve these matters with minimal expense, time and stress. A formal investigation is generally not the best approach in these cases. Rather we help the parties work through their issues together.

Typically this involves speaking to both parties and understanding each side's view. We help them understand how Commonwealth workplace laws apply to their situation and give both sides information about relevant awards or parts of the Act.

A request for assistance about a workplace dispute usually results in us taking one or more of the following actions:

- using the information provided in future education and compliance activities
- giving tailored advice to help parties deal with the matter and get a better understanding of Commonwealth workplace laws
- helping people to resolve an issue quickly and informally in the workplace by providing access to employment tools and resources
- referring the information to another government agency
- conducting an inquiry
- offering mediation
- conducting an investigation
- placing parties on notice about our concerns and the possibility of future action if the conduct continues or happens again
- assisting an employee to take their own action (such as through a small claims court)
- determining that there is no action required at this time.

In all cases the information given to us is important, and helps us to determine our current and future activities.

We find that most matters can be resolved through mediation.

7. Mediation

Mediation is a free, simple, confidential and voluntary process conducted by an accredited impartial mediator.

Mediation is a two-way process that gives parties the opportunity to discuss their dispute and find mutually acceptable solutions. Many requests for assistance we receive are suitable for mediation and most mediations lead to a resolution.

As a guide, mediation is suitable where:

- the employee still works for the employer
- there is conflicting evidence (e.g. one word against the other)
- there is little or no evidence (e.g. no records of additional hours worked)
- there are issues about final entitlements (e.g. payment in lieu of notice and annual leave)
- the employee is award-free or there are issues about common law contracts or above award entitlements
- the employer has withheld money or made deductions from wages
- there are allegations of property taken from the employer
- there is a classification dispute, or
- the employee and employer seek a quick solution to an issue.

Mediation is an easy process held over the telephone. It usually takes less than 90 minutes. The mediator takes a neutral stance while helping parties to reach a settlement on the day of the mediation; however it is the parties who control the outcome. For more information visit the [mediation page](http://www.fairwork.gov.au/mediation) on our website (www.fairwork.gov.au/mediation).

CASE STUDY - Mediation:

Fatima worked at Ying's hairdressing salon and says that Ying owes her one week's wages. Fatima and Ying were friends before this issue arose, and both wanted to mediate the issue. In mediation, Fatima said that she was disappointed with Ying. Ying explained that her ex-husband looked after the payroll and when they divorced, she was left to deal with everything without any help and had been unable to fix Fatima's wages.

After discussion, Fatima said she was upset because she wanted Ying to take some responsibility for what happened. Ying apologised and said the business was struggling. Fatima and Ying agreed that it was hard to earn money as a business or as an employee. Through mediation, Fatima and Ying agreed to resolve this matter by having the wages paid in instalments to Fatima. Both were happy with this outcome.

8. Promoting compliance – what to expect

One of our main roles is to promote compliance with Commonwealth workplace laws.

Our inquiries and investigations are important ways we obtain evidence of serious non-compliance. We measure the seriousness of non-compliance by the potential impact it has on an individual, group or market. We may decide to conduct an inquiry or investigation where the available evidence suggests there is:

- exploitation of vulnerable workers (e.g. aged, young, overseas)
- significant public interest or concern (e.g. pregnancy and age discrimination)
- blatant disregard for the law, or a court or commission order
- deliberate distortion of a level playing field to gain a commercial advantage (e.g. large scale non-compliance that distorts the labour market), or
- an opportunity to provide an educative or deterrent effect.

We regularly review our compliance priorities to meet the changing needs of the Australian community. These are the areas we consider to be **serious non-compliance priorities**.

While we focus on these priority areas, we continue to monitor compliance more broadly and take action where needed. Deliberate or repeated breaches of Commonwealth workplace laws are treated seriously.

CASE STUDY – Promoting compliance:

Lina went on unpaid parental leave following the birth of her child. After six months, she advised her employer Justine that she was ready to return to work. Justine told Lina that she had been replaced with another person, and there was no job for Lina.

Lina requested our assistance. We investigated the matter and explained the relevant workplace laws to Justine, including the pregnancy discrimination provisions of the Act. As a result, Justine made changes to her business so that she followed the law. These changes included training her managers, guaranteeing that employees would return to their old position after parental leave, communicating better with pregnant employees, and developing internal policies and a toolkit to help all her staff understand parental leave. As a result of Justine's response, we did not need to take any further enforcement action.

9. Inquiring into a matter

We sometimes receive information from the media or the public which suggests non-compliance. We often decide to inquire initially into the matter rather than commence an investigation. In doing so, we encourage all parties involved to speak with us and provide information that supports their point of view. Our focus is on helping the parties, where possible, to comply with the law and resolve the matter quickly and informally.

During such an inquiry we may ask parties to provide evidence such as time and wage records, or other documents. Where an inquiry finds deliberate or repeated breaches of Commonwealth workplace laws, the matter will be treated seriously and investigated. Where evidence is disputed, parties may be encouraged to resolve the matter through a small claims procedure.

In other situations, where we believe that the information we have received from the public warrants detailed research, we may decide to conduct a comprehensive Inquiry. This type of inquiry reviews allegations of serious non-compliance with Commonwealth workplace laws by looking at information about what has happened or is happening in a particular workplace, industry, supply chain or labour market. After our review, we form recommendations and actions based upon our findings, including the possibility of an enforcement outcome. We also publish the findings from this type of inquiry on our website.

CASE STUDY – Inquiry:

We launched an Inquiry following a significant increase in the number of requests for assistance received from hotel housekeepers. The focus of the Inquiry was the misclassification of hotel housekeepers as independent contractors, when in fact they were employees.

We sought to identify the scale and cause of the misclassification, and determine how to ensure hotel operators correctly classify housekeepers in the future.

The Inquiry included unannounced visits by Fair Work Inspectors to several major hotels, interviewing housekeepers, issuing Notices to Produce documents, assessing contracts and interviewing procurement managers.

At two of the hotel groups, the Inquiry found evidence of contraventions of the Act concerning misclassification. The housekeepers at these hotels were being denied applicable penalty rates, regular patterns of work and accrual of leave entitlements due to their misclassification as independent contractors.

The Inquiry also found evidence of sham contracting arrangements at a major hotel group involving contracted cleaners. The cleaners were predominantly international students on visas working solely for a particular hotel with no autonomy in their day to day work. They were receiving a flat rate of pay and having to pay for the cost of chemicals, uniforms and administration fees.

In our preliminary findings report we recommended a range of compliance and enforcement outcomes including Letters of Caution, Compliance Notices, an Enforceable Undertaking and litigation against the respective hotel brands.

The report also recommended steps to improve compliance such as how hotels can enhance the management of their procurement practices within their supply chain including ensuring the principal contractors and sub-contractors comply with the law.

10. Investigating a matter

In circumstances which involve serious non-compliance we may conduct an investigation. This happens only in a very small number of cases.

An investigation is where a Fair Work Inspector considers allegations and gathers and examines evidence to determine if there have been breaches of Commonwealth workplace laws.

We do not represent any party. All investigations are impartial and the Fair Work Inspector will rely on the evidence available when making a decision.

We will always provide each party the opportunity to be heard during an investigation. We also use discretion to decide on the best process or reach the best outcome for an investigation.

In an investigation, a Fair Work Inspector can use powers under the Act to visit workplaces, interview people or require records or documents to be provided.

During an investigation, we expect all people to:

- always tell us the truth
- fully disclose all relevant matters from the outset of the investigation
- provide us with relevant information as it comes to hand
- respond in a timely manner to our requests.

The Fair Work Inspector handling the investigation will update the parties with developments at regular intervals.

The Fair Work Inspector will advise parties of investigation findings in writing and include details of how the outcome was decided. The findings will be provided within seven working days of the Fair Work Inspector's decision.

We seek to be reasonable and proportionate when conducting investigations. The average duration of an investigation is three months.

CASE STUDY – Investigation:

Ishan's employees had taken unprotected industrial action and he was successful in obtaining an order from the Fair Work Commission that required the employees to return to work. The industrial action caused his business significant economic loss.

However, Ishan kept paying his employees during the unprotected industrial action, which is not allowed under the Act. We investigated and Ishan said that due to the nature of the industrial action, it was hard for him to tell which employees had participated. We found that Ishan's business had a history of responding to industrial action by requesting certain orders from the Fair Work Commission, but the business itself did not have proper processes and systems in place to identify the people who took part in unprotected industrial action.

We were mindful of the cost to the business that had been caused by the industrial action. We also needed the business to fix the issue, and not breach the Act again.

Ishan formally agreed to introduce processes and systems to manage compliance with industrial action obligations, so that he would comply with the Act in future. This outcome reinforced the importance and integrity of the industrial action provisions of the Act, while acknowledging no formal penalty was needed to seek compliance from Ishan.

Our responses following an investigation typically include:

10.1 Findings letter

A findings letter is sent to the parties setting out what we found from the evidence gathered in an investigation. It tells a party what we have found, what they need to do next, and what we intend to do.

For instance, we may find there was no evidence of any breaches. At other times, we may find breaches and will ask the party to fix these (e.g. by back paying an employee).

CASE STUDY – Findings letter:

Pauline, a part-time employee, had worked for a coffee shop for over 12 months. Pauline asked us for help because she received less than the award pay rate and was not paid extra for working on the weekend.

A Fair Work Inspector investigated the matter, gathering evidence including documents and statements from Pauline, her employer Chris, and a witness. The Fair Work Inspector assessed the evidence and found a number of breaches. The Fair Work Inspector sent a findings letter to Chris and Pauline. The findings letter detailed the award obligations on minimum pay rates, and the penalty rates for weekends and evening work. The findings letter also explained the website tools that could help Chris to pay staff correctly, and asked Chris to back pay Pauline \$850 to make good the underpayment. Chris paid Pauline and now knows about the tools on the website that will assist compliance in the future.

10.2 Tailored small claims assistance

Sometimes a request for assistance involving a workplace dispute is assessed as suitable for an employee to seek their own recovery of unpaid entitlements through specified courts.

These small claims applications have low fees and are dealt with by the courts less formally than other applications made to courts. The small claims process is a fast and efficient way of resolving a dispute.

When deciding whether to refer an employee to a small claims process we consider:

- the amount of money being claimed
- how serious the allegations are
- whether the money being claimed is related to a common law contract or an above award payment
- whether attempts at voluntary recovery (such as mediation) have been made
- whether evidence is being disputed or there are written records
- the employee's ability to follow the small claims process
- whether the employment period ended more than two years ago.

When parties are referred to the small claims process we assist by directing them to tools and resources that explain the small claims process and help them to calculate minimum employment entitlements. These resources are available [on our website \(www.fairwork.gov.au/smallclaims\)](http://www.fairwork.gov.au/smallclaims).

In some cases where we have found that an employee is owed money, we may assist them through the small claims procedure, for example, by helping with the small claims application. The level of assistance is considered on a case by case basis. For example, we may give greater help to a person with low literacy skills or from a culturally and linguistically diverse background.

CASE STUDY - Small claims:

George is a sales representative and earns \$60,000 per year which is significantly higher than the minimum award entitlement for his job. George advised us that he was owed \$2,000 for working extra hours.

George kept diary notes for some of the extra hours and said he was told to work these hours by his employer Mariana. Mariana disputed that the business owed George any money or that George was directed to work the extra hours. They were unable to agree on a resolution.

We explained the small claims process to both George and Mariana and encouraged them to try and resolve the issues once more between themselves in order to avoid the court process.

We showed George how to complete a small claims application form, how to present written evidence and how to set out calculations of what he believed was owing to him.

We advised Mariana on how to defend a small claims application and how to present written evidence.

We also explained to both parties that they may need to give verbal evidence in court about whether George was directed to work extra hours.

10.3 Letter of caution

A letter of caution is a written warning given to a party when we have found breaches and want to put them on notice that future breaches could result in us seeking financial penalties.

A letter of caution is typically used to encourage compliance in the dispute before us and to ensure future activities of the party are monitored in case of future non-compliance.

CASE STUDY - Letter of caution:

Peng worked in sales for five months, but did not receive a regular income during that time. He was told that he was engaged as an independent contractor on a commission-only basis. He received \$1,600 in commission over the five months.

We investigated and considered all the evidence. We found that Peng was an employee under an award, and not an independent contractor. His employer Bertrand had seriously breached the award, the Act and failed to provide many entitlements due to Peng including wages, allowances and annual leave. Bertrand claimed he had been unaware of the possibility Peng may have been an employee.

Bertrand agreed to pay the entitlements owing to Peng as an employee. Due to the significant breaches, we gave Bertrand a letter of caution, advising him that we would take any further breaches into account when deciding whether to start litigation or other enforcement action against him in the future.

11. Promoting compliance - enforcement outcomes

An enforcement outcome is where we decide that formal action under the Act is the appropriate response to breaches we have found.

There are four enforcement outcomes available to us at law. The Act sets out the legal requirements for each enforcement outcome, as well as things such as time limits and what powers courts have to make orders and impose financial penalties.

11.1 Infringement Notice

An Infringement Notice is a fine given for breaching the record-keeping or pay slip requirements of the Act and the Regulations.

Infringement Notices can be issued up to 12 months after the breach occurred.

We have discretion over whether an Infringement Notice is issued and the amount of the fine (up to the legal maximum). We will consider matters such as:

- whether the breach impedes a Fair Work Inspector's ability to find or calculate underpayments
- whether the breach meant that an employee did not have information needed to recover entitlements
- whether the employer has a history of breaching time and wage record-keeping or pay slip requirements
- whether the breach was deliberate to avoid obligations under Commonwealth workplace laws
- whether the breach had significant implications, for example an employee being unable to secure a loan due to lack of pay records.

The current maximum fines in Infringement Notices for each breach of a record-keeping or pay slip obligation are:

- \$630 for an individual or \$3,150 for a body corporate for breaches of the Act
- \$420 for an individual or \$2,100 for a body corporate for breaches of the Regulations.

If an employer thinks a mistake occurred and they have not breached record-keeping or pay slip obligations they can make an application to us to have the Infringement Notice reconsidered and withdrawn.

CASE STUDY - Infringement Notice:

Valentina worked for a company as a full-time administrative assistant. She was concerned that her pay had not increased after she turned 18. She thought she was still being paid the 17-year old rate, but she could not be sure as her employer Karl had not given her pay slips for seven months. She also worked some overtime, but was not always paid for this. Valentina sought our assistance, and we found that Karl had not paid Valentina the correct entitlements. Karl paid Valentina the money owing, and agreed he had overlooked her award increase when she turned 18.

We also gave Karl's company two Infringement Notices for \$1,050 each, which represents one third of the maximum amount. This amount was settled on because Karl did not have a history of non-compliance. The first Infringement Notice was because Karl failed to keep proper records of Valentina's overtime hours, which may have caused Valentina to miss out on some entitlements. The second Infringement Notice was for failing to give Valentina pay slips, which meant she could not be sure of the gross wages or overtime paid to her each week.

These breaches of the Act by Karl's company resulted in total fines of \$2,100 to be paid within 28 days. We also gave Karl information and templates to help him in complying with his pay slip and record-keeping obligations in the future.

11.2 Compliance Notice

A Compliance Notice is a written notice that legally requires a person to do certain things to fix breaches of the Act.

A Compliance Notice can be used where a Fair Work Inspector reasonably believes that a person has breached a term of the National Employment Standards, a modern award, enterprise agreement or other instrument that specifies wage rates and entitlements.

We typically issue Compliance Notices where an employer hasn't agreed to, or we suspect the employer won't, rectify an alleged breach. A person who has received a Compliance Notice may seek a review through the courts.

The decision to issue a Compliance Notice is not taken lightly, as a failure to do what the Compliance Notice requires in the time stated is likely to result in us starting legal proceedings in a court. We can take action for both the original breaches and the failure to comply with the Compliance Notice. A failure to comply can result in significant financial penalties of up to \$31,500 for a company and \$6,300 for an individual.

When considering whether to issue a Compliance Notice, a Fair Work Inspector will consider:

- the nature and extent of the breaches
- the level of cooperation from the employer
- whether the Compliance Notice will achieve a better and/or faster outcome
- the desire to bring about a cost effective and quick resolution to recover underpayments owed to individuals.

CASE STUDY - Compliance Notice:

A Fair Work Inspector investigated a matter involving Moshe, a 19 year old working in a child care centre. The investigation found that over six months his employer Stella had underpaid Moshe \$2,300 in wages and annual leave on termination.

Stella told the Fair Work Inspector that she would not pay as Moshe had not been a hard worker and did not deserve any more money. The Fair Work Inspector ensured Stella knew she legally had to make the payment, and explained that issues with Moshe's performance needed to be dealt with during her employment and were not a reason to pay less than the legal minimum. Stella still refused to pay the money owing.

The Fair Work Inspector then gave Stella a Compliance Notice that said she needed to make payment within a set timeframe. The Fair Work Inspector made it clear that if Stella did not make the payment by the due date she may face penalties in a court. Stella researched her obligations and realised that she did need to pay Moshe the minimum pay rates and annual leave, even if she had concerns about Moshe's work. Stella decided to pay Moshe the full amount owing by the due date in the Compliance Notice.

11.3 Enforceable Undertaking

When we believe that someone has seriously breached the Act, the breach is serious and they acknowledge this, accept responsibility and agree to fix the harm, we can accept a written undertaking from the person about the breaches.

The key difference between an Enforceable Undertaking and a Compliance Notice is an Enforceable Undertaking involves not only the payment of all monies owed but admission and contrition from the party who has breached the law. In addition, an Enforceable Undertaking covers a broader range of conduct and broader remedies.

We use Enforceable Undertakings where an employer has acknowledged they've breached the law, accepted responsibility and agreed to cooperate with us and fix the problem.

Many of the initiatives included in Enforceable Undertakings help to build a greater understanding of workplace responsibilities, motivate the company to do the right thing and help them avoid making the same mistake again.

Enforceable Undertakings are set out in a publicly available and legally binding document. Importantly, we can take legal action in a court to enforce the terms of an Enforceable Undertaking if it is not complied with.

Enforceable Undertakings typically operate for a period of between 2 – 5 years and often include terms about fixing loss or damage caused (e.g. by paying compensation or back pay). They also deal with future compliance and what the person will do in the future to prevent more breaches, such as training sessions for senior managers. Enforceable Undertakings also require people to report on compliance at specific times or when a particular action is undertaken, such as a self-audit.

We may offer a person the option to enter into an Enforceable Undertaking as an alternative to us starting legal proceedings. We also consider offers from people of entering into an Enforceable Undertaking in response to breaches we have found.

When deciding whether to enter into an Enforceable Undertaking, we consider:

- the nature, extent and seriousness of the breaches
- the prior compliance history of the person
- whether the person admits the breaches and what they propose to do to fix or prevent breaches, beyond just complying with minimum standards in future
- the attitude of the respondent
- whether the undertakings are relevant to the breaches and will achieve positive outcomes for employees and/or the community
- whether an undertaking is a superior outcome over litigation, including whether it brings specific and general deterrence and promotes compliance with the Act.

CASE STUDY - Enforceable Undertaking:

Jill had paid her employees flat rates of pay that did not meet the minimum award provisions. A Fair Work Inspector found that the total underpayments to Jill's employees over a year were more than \$50,000.

Jill cooperated with us during the investigation, and admitted all the breaches. She entered into an Enforceable Undertaking with us, in which she agreed to pay the full amounts owing to all employees under an instalment plan. She also agreed in the Enforceable Undertaking to make a written apology to employees, and take all reasonable steps to ensure that she met her workplace obligations in the future, including participating in workplace relations training.

Jill's actions were made public on our website through the terms of the Enforceable Undertaking.

12. Litigation

In the most serious instances of non-compliance we take cases to court to enforce the law or seek a penalty. We call these court cases litigations. Cases that are suitable for litigation typically involve a combination of the following factors:

- deliberate and/or repeated non-compliance, measured by the impact the non-compliance has on an individual, business, group or market
- exploitation of vulnerable workers
- failure to cooperate and fix breaches after being given the opportunity to do so

- parties with a prior history of breaches who have not taken adequate steps to ensure compliance despite being advised of the consequences in the past.

Litigation is an essential enforcement action for three reasons:

1. enforcing the law and obtaining court orders sends a powerful public message to others not to engage in similar conduct (general deterrence)
2. stopping people from engaging in unlawful behaviour now and in the future makes the need to comply real for individuals (specific deterrence)
3. clarifying the law helps the community understand what are the various obligations and rights arising from Commonwealth workplace laws.

Legal action is taken where we have sufficient evidence and, on balance, we consider it is in the public interest and a proper response to the conduct. Detailed information about how we make decisions to start litigation is set out in our [Guidance Note 1 - Litigation Policy](#):

(<http://www.fairwork.gov.au/about-us/policies-and-guides/internal-policies-and-plans#guidenote>)

Where a court determines that breaches have occurred, a range of outcomes are available to the court. We will ask the court for outcomes that balance our aims of general and specific deterrence with the issues relevant in a case. In addition to financial penalties, we may seek other orders including back pay or compensation, injunctions, and/or requirements to undertake training or implement other practices to address the breaches.

CASE STUDY – Litigation:

We had dealt with a number of requests for assistance from former employees about the same employer 12 months earlier. Underpayments had occurred and they were voluntarily fixed.

So when we were contacted again by employees from this employer the Fair Work Inspector organised a meeting with the business owner to get their side of the story. The employer acknowledged that employees had been underpaid and said they would provide the relevant time and wage records.

When the records were not forthcoming, the Fair Work Inspector made a formal request for the records in the form of a Notice to Produce documents under the Act. A few months later some records were provided.

The Fair Work Inspector contacted the employer in person, via phone and by email to access the rest of the records. After using what was available to calculate amounts owing, the Fair Work Inspector attempted to inform the employer of the findings by mail, email and phone. In total, the Fair Work Inspector initiated 33 separate and largely unsuccessful points of contact with the employer over a 16 month period in an attempt to resolve the matter.

The employer blatantly refused to engage with us and rectify problems that the employer acknowledged did occur, leaving us with few options other than to progress to court. In the end, nearly two years after the requests for assistance had been made, the Federal Court ruled that the employer needed to back pay over \$12,000 to nine staff, including two junior employees, as well as ordering the company to pay penalties of over \$19,000, and the Director almost \$4,500.

13. Publication of enforcement outcomes

We publish information regarding our enforcement activities on our website. This forms an important part of our role in ensuring compliance with Commonwealth workplace laws by:

- enhancing general and specific deterrence
- informing and educating the community, or people in the same and similar industries, of the nature and outcome of enforcement activities
- providing advice about to how to prevent similar breaches.

Information we publish will be fair and accurate. We may decide to publish information on our website, including by issuing media releases. Information may also be used in reports, presentations or other educative material.

In litigation matters we may publicise the decision to commence proceedings, the lodgement of court documents, milestones during proceedings, directions hearings, and/or decisions (whether there are financial penalties or orders or neither). We will publish information if we believe that publicising any or all of these stages will support compliance with Commonwealth workplace laws.

We publish this information for two reasons:

- visibility of our enforcement activity sends a powerful message of deterrence to others
- clarification of the law and the level of penalties that certain breaches incur can help people understand the seriousness of breaking the law.

14. Working with other agencies

We are not always the agency best placed to deal with an issue. For example, a number of authorities specialise in handling superannuation, visa issues or bullying.

Where we believe another agency can provide greater assistance, we will refer the issue as early as possible.

We may share information with other government agencies or departments where authorised by the Act. For example, we may share information where disclosure is necessary, appropriate, or likely to assist administration or enforcement of a law of the Commonwealth, a State or a Territory.

Examples of agencies we may share information with include Fair Work Building and Construction, the Australian Taxation Office and the Department of Immigration and Border Protection. We also receive information from these government agencies at times which assists us do our work.

15. Feedback

We encourage feedback on any matter, and invite people to contact us at yourfeedback@fwo.gov.au

If a person requests a review of our actions and is not satisfied with the result of our review, they can contact the Commonwealth Ombudsman on 1300 362 072, or at www.ombudsman.gov.au.

Compliance and Enforcement Policy

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Australian Government

Fair Work
OMBUDSMAN

The Fair Work Ombudsman [FWO] is an independent statutory agency created by the *Fair Work Act 2009* [the Act]. The role of the FWO is to promote harmonious, productive and cooperative workplace relations, and to monitor, inquire into, investigate, and enforce compliance with relevant Commonwealth workplace laws.

This policy explains how we seek to ensure compliance with Commonwealth workplace laws. By Commonwealth workplace laws, we mean the Act, its regulations and the awards and agreements that set wages and conditions for Australian workplaces.

1. Our guiding principles

We want to promote a culture of compliance by equipping Australian workers and businesses with the information and support they need to make good choices in their workplaces.

Our work is guided by the following principles:

Principles	We:
Clear and effective communication	<ul style="list-style-type: none"> ■ listen to the workplace concerns of workers and business ■ provide advice that is easy to access, understand and apply
Professional customer service	<ul style="list-style-type: none"> ■ deliver a consistent and professional experience in every customer interaction ■ offer multiple ways to connect with us ■ provide practical advice and assistance that is responsive, professional and impartial
Consistency	<ul style="list-style-type: none"> ■ give practical advice which can be relied upon ■ ensure a level playing field where the same rules apply to everyone ■ apply the same assessment principles to each request for assistance ■ consider the same range of factors in deciding how to treat a matter
Risk-based and proportionate	<ul style="list-style-type: none"> ■ focus our compliance and enforcement efforts where there is serious non-compliance and where we can deliver the greatest benefit ■ consider risk in terms of potential impact on the community, as well as the relative risk of exploitation individuals face

	<ul style="list-style-type: none"> ■ encourage and empower employees and employers to resolve issues in their workplace, where appropriate ■ offer a range of dispute resolution tools and resources
Open and transparent	<ul style="list-style-type: none"> ■ remain neutral and impartial ■ give the parties the right to review all our decisions ■ publish information on our compliance and enforcement activities in a format that is clear, understandable and accessible ■ ensure our customers' private details are kept confidential
Collaborative	<ul style="list-style-type: none"> ■ build relationships with stakeholders and the community based on trust and respect ■ work with stakeholders to find solutions to workplace issues and opportunities to collaborate ■ harness intelligence and insight from a range of sources including other government agencies to inform our compliance and enforcement activities ■ listen to the community's expectations of us
Continuous improvement	<ul style="list-style-type: none"> ■ measure the impact of our interactions with customers and use this information to improve our services ■ seek feedback on our processes, policies and practices and make changes to improve them ■ adopt leading technologies to transform our services to be more efficient and effective
Affect cultural change	<ul style="list-style-type: none"> ■ develop solutions to address structural and behavioural drivers that lead to widespread non-compliance in certain industries and sectors ■ focus our efforts on supporting productivity by preventing workplace disputes

2. Advice, support and assistance

A core part of our role is providing practical workplace relations advice and assistance that is easy to access, understand and apply. Helping the community understand the workplace relations system is one of the ways that we support compliant, productive and inclusive workplaces.

This is why we provide the Fair Work Infoline and Small Business Helpline. We also provide information, tools and resources through our website (fairwork.gov.au), Facebook, Twitter, LinkedIn and YouTube. These free tools and resources (which we continue to develop) are available 24/7 on our website and include:

- an [online learning centre](#) that has video-based interactive courses to teach businesses and workers skills and strategies to help them at work
- [fact sheets](#) about the minimum rights and obligations of businesses and workers, including information on the National Employment Standards, record-keeping and pay slips
- [best practice guides](#) to help small to medium-sized businesses with implementing best practice workplace policies and procedures
- [templates](#) that simplify the work in keeping employment records
- our [Pay Calculator](#) to help calculate modern award pay rates
- [My account](#) which allows users to save tailored information such as pay rates and conditions of employment specific to their circumstances. Users can log into My account and view saved information at any time.

We encourage people to use our self-service tools and resources to find answers and have conversations in their workplaces. For most people, understanding workplace rights and obligations means that issues can be resolved at the workplace level without intervention from us. If we can't help you because the issue falls outside of our area of responsibility, we will refer you to the people who can.

CASE STUDY – Self help tools:

Jim is a mechanic at a local garage. Driving home from work, he heard on the radio that award rates of pay had recently gone up. Jim knew he was paid the old award rate, and he had not received an increase yet.

When he got home, Jim went to fairwork.gov.au to check his rate of pay. Using our pay calculator, he got the new award rate and printed a copy for his boss Miguel. Jim also completed our *Difficult conversations in the workplace* online learning course to prepare himself for a discussion with Miguel.

The next day at work, Jim found a good time to talk to Miguel about his pay. Miguel did not know about the increase, so Jim told him about the pay calculator and gave him the print out.

Miguel said he would need to check for himself. The following day, Miguel used the pay calculator and confirmed that Jim was right. As a result, Miguel organised for Jim's pay to be increased to the new award rate. Miguel also registered for My account and subscribed to our email updates to receive information on future pay increases.

3. Campaigns

Campaigns help us check, improve and maintain compliance with Commonwealth workplace laws in a targeted way.

We take a risk-based and proportionate approach to determining which industries, locations and workplace relations issues to focus on. This includes gathering intelligence to ensure our campaigns are evidence-based and deliver the greatest benefit.

An important part of our campaigns is gaining the support of, and working with, groups such as industry associations, employer representatives, unions and community groups.

During a campaign, we communicate with employers and employees about Commonwealth workplace laws. This communication can be through letters, phone calls, visits from our Fair Work Inspectors, social media, or our website fairwork.gov.au.

We also look at employee time and wage records to check compliance with Commonwealth workplace laws.

If we find that employers are not meeting their obligations, we work closely with them to help them fix any errors.

After each campaign, we release a report showing the results, insights and further actions on our website.

CASE STUDY - Campaign:

We conducted extensive research to identify industry sectors of non-compliance and/or those with a high number of vulnerable employees. The research indicated a need to focus on apprentices. We worked closely with industry stakeholders in planning and designing a national campaign targeting apprentices. The purpose of the campaign was to help businesses across a variety of industries understand and comply with workplace laws and to test levels of compliance.

Robert employs an apprentice in his hairdressing salon in Sydney. Through Facebook he saw that we were starting a national campaign targeting apprentices and requested our assistance to check he was complying with the law. As part of the campaign Fair Work Inspectors contacted more than 700 businesses, by mail and in person, to ensure employers like Robert were aware of their workplace obligations and to examine pay records.

Fair Work Inspectors checked that employers were paying the correct minimum hourly rate, penalty rates and allowances and were complying with pay slip and record-keeping requirements. These checks included site visits and where businesses were found to have made a mistake, Inspectors worked with them to fix errors and make any necessary back payments to employees. The most serious instances of non-compliance were considered for further action.

Fair Work Inspectors also took the opportunity to assist employers to use the tools and resources available to help them manage their workplace and understand and comply with their obligations. In response to his request, Robert also received this assistance.

The campaign provided a useful snapshot of issues which will influence our decisions regarding apprentices. A campaign report containing a number of findings and recommendations was published on our website and provided to industry stakeholders.

4. Compliance partnerships

We encourage employers that want to publicly demonstrate their commitment to creating compliant, productive and inclusive Australian workplaces to enter into partnership agreements with us.

Compliance partnerships give employers, and importantly their staff, certainty that their systems and processes are working effectively and help build a culture of compliance. Their public commitment to compliance is also a competitive advantage that helps attract talent, instil confidence in customers and appeal to organisations in their supply chain. For example, compliance partnerships provide an opportunity for franchise operators and head contractors to work with franchisees and sub-contractors to drive workplace improvements throughout their supply chain.

Compliance partnerships can be tailored for individual businesses and circumstances and can include:

- employer initiatives to engage with employees
- self-audits
- the monitoring of contractors and franchisees
- ensuring effective dispute resolution processes
- implementing workplace relations training for key managers and staff.

Compliance partnerships are becoming increasingly popular with businesses who wish to make a strong and public commitment to their employees, contractors, customers and the broader community about compliance with workplace laws. Names of enterprises and/or their brands that have entered into a compliance partnership with the FWO can be found [on our website](http://www.fairwork.gov.au/about-us/our-role/enforcing-the-legislation/proactive-compliance-deeds): (<http://www.fairwork.gov.au/about-us/our-role/enforcing-the-legislation/proactive-compliance-deeds>)

CASE STUDY – Compliance partnership:

Franchisor Pty Ltd read about compliance partnerships on fairwork.gov.au and thought it would be a good program to be in to make a positive and public statement of its commitment to compliance with Commonwealth workplace laws.

Franchisor Pty Ltd approached us to find out what the arrangements would be.

After some discussion about the structure and relationships within the brand, Franchisor Pty Ltd entered into a compliance partnership which involved:

- establishing an employee enquiry line available to both direct employees and employees of franchisees
- establishing systems and processes to promote compliance and report on these
- conducting self-audits of employee entitlements of direct employees
- facilitating self-audits of employee entitlements of a sample of franchisees
- working with us to resolve workplace disputes if a request for assistance was received by us from an employee of a franchisee, and reporting the outcome to us
- reporting annually on the status of the compliance partnership.

Franchisor Pty Ltd's compliance partnership was published on the our website and was also the subject of a FWO media release, resulting in positive messages for Franchisor Pty Ltd's brand.

As a result of the compliance partnership, franchisees reported that they found compliance with workplace laws easier. They said that by better understanding their obligations they were able to focus on 'running their business'. The head franchisor also reported feedback that it had improved its public standing as an 'employer of choice' resulting in lower staff turnover costs because employees were confident that their employer was providing all their entitlements.

5. Early involvement

We receive a large number of telephone requests for assistance. Callers include employees and employers who have a concern about their workplace. In these situations we find that if we get involved early, we can help the parties resolve issues at the workplace level. We encourage and empower employees and employers to self-resolve issues in their workplace where possible. We can also offer a mediation service where both sides come up with solutions together that will work for them.

CASE STUDY – Early involvement:

Nadia called us and said she was being underpaid by her employer Robin. Nadia was unsure about how to raise this issue and did not want to upset her relationship with Robin as she was still working for the business.

We helped Nadia by advising her on the award and hourly rate of pay that applied. We encouraged Nadia to have a discussion with Robin to address the wages issues by giving her practical tips and guiding her through our online self-resolution tools, such as the *Difficult conversations in the workplace* online learning module.

Nadia emailed Robin with her concerns and met with Robin to discuss her situation. Robin wasn't sure about her obligations so she rang our Small Business Helpline to check what she had to do. After speaking with us, and Nadia, Robin raised Nadia's wages to the correct amount and back paid Nadia to fix the underpayment.

Our practical assistance empowered Nadia to resolve the issue directly with Robin without escalating it further. This also meant that Nadia was able to maintain a positive relationship with Robin.

6. Assessing requests for assistance involving workplace disputes

We receive many requests for assistance from workers who have a dispute about their wages or other issues with their employer. We describe the worker and the business in these cases as the parties to the request for assistance.

6.1 Assessment

When we receive a request for assistance or we are alerted to a possible workplace dispute, we consider how best we can help through an assessment of the issues by experienced officers.

We understand that not everyone needs the same type of assistance. Depending on the individual's circumstance, the issues at the workplace and the situation more generally, we provide a tailored response appropriate to the matter.

6.2 What do we consider?

In deciding how we will act, we consider the seriousness of the alleged conduct and the circumstances of the parties, as well as the practical issues involved in resolving the matter. This includes whether the request for assistance involves:

- public interest (where the community would expect us to be involved)
- a party facing significant barriers to resolving the matter themselves, for example, low levels of literacy or comprehension
- a small business owner, who has limited access to a human resources expert
- a party who has had previous issues with compliance
- an alleged breach appears to be deliberate
- sufficient information to support an argument that a breach has occurred
- confidentiality (where the employee does not want us to tell the business that a request came from them)
- the parties having made any attempts to resolve the matter
- breaches of monetary entitlements where the amount is significant
- minimum entitlements as opposed to above award conditions (we give priority to minimum entitlements, that is, entitlements set out in the Act, a Modern Award or Enterprise Agreement)
- an employment relationship that has ended, including how long ago the employment ended (we generally do not pursue matters that are more than two years old).

As an example, we would act differently in a case where a young person is being paid less than the minimum wage than in a case where an employee on above award wages hasn't received the bonus they are entitled to.

6.3 What action are we likely to take?

Where a request for assistance concerns wages or conditions and there appears to be no exploitation or deliberate non-compliance, we help the parties resolve the issue quickly and informally.

We have found that in most cases the issue can be resolved between the parties with some help from us. We want parties to resolve these matters with minimal expense, time and stress. A formal investigation is generally not the best approach in these cases. Rather we help the parties work through their issues together.

Typically this involves speaking to both parties and understanding each side's view. We help them understand how Commonwealth workplace laws apply to their situation and give both sides information about relevant awards or parts of the Act.

A request for assistance about a workplace dispute usually results in us taking one or more of the following actions:

- using the information provided in future education and compliance activities
- giving tailored advice to help parties deal with the matter and get a better understanding of Commonwealth workplace laws
- helping people to resolve an issue quickly and informally in the workplace by providing access to employment tools and resources
- referring the information to another government agency
- conducting an inquiry
- offering mediation
- conducting an investigation
- placing parties on notice about our concerns and the possibility of future action if the conduct continues or happens again
- assisting an employee to take their own action (such as through a small claims court)
- determining that there is no action required at this time.

In all cases the information given to us is important, and helps us to determine our current and future activities.

We find that most matters can be resolved through mediation.

7. Mediation

Mediation is a free, simple, confidential and voluntary process conducted by an accredited impartial mediator.

Mediation is a two-way process that gives parties the opportunity to discuss their dispute and find mutually acceptable solutions. Many requests for assistance we receive are suitable for mediation and most mediations lead to a resolution.

As a guide, mediation is suitable where:

- the employee still works for the employer
- there is conflicting evidence (e.g. one word against the other)
- there is little or no evidence (e.g. no records of additional hours worked)
- there are issues about final entitlements (e.g. payment in lieu of notice and annual leave)
- the employee is award-free or there are issues about common law contracts or above award entitlements
- the employer has withheld money or made deductions from wages
- there are allegations of property taken from the employer
- there is a classification dispute, or
- the employee and employer seek a quick solution to an issue.

Mediation is an easy process held over the telephone. It usually takes less than 90 minutes. The mediator takes a neutral stance while helping parties to reach a settlement on the day of the mediation; however it is the parties who control the outcome. For more information visit the [mediation page](#) on our website (www.fairwork.gov.au/mediation).

CASE STUDY - Mediation:

Fatima worked at Ying's hairdressing salon and says that Ying owes her one week's wages. Fatima and Ying were friends before this issue arose, and both wanted to mediate the issue. In mediation, Fatima said that she was disappointed with Ying. Ying explained that her ex-husband looked after the payroll and when they divorced, she was left to deal with everything without any help and had been unable to fix Fatima's wages.

After discussion, Fatima said she was upset because she wanted Ying to take some responsibility for what happened. Ying apologised and said the business was struggling. Fatima and Ying agreed that it was hard to earn money as a business or as an employee. Through mediation, Fatima and Ying agreed to resolve this matter by having the wages paid in instalments to Fatima. Both were happy with this outcome.

8. Promoting compliance – what to expect

One of our main roles is to promote compliance with Commonwealth workplace laws.

Our inquiries and investigations are important ways we obtain evidence of serious non-compliance. We measure the seriousness of non-compliance by the potential impact it has on an individual, group or market. We may decide to conduct an inquiry or investigation where the available evidence suggests there is:

- exploitation of vulnerable workers (e.g. aged, young, overseas)
- significant public interest or concern (e.g. pregnancy and age discrimination)
- blatant disregard for the law, or a court or commission order
- deliberate distortion of a level playing field to gain a commercial advantage (e.g. large scale non-compliance that distorts the labour market), or
- an opportunity to provide an educative or deterrent effect.

We regularly review our compliance priorities to meet the changing needs of the Australian community. These are the areas we consider to be **serious non-compliance priorities**.

While we focus on these priority areas, we continue to monitor compliance more broadly and take action where needed. Deliberate or repeated breaches of Commonwealth workplace laws are treated seriously.

CASE STUDY – Promoting compliance:

Lina went on unpaid parental leave following the birth of her child. After six months, she advised her employer Justine that she was ready to return to work. Justine told Lina that she had been replaced with another person, and there was no job for Lina.

Lina requested our assistance. We investigated the matter and explained the relevant workplace laws to Justine, including the pregnancy discrimination provisions of the Act. As a result, Justine made changes to her business so that she followed the law. These changes included training her managers, guaranteeing that employees would return to their old position after parental leave, communicating better with pregnant employees, and developing internal policies and a toolkit to help all her staff understand parental leave. As a result of Justine's response, we did not need to take any further enforcement action.

9. Inquiring into a matter

We sometimes receive information from the media or the public which suggests non-compliance. We often decide to inquire initially into the matter rather than commence an investigation. In doing so, we encourage all parties involved to speak with us and provide information that supports their point of view. Our focus is on helping the parties, where possible, to comply with the law and resolve the matter quickly and informally.

During such an inquiry we may ask parties to provide evidence such as time and wage records, or other documents. Where an inquiry identifies deliberate or repeated breaches of Commonwealth workplace laws, the matter will be treated seriously and investigated. Where evidence is disputed, parties may be encouraged to resolve the matter through a small claims procedure.

In other situations, where we believe that the information we have received from the public warrants detailed research, we may decide to conduct a comprehensive Inquiry. This type of inquiry reviews allegations of serious non-compliance with Commonwealth workplace laws by looking at information about what has happened or is happening in a particular workplace, industry, supply chain or labour market. After our review, we form recommendations and actions based upon our findings, including the possibility of an enforcement outcome. We also publish the findings from this type of inquiry on our website.

CASE STUDY – Inquiry:

We launched an Inquiry following a significant increase in the number of requests for assistance received from hotel housekeepers. The focus of the Inquiry was the misclassification of hotel housekeepers as independent contractors, when in fact they were employees.

We sought to identify the scale and cause of the misclassification, and determine how to ensure hotel operators correctly classify housekeepers in the future.

The Inquiry included unannounced visits by Fair Work Inspectors to several major hotels, interviewing housekeepers, issuing Notices to Produce documents, assessing contracts and interviewing procurement managers.

At two of the hotel groups, the Inquiry found evidence of contraventions of the Act concerning misclassification. The housekeepers at these hotels were being denied applicable penalty rates, regular patterns of work and accrual of leave entitlements due to their misclassification as independent contractors.

The Inquiry also found evidence of sham contracting arrangements at a major hotel group involving contracted cleaners. The cleaners were predominantly international students on visas working solely for a particular hotel with no autonomy in their day to day work. They were receiving a flat rate of pay and having to pay for the cost of chemicals, uniforms and administration fees.

In our preliminary findings report we recommended a range of compliance and enforcement outcomes including Letters of Caution, Compliance Notices, an Enforceable Undertaking and litigation against the respective hotel brands.

The report also recommended steps to improve compliance such as how hotels can enhance the management of their procurement practices within their supply chain including ensuring the principal contractors and sub-contractors comply with the law.

10. Investigating a matter

In circumstances which involve serious non-compliance we may conduct an investigation. This happens only in a very small number of cases.

An investigation is where a Fair Work Inspector considers allegations and gathers and examines evidence to determine if there have been breaches of Commonwealth workplace laws.

We do not represent any party. All investigations are impartial and the Fair Work Inspector will rely on the evidence available when making a decision.

We will always provide each party the opportunity to be heard during an investigation. We also use discretion to decide on the best process or reach the best outcome for an investigation.

In an investigation, a Fair Work Inspector can use powers under the Act to visit workplaces, interview people or require records or documents to be provided.

In some cases, usually where Fair Work Inspector's have been unable to obtain evidence or information using voluntary or other methods, the Fair Work Ombudsman and specified Senior Executive officers can issue a notice to require a person to provide information, produce documents or attend and answer questions.

During an investigation, we expect all people to:

- always tell us the truth
- fully disclose all relevant matters from the outset of the investigation
- provide us with relevant information as it comes to hand
- respond in a timely manner to our requests.

The Fair Work Inspector handling the investigation will update the parties with developments at regular intervals.

The Fair Work Inspector will advise parties of investigation findings in writing and include details of how the outcome was decided. The findings will be provided within seven working days of the Fair Work Inspector's decision.

We seek to be reasonable and proportionate when conducting investigations. The average duration of an investigation is three months.

CASE STUDY – Investigation:

Ishan's employees had taken unprotected industrial action and he was successful in obtaining an order from the Fair Work Commission that required the employees to return to work. The industrial action caused his business significant economic loss.

However, Ishan kept paying his employees during the unprotected industrial action, which is not allowed under the Act. We investigated and Ishan said that due to the nature of the industrial action, it was hard for him to tell which employees had participated. We found that Ishan's business had a history of responding to industrial action by requesting certain orders from the Fair Work Commission, but the business itself did not have proper processes and systems in place to identify the people who took part in unprotected industrial action.

We were mindful of the cost to the business that had been caused by the industrial action. We also needed the business to fix the issue, and not breach the Act again.

Ishan formally agreed to introduce processes and systems to manage compliance with industrial action obligations, so that he would comply with the Act in future. This outcome reinforced the importance and integrity of the industrial action provisions of the Act, while acknowledging no formal penalty was needed to seek compliance from Ishan.

Our responses following an investigation typically include:

10.1 Findings letter

A findings letter is sent to the parties setting out what we found from the evidence gathered in an investigation. It tells a party what we have found, what they need to do next, and what we intend to do.

For instance, we may find there was no evidence of any breaches. At other times, we may find breaches and will ask the party to fix these (e.g. by back paying an employee).

CASE STUDY – Findings letter:

Pauline, a part-time employee, had worked for a coffee shop for over 12 months. Pauline asked us for help because she received less than the award pay rate and was not paid extra for working on the weekend.

A Fair Work Inspector investigated the matter, gathering evidence including documents and statements from Pauline, her employer Chris, and a witness. The Fair Work Inspector assessed the evidence and found a number of breaches. The Fair Work Inspector sent a findings letter to Chris and Pauline. The findings letter detailed the award obligations on minimum pay rates, and the penalty rates for weekends and evening work. The findings letter also explained the website tools that could help Chris to pay staff correctly, and asked Chris to back pay Pauline \$850 to make good the underpayment. Chris paid Pauline and now knows about the tools on the website that will assist compliance in the future.

10.2 Tailored small claims assistance

Sometimes a request for assistance involving a workplace dispute is assessed as suitable for an employee to seek their own recovery of unpaid entitlements through specified courts.

These small claims applications have low fees and are dealt with by the courts less formally than other applications made to courts. The small claims process is a fast and efficient way of resolving a dispute.

When deciding whether to refer an employee to a small claims process we consider:

- the amount of money being claimed
- how serious the allegations are
- whether the money being claimed is related to a common law contract or an above award payment
- whether attempts at voluntary recovery (such as mediation) have been made
- whether evidence is being disputed or there are written records
- the employee's ability to follow the small claims process
- whether the employment period ended more than two years ago.

When parties are referred to the small claims process we assist by directing them to tools and resources that explain the small claims process and help them to calculate minimum employment entitlements. These resources are available [on our website \(www.fairwork.gov.au/smallclaims\)](http://www.fairwork.gov.au/smallclaims).

In some cases where we have found that an employee is owed money, we may assist them through the small claims procedure, for example, by helping with the small claims application. The level of assistance is considered on a case by case basis. For example, we may give greater help to a person with low literacy skills or from a culturally and linguistically diverse background.

CASE STUDY - Small claims:

George is a sales representative and earns \$60,000 per year which is significantly higher than the minimum award entitlement for his job. George advised us that he was owed \$2,000 for working extra hours.

George kept diary notes for some of the extra hours and said he was told to work these hours by his employer Mariana. Mariana disputed that the business owed George any money or that George was directed to work the extra hours. They were unable to agree on a resolution.

We explained the small claims process to both George and Mariana and encouraged them to try and resolve the issues once more between themselves in order to avoid the court process.

We showed George how to complete a small claims application form, how to present written evidence and how to set out calculations of what he believed was owing to him.

We advised Mariana on how to defend a small claims application and how to present written evidence.

We also explained to both parties that they may need to give verbal evidence in court about whether George was directed to work extra hours.

10.3 Letter of caution

A letter of caution is a written warning given to a party when we have found breaches and want to put them on notice that future breaches could result in us seeking financial penalties.

A letter of caution is typically used to encourage compliance in the dispute before us and to ensure future activities of the party are monitored in case of future non-compliance.

CASE STUDY - Letter of caution:

Peng worked in sales for five months, but did not receive a regular income during that time. He was told that he was engaged as an independent contractor on a commission-only basis. He received \$1,600 in commission over the five months.

We investigated and considered all the evidence. We found that Peng was an employee under an award, and not an independent contractor. His employer Bertrand had seriously breached the award, the Act and failed to provide many entitlements due to Peng including wages, allowances and annual leave. Bertrand claimed he had been unaware of the possibility Peng may have been an employee.

Bertrand agreed to pay the entitlements owing to Peng as an employee. Due to the significant breaches, we gave Bertrand a letter of caution, advising him that we would take any further breaches into account when deciding whether to start litigation or other enforcement action against him in the future.

11. Promoting compliance - enforcement outcomes

An enforcement outcome is where we decide that formal action under the Act is the appropriate response to breaches we have found.

There are four enforcement outcomes available to us at law. The Act sets out the legal requirements for each enforcement outcome, as well as things such as time limits and what powers courts have to make orders and impose financial penalties.

11.1 Infringement Notice

An Infringement Notice is a fine given for breaching the record-keeping or pay slip requirements of the Act and the Regulations.

Infringement Notices can be issued up to 12 months after the breach occurred.

We have discretion over whether an Infringement Notice is issued and the amount of the fine (up to the legal maximum). We will consider matters such as:

- whether the breach impedes a Fair Work Inspector's ability to find or calculate underpayments
- whether the breach meant that an employee did not have information needed to recover entitlements
- whether the employer has a history of breaching time and wage record-keeping or pay slip requirements
- whether the breach was deliberate to avoid obligations under Commonwealth workplace laws
- whether the breach had significant implications, for example an employee being unable to secure a loan due to lack of pay records.

The current maximum fines in Infringement Notices for each breach of a record-keeping or pay slip obligation are:

- \$1,260 for an individual or \$6,300 for a body corporate for breaches of the Act
- \$420 for an individual or \$2,100 for a body corporate for breaches of the Regulations.

If an employer thinks a mistake occurred and they have not breached record-keeping or pay slip obligations they can make an application to us to have the Infringement Notice reconsidered and withdrawn.

CASE STUDY - Infringement Notice:

Valentina worked for a company as a full-time administrative assistant. She was concerned that her pay had not increased after she turned 18. She thought she was still being paid the 17-year old rate, but she could not be sure as her employer Karl had not given her pay slips for seven months. She also worked some overtime, but was not always paid for this. Valentina sought our assistance, and we found that Karl had not paid Valentina the correct entitlements. Karl paid Valentina the money owing, and agreed he had overlooked her award increase when she turned 18.

We also gave Karl's company two Infringement Notices for \$2,100 each, which represents one third of the maximum amount. This amount was settled on because Karl did not have a history of non-compliance. The first Infringement Notice was because Karl failed to keep proper records of Valentina's overtime hours, which may have caused Valentina to miss out on some entitlements. The second Infringement Notice was for failing to give Valentina pay slips, which meant she could not be sure of the gross wages or overtime paid to her each week.

These breaches of the Act by Karl's company resulted in total fines of \$4,200 to be paid within 28 days. We also gave Karl information and templates to help him in complying with his pay slip and record-keeping obligations in the future.

11.2 Compliance Notice

A Compliance Notice is a written notice that legally requires a person to do certain things to fix breaches of the Act.

A Compliance Notice can be used where a Fair Work Inspector reasonably believes that a person has breached a term of the National Employment Standards, a modern award, enterprise agreement or other instrument that specifies wage rates and entitlements.

We typically issue Compliance Notices where an employer hasn't agreed to, or we suspect the employer won't, rectify an alleged breach. A person who has received a Compliance Notice may seek a review through the courts.

The decision to issue a Compliance Notice is not taken lightly, as a failure to do what the Compliance Notice requires in the time stated is likely to result in us starting legal proceedings in a court. We can take action for both the original breaches and the failure to comply with the Compliance Notice. A failure to comply can result in significant financial penalties of up to \$31,500 for a company and \$6,300 for an individual.

When considering whether to issue a Compliance Notice, a Fair Work Inspector will consider:

- the nature and extent of the breaches
- the level of cooperation from the employer
- whether the Compliance Notice will achieve a better and/or faster outcome
- the desire to bring about a cost effective and quick resolution to recover underpayments owed to individuals.

CASE STUDY - Compliance Notice:

A Fair Work Inspector investigated a matter involving Moshe, a 19 year old working in a child care centre. The investigation found that over six months his employer Stella had underpaid Moshe \$2,300 in wages and annual leave on termination.

Stella told the Fair Work Inspector that she would not pay as Moshe had not been a hard worker and did not deserve any more money. The Fair Work Inspector ensured Stella knew she legally had to make the payment, and explained that issues with Moshe's performance needed to be dealt with during her employment and were not a reason to pay less than the legal minimum. Stella still refused to pay the money owing.

The Fair Work Inspector then gave Stella a Compliance Notice that said she needed to make payment within a set timeframe. The Fair Work Inspector made it clear that if Stella did not make the payment by the due date she may face penalties in a court. Stella researched her obligations and realised that she did need to pay Moshe the minimum pay rates and annual leave, even if she had concerns about Moshe's work. Stella decided to pay Moshe the full amount owing by the due date in the Compliance Notice.

11.3 Enforceable Undertaking

When we believe that someone has seriously breached the Act, the breach is serious and they acknowledge this, accept responsibility and agree to fix the harm, we can accept a written undertaking from the person about the breaches.

The key difference between an Enforceable Undertaking and a Compliance Notice is an Enforceable Undertaking involves not only the payment of all monies owed but admission and contrition from the party who has breached the law. In addition, an Enforceable Undertaking covers a broader range of conduct and broader remedies.

We use Enforceable Undertakings where an employer has acknowledged they've breached the law, accepted responsibility and agreed to cooperate with us and fix the problem.

Many of the initiatives included in Enforceable Undertakings help to build a greater understanding of workplace responsibilities, motivate the company to do the right thing and help them avoid making the same mistake again.

Enforceable Undertakings are set out in a publicly available and legally binding document. Importantly, we can take legal action in a court to enforce the terms of an Enforceable Undertaking if it is not complied with.

Enforceable Undertakings typically operate for a period of between 2 – 5 years and often include terms about fixing loss or damage caused (e.g. by paying compensation or back pay). They also deal with future compliance and what the person will do in the future to prevent more breaches, such as training sessions for senior managers. Enforceable Undertakings also require people to report on compliance at specific times or when a particular action is undertaken, such as a self-audit.

We may offer a person the option to enter into an Enforceable Undertaking as an alternative to us starting legal proceedings. We also consider offers from people of entering into an Enforceable Undertaking in response to breaches we have found.

Documents released by the Fair Work Ombudsman under the Freedom of Information Act

When deciding whether to enter into an Enforceable Undertaking, we consider:

- the nature, extent and seriousness of the breaches
- the prior compliance history of the person
- whether the person admits the breaches and what they propose to do to fix or prevent breaches, beyond just complying with minimum standards in future
- the attitude of the respondent
- whether the undertakings are relevant to the breaches and will achieve positive outcomes for employees and/or the community
- whether an undertaking is a superior outcome over litigation, including whether it brings specific and general deterrence and promotes compliance with the Act.

CASE STUDY - Enforceable Undertaking:

Jill had paid her employees flat rates of pay that did not meet the minimum award provisions. A Fair Work Inspector found that the total underpayments to Jill's employees over a year were more than \$50,000.

Jill cooperated with us during the investigation, and admitted all the breaches. She entered into an Enforceable Undertaking with us, in which she agreed to pay the full amounts owing to all employees under an instalment plan. She also agreed in the Enforceable Undertaking to make a written apology to employees, and take all reasonable steps to ensure that she met her workplace obligations in the future, including participating in workplace relations training.

Jill's actions were made public on our website through the terms of the Enforceable Undertaking.

12. Litigation

In the most serious instances of non-compliance we take cases to court to enforce the law or seek a penalty. We call these court cases litigations. Cases that are suitable for litigation typically involve a combination of the following factors:

- deliberate and/or repeated non-compliance, measured by the impact the non-compliance has on an individual, business, group or market
- exploitation of vulnerable workers
- failure to cooperate with us or fix breaches after being given the opportunity to do so

- parties with a prior history of breaches who have not taken adequate steps to ensure compliance despite being advised of the consequences in the past.

Litigation is an essential enforcement action for three reasons:

1. enforcing the law and obtaining court orders sends a powerful public message to others not to engage in similar conduct (general deterrence)
2. stopping people from engaging in unlawful behaviour now and in the future makes the need to comply real for individuals (specific deterrence)
3. clarifying the law helps the community understand what are the various obligations and rights arising from Commonwealth workplace laws.

Legal action is taken where we have sufficient evidence and, on balance, we consider it is in the public interest and a proper response to the conduct. Detailed information about how we make decisions to start litigation is set out in our [Guidance Note 1 - Litigation Policy](#):

(<http://www.fairwork.gov.au/about-us/policies-and-guides/internal-policies-and-plans#guidenote>)

Where a court determines that breaches have occurred, a range of outcomes are available to the court. We will ask the court for outcomes that balance our aims of general and specific deterrence with the issues relevant in a case. In addition to financial penalties, we may seek other orders including back pay or compensation, injunctions, and/or requirements to undertake training or implement other practices to address the breaches.

CASE STUDY – Litigation:

We had dealt with a number of requests for assistance from former employees about the same employer 12 months earlier. Underpayments had occurred and they were voluntarily fixed.

So when we were contacted again by employees from this employer the Fair Work Inspector organised a meeting with the business owner to get their side of the story. The employer acknowledged that employees had been underpaid and said they would provide the relevant time and wage records.

When the records were not forthcoming, the Fair Work Inspector made a formal request for the records in the form of a Notice to Produce documents under the Act. A few months later some records were provided.

The Fair Work Inspector contacted the employer in person, via phone and by email to access the rest of the records. After using what was available to calculate amounts owing, the Fair Work Inspector attempted to inform the employer of the findings by mail, email and phone. In total, the Fair Work Inspector initiated 33 separate and largely unsuccessful points of contact with the employer over a 16 month period in an attempt to resolve the matter.

The employer blatantly refused to engage with us and rectify problems that the employer acknowledged did occur, leaving us with few options other than to progress to court. In the end, nearly two years after the requests for assistance had been made, the Federal Court ruled that the employer needed to back pay over \$12,000 to nine staff, including two junior employees, as well as ordering the company to pay penalties of over \$19,000, and the Director almost \$4,500.

13. Publication of enforcement outcomes

We publish information regarding our enforcement activities on our website. This forms an important part of our role in ensuring compliance with Commonwealth workplace laws by:

- enhancing general and specific deterrence
- informing and educating the community, or people in the same and similar industries, of the nature and outcome of enforcement activities
- providing advice about to how to prevent similar breaches.

Information we publish will be fair and accurate. We may decide to publish information on our website, including by issuing media releases. Information may also be used in reports, presentations or other educative material.

In litigation matters we may publicise the decision to commence proceedings, the lodgement of court documents, milestones during proceedings, directions hearings, and/or decisions (whether there are financial penalties or orders or neither). We will publish information if we believe that publicising any or all of these stages will support compliance with Commonwealth workplace laws.

We publish this information for two reasons:

- visibility of our enforcement activity sends a powerful message of deterrence to others
- clarification of the law and the level of penalties that certain breaches incur can help people understand the seriousness of breaking the law.

14. Working with other agencies

We are not always the agency best placed to deal with an issue. For example, a number of authorities specialise in handling superannuation, visa issues or bullying.

Where we believe another agency can provide greater assistance, we will refer the issue as early as possible.

We may share information with other government agencies or departments where authorised by the Act. For example, we may share information where disclosure is necessary, appropriate, or likely to assist administration or enforcement of a law of the Commonwealth, a State or a Territory.

Examples of agencies we may share information with include the Australian Building and Construction Commission, the Australian Securities and Investments Commission, the Australian Taxation Office and the Department of Immigration and Border Protection. We also receive information from these government agencies at times which assists us do our work.

15. Feedback

We encourage feedback on any matter, and invite people to visit our Feedback page <https://www.fairwork.gov.au/contact-us/online-enquiries/feedback>.

If a person requests a review of our actions and is not satisfied with the result of our review, they can contact the Commonwealth Ombudsman on 1300 362 072, or at www.ombudsman.gov.au.



Australian Government

Fair Work
OMBUDSMAN

Compliance and Enforcement Policy

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Documents released by the Fair Work Ombudsman under the Freedom of Information Act

The Fair Work Ombudsman (FWO) is an independent statutory agency created by the *Fair Work Act 2009* (the FW Act). The role of the FWO is to promote harmonious, productive and cooperative workplace relations; and to monitor, inquire into, investigate, and enforce compliance with relevant Commonwealth workplace laws.

This policy explains how we seek to ensure compliance with Commonwealth workplace laws. By Commonwealth workplace laws, we mean the FW Act, its regulations and the awards and agreements that set wages and conditions for Australian workplaces.

Principles

The FWO wants to promote a culture of compliance by equipping workers and businesses in Australia with the information and support they need to make good choices in their workplaces, and be compliant with Commonwealth workplace laws.

Our work is guided by the following principles:

Principles	We:
Clear and effective communication	<ul style="list-style-type: none"> ■ listen to the workplace concerns of workers and businesses ■ provide information and advice that is easy to access, understand and apply
Professional customer service	<ul style="list-style-type: none"> ■ deliver a relevant and professional experience in every customer interaction ■ offer multiple ways to connect with us ■ provide practical advice and assistance that is timely, professional and impartial ■ ensure the security of our customers' personal details in line with privacy laws
Consistency	<ul style="list-style-type: none"> ■ give practical advice which can be relied upon ■ ensure a level playing field where the same rules apply to everyone ■ apply the same assessment principles to each request for assistance ■ consider the same range of factors when deciding how to assist
Risk-based and proportionate	<ul style="list-style-type: none"> ■ focus our compliance and enforcement efforts where there is serious non-compliance and where we can deliver the greatest benefit

	<ul style="list-style-type: none"> ■ consider risk in terms of potential impact on the community, as well as the relative risk of exploitation that individuals face ■ encourage and empower employees and employers to resolve issues in their workplace, where appropriate ■ offer a range of dispute resolution tools and resources
Open and transparent	<ul style="list-style-type: none"> ■ remain neutral and impartial ■ give parties (to a dispute) the right to review all our decisions ■ publish information on our compliance and enforcement activities in a format that is fair, clear, understandable and accessible
Collaborative	<ul style="list-style-type: none"> ■ build relationships with stakeholders and the community based on trust and respect ■ work with customers to find solutions to workplace issues and opportunities to collaborate ■ harness intelligence and insight from a range of sources including other government agencies to inform our compliance and enforcement activities
Continuous improvement	<ul style="list-style-type: none"> ■ listen and respond to the community's expectations of us ■ measure the impact of our interactions with customers and use this information to improve our work ■ seek feedback on our processes, policies and practices and make changes to improve them ■ adopt leading technologies to ensure our services are more efficient and effective
Affect cultural change	<ul style="list-style-type: none"> ■ work with business, unions, community groups and other government agencies to develop solutions which address structural and behavioural drivers of non-compliance in certain industries and sectors ■ focus our efforts on supporting productivity by preventing workplace disputes ■ inform the public regularly and frequently on the importance of understanding workplace rights and obligations ■ share the stories of businesses dedicated to building compliant, productive and inclusive workplaces

How the FWO advises, supports and educates

The FWO encourages people to access our online tools and resources to increase their understanding of workplaces laws, find answers, and conduct open and constructive conversations in the workplace. For most people, a better understanding of workplace rights and obligations means that they can resolve issues at the workplace level without formal intervention from us. We have a suite of online tools and resources, with a range of in-language resources, that support this work, including:

- A [Pay and Conditions Tool \(PACT\)](#), which calculates pay rates, penalty rates and allowances, leave, notice of termination and redundancy.
- A '[Record My Hours](#)' app which can be downloaded to a mobile phone, allowing the user to keep an accurate record of their working hours as well as other information about their employment.
- A web translator function that offers automatic in-language content in 40 languages and translated resources and videos in the top 16 priority languages.
- [My account](#), which allows users to save, tailored information and submit online enquiries and receive responses (on matters such as pay rates and conditions of employment) directly to their individual account. Users can log into their personalised My account and view their saved information at any time. Users can also submit individual enquiries and receive tailored responses based on their circumstances. [Webchat](#) is also available for registered My account users, seeking quick answers, advice or guidance.
- An [anonymous reporting tool](#) that enables the public to report concerns about workplace issues anonymously. The tool is available in multiple languages, allowing customers to report workplace issues to the FWO in their language with the knowledge that their identity will not be disclosed.
- An [online learning centre](#) that has video-based interactive courses to teach businesses and workers skills and strategies to help them at work.
- [Fact sheets](#) about the minimum rights and obligations of businesses and workers, including information on the National Employment Standards, record-keeping and pay slips.
- [Best practice guides](#) to help small to medium-sized businesses with implementing best practice workplace policies and procedures.
- [Templates](#) that simplify the requirements for keeping employment records.
- A [telephone translator service](#) operated by the Translating and Interpreting Service on 131 450.

CASE STUDY – Self-help tools

Ally is a small business owner and she recently signed up to FWO's My account service to save information on the award conditions of employees. Having this tailored information saved on her My account means that Ally can easily access relevant resources when she needs them.

When one of her employees queried their rate of pay on a public holiday and their uniform allowance, Ally logged into her My account to check the provisions under the award. After reading the information and using the FWO's Pay and Conditions Tool, Ally believed she was paying the correct entitlements but wanted to check her understanding with an expert. As she was busy during business hours, Ally lodged an online query through her My account later that night to clarify her understanding of the applicable pay rates and allowances.

After receiving and assessing the enquiry the next day, a FWO officer responded to Ally via My account and confirmed the penalty rates applicable for public holidays and the circumstances when a uniform allowance would be paid. Ally had been paying the correct penalty rates on the public holidays, and the employee wasn't entitled to a uniform allowance. The officer saved the relevant information about the entitlements for Ally so she could feel confident that she was paying the correct entitlements. The officer also linked to some educational resources from the FWO's Online Learning Centre to help Ally feel confident in approaching the discussion of these issues with her employee.

When the employee disagreed with the information during their meeting, Ally logged onto her My account and they went through the information together, including using the Pay and Conditions Tool. They printed the pay rates and pinned them on the noticeboard so that all employees were aware of the minimum rates of pay.

How the FWO assesses the information we receive

The FWO receives many requests for assistance from workers who have a dispute about their wages or other issues with their employer. We describe the worker and the business in these cases as 'the parties' to the request for assistance.

One of our key functions is to respond to people who are directly seeking information and help, and this policy explains how those requests for assistance are treated.

We also initiate our own activities, such as campaigns and inquiries. These activities are based on information that comes to us from a range of sources - including intelligence, anonymous tip offs, research and requests for assistance.

Our priorities are determined by analysing all of this information and directing our resources to where they are most needed and where they will have the most positive impact.

3.1 Assessment

When the FWO receives a request for assistance or we are alerted to a possible workplace dispute, experienced officers assess the situation to decide how we can best help.

We understand that not everyone or every situation needs the same type of assistance. We provide tailored assistance based on an individual's circumstances, the issues at the workplace and the situation more generally.

3.2 What the FWO considers

In deciding how we will act, the FWO considers the seriousness of the alleged conduct and the circumstances of the parties, as well as the practical issues involved in resolving the matter.

There are a range of factors we consider including:

- the public interest (whether the community would expect us to get involved)
- FWO priorities based on our intelligence and experience, as well as stakeholder input
- whether a party is facing significant barriers to resolving the matter themselves (for example, low levels of literacy or comprehension)
- the size of the business and extent to which it sought advice from appropriate experts
- whether a party has had previous issues with compliance
- whether any alleged breach of Commonwealth workplace laws appears to be deliberate

- the nature and reliability of information available to support a finding or view that a breach has occurred
- confidentiality (where the employee has requested our assistance, but does not want to tell us the business the issue relates to)
- whether the parties have made reasonable attempts to resolve the matter
- in the case of alleged breaches of monetary entitlements, the amount of any underpayment
- whether there has been a failure to provide minimum entitlements as opposed to a failure to provide conditions above minimum award entitlements (we give priority to minimum entitlements, that is, entitlements set out in the FW Act, a Modern Award or Enterprise Agreement)
- whether the employment relationship is ongoing, or how long ago the employment ended (the age of the matter may be relevant to whether we take action).

3.3 Action the FWO is likely to take

Where a request for assistance concerns wages or conditions, and there is a willingness to address the issue, we help the parties resolve the issue quickly and informally.

In most cases, we have found that the issue can be resolved by the parties with some help from us. We want parties to resolve these matters with minimal expense, time and stress. A formal investigation is generally not the best approach in these cases. Rather, we help the parties work through their issues together.

Where appropriate, this informal approach may include assisting the worker who is a party to a request to understand how Commonwealth workplace laws apply to their situation and how they may be able to resolve the issue with their employer.

Where this approach is not successful or appropriate, as an impartial agency, we may look to contact both parties to the request, understand each side's view and provide a range of advice and services in an effort to achieve a resolution.

Similarly, when we receive information from the community, we may record, review and use that information to design and deliver future education and compliance activities. Information from the community is an invaluable means of gaining a better understanding of an industry or market.

If it appears that deliberate or systemic non-compliance has occurred, we may carry out a formal investigation or inquiry.

A request for assistance about a workplace dispute usually results in us taking one or more of the following actions:

- using the information provided in future education and compliance activities
- giving tailored advice to help parties deal with the matter and get a better understanding of Commonwealth workplace laws
- helping people to resolve an issue quickly and informally in the workplace by providing access to employment tools and resources
- assisting an employee to take their own action (such as through a small claims court)
- referring the information to another government agency (such as the Australian Taxation Office) because it is relevant to their work or they are better positioned to take action
- conducting an inquiry
- offering mediation
- conducting an investigation
- placing parties on notice about our concerns and the possibility of future action if the conduct continues or happens again
- determining that there is no action required at this time.

In all cases the information given to us is important, and helps us to determine our current and future activities.

How the FWO intervenes

4.1 Early intervention

Most matters can be resolved through assisted dispute resolution services and our 'early intervention' approach.

The FWO receives a large number of requests for assistance from employees and employers who have a concern about their workplace. In these situations, we find if we get involved early, we can help the parties resolve issues at the workplace level. We encourage and empower employees and employers to resolve issues directly in their workplace where possible.

CASE STUDY – Early intervention

Jenny, a casual truck driver, approached the FWO for assistance because she thought she was not getting paid correctly. A FWO officer helped Jenny to work out her minimum pay rates under the relevant award. The FWO officer then helped Jenny to write a letter to her employer setting out her minimum pay rates, so that Jenny could explain that she believed had been underpaid and wanted this issue to be resolved. This is a first step often recommended by the FWO after getting a request for assistance like Jenny's.

Jenny shared the information with three other colleagues who also contacted the FWO to seek assistance. The FWO officer contacted the employer, providing advice about the relevant award provisions and assistance in using our online Pay and Conditions Tool to calculate the applicable shift rates for casual employees.

The employer didn't agree with the advice provided and said he would be seeking assistance from his accountant. The accountant contacted the FWO officer and confirmed that he had provided incorrect advice to his client, which led to the underpayments. After several conversations, the accountant and the employer engaged with the employees and resolved their concerns by calculating and back paying the underpayments and rectifying the minimum rates of pay via an agreed payment plan. The FWO officer showed the accountant other educational resources to assist in preventing issues in the future or with other clients, and advised the accountant to review any similar advice provided to other clients.

The FWO officer also encouraged the accountant to sign up to FWO's employer newsletter. The accountant and employer were listed as businesses to follow up in further FWO activities.

4.2 Mediation

Mediation is a free, simple, confidential and voluntary process conducted by an accredited impartial mediator.

Mediation gives parties the opportunity to discuss their workplace dispute with the help of an impartial mediator and find mutually acceptable solutions. Many requests for assistance we receive are suitable for mediation and most mediations lead to a resolution.

As a guide, mediation may be suitable where one or more of the following circumstances exists:

- there is a desire to preserve the existing employment relationship
- there is conflicting evidence (e.g. one person's word against that of another)
- there are issues about final entitlements (e.g. payment in lieu of notice and/or annual leave)
- the employer has withheld money or made deductions from wages
- there are allegations that an employee has taken property from their employer
- there is a classification dispute between employer and employee
- the employee and employer seek a quick solution to an issue.

Mediation is a practical process held over the telephone. It usually takes less than 90 minutes. The mediator takes a neutral stance while helping parties reach a settlement on the day of the mediation; the parties control the outcome. For more information visit the [mediation page](#) on our website (www.fairwork.gov.au/mediation).

CASE STUDY - Mediation

An apprentice came to the FWO requesting assistance. He advised he had not been paid penalty rates for work performed on weekends and that his third-year apprentice documents hadn't been completed.

The apprentice was engaged by the business when he was in the second and third year of his apprenticeship. Upon commencement, the employer advised he couldn't afford to pay weekend penalties. The apprentice agreed to work weekends at the ordinary rate of pay, knowing he would be paid less than the award, because he had found it difficult to find an employer willing to take him on.

The apprentice resigned and advised the business he was going to make a claim for underpayment of wages. In response, the business refused to sign off his apprenticeship paperwork, which resulted in the employee not being recognised as a tradesperson.

Given the issues in the dispute, a FWO mediation took place and a monetary settlement resulted. The employee had his apprenticeship signed off as part of the overall settlement. Throughout the process of dealing with the dispute through FWO, both parties received education about their respective workplace rights and obligations and were advised to take their respective rights and responsibilities seriously.

4.3 Tailored small claims assistance

Sometimes a request for assistance involving a workplace dispute is assessed by the FWO as suitable for an employee to seek their own recovery of unpaid entitlements through purpose-built small claims courts.

Small claims applications have low fees and are dealt with in a less formal manner than other courts. The small claims process is a fast and efficient way of resolving certain types of workplace disputes and helps both parties resolve the issue, not just the person who filed the small claim.

When deciding whether to recommend the small claims process to an employee, we consider:

- the amount of money being claimed
- the seriousness of the allegations
- whether the money being claimed is related to a common law contract or an above award payment
- whether attempts at voluntary recovery (such as mediation) have been made
- whether evidence is being disputed or there are written records
- the employee's ability to follow the small claims process
- whether the employment period ended more than two years ago.

When we suggest the small claims process, we assist both parties (employees and employers) by directing them to tools and resources that explain the small claims process and help them calculate minimum employment entitlements. These resources are available on our website at www.fairwork.gov.au/smallclaims.

In some cases, where we have found that an employee is owed money, we assist them through the small claims process, for example by helping with the small claims application. The level of assistance offered is considered on a case-by-case basis. For example, we may give greater help to a person with low literacy skills or someone from a culturally and linguistically diverse background.

CASE STUDY - Small claims

The FWO conducted an investigation into an employee's claim of non-payment of overtime. The investigation resulted in a Fair Work Inspector issuing a findings letter, which advised that the employer should rectify the overtime underpayment, calculated to be \$2500.

The employer disputed the investigation findings based on his view that his employee, Prasad, was not directed to work the overtime hours, despite Prasad's timesheets being signed by his supervisor. There was conflicting evidence as to the supervisor's intent and the amount of money in dispute, so we recommended that a small claims process would be the best way to resolve the dispute.

Prasad used our free online small claims resources such as 'A step by step guide to applying for small claims' and videos to learn more about the small claims process.

He also asked for the FWO's assistance in commencing the small claims application. We helped him write a pre-claim letter to his employer stating his intention to file a matter in a small claims court. We also provided information about lodgement options - including which courts he could lodge with, how to complete the forms, how to present his written evidence (such as diary records and text messages), and how to file the court papers.

We also offered assistance to Prasad's employer, Brad, on how to defend a small claims application through our online small claims resources and a discussion of his options.

We encouraged Prasad and Brad to try and resolve the issues to avoid the court process. We also explained to both parties that they may be required to give verbal evidence in court about whether Prasad was directed to work extra hours.

The matter proceeded to a court hearing where both parties represented themselves without lawyers present, and gave documentary and testimonial evidence. The parties also cross-examined each other. The judge found Prasad's evidence to be more persuasive and ordered Brad to pay Prasad \$2500 within 30 days.

4.4 Investigations

One of the FWO's main roles is to promote compliance with Commonwealth workplace laws. Our compliance priorities are based on our intelligence and experience as well as stakeholder input.

Our investigations and inquiries are important ways we obtain evidence of non-compliance. We assess the seriousness of non-compliance by the potential impact it has on an individual, group or market. We may decide to conduct an investigation or inquiry where the available evidence suggests one or more of the following exists:

- exploitation of vulnerable workers (e.g. aged, young, overseas)
- concerns presenting within a high-risk sector
- significant public interest
- deliberate disregard for the law, or an order of a court or tribunal
- such widespread non-compliance that its impact is to distort a part of the labour market, disadvantaging compliant businesses (e.g. large-scale non-compliance that undermines a level playing field, supply chains and networks that distance the beneficiary of the labour from those directly engaging the workers)
- an opportunity to provide an educative or deterrent effect.

CASE STUDY – Promoting compliance

Lina spent the last five years building her business. In this time, she opened a number of cafes in Melbourne. Her rapid growth increased her business from two outlets in the inner east of Melbourne to running 15 sites in greater Melbourne. In the last two years, the FWO received information from a range of sources (members of the public, former and current workers, and community groups) that employees were not receiving their minimum entitlements. While a steady stream of information has been received, less than 10 formal requests for assistance had been submitted. Many of the workers at Lina's cafes appeared to be international students, reluctant to approach the FWO.

After reviewing the information and intelligence, the FWO decided to audit seven of Lina's sites without notice. When the FWO undertakes an activity like this, Fair Work Inspectors interview workers at the sites (with the aid of interpreters if needed) and evidence is obtained using the powers available to the FWO under the FW Act. The activity also involved interviewing Lina, her senior managers and her accountant. At the end of the compliance activity, the FWO published a report on the FWO's website about what the FWO discovered and any further action taken as a result of the activity.

In circumstances which involve serious non-compliance we may conduct an investigation.

An investigation is where a Fair Work Inspector considers allegations and gathers and examines evidence to determine if there have been breaches of Commonwealth workplace laws.

All investigations are impartial. We do not represent any party. The Fair Work Inspector will rely on the evidence available when making a decision.

During an investigation, we will always provide each party the opportunity to be heard. We also use discretion to decide on the best process or reach the best outcome for an investigation.

In an investigation, a Fair Work Inspector can use powers under the FW Act to visit workplaces, interview people and require records or documents to be provided.

1. Section 712A Notices

Where Fair Work Inspectors have been unable to obtain evidence or information using voluntary or other methods, the Fair Work Ombudsman and specified Senior Executive officers have the power under section 712A of the Fair Work Act to apply to the Administrative Appeals Tribunal to issue a FWO Notice to require a person to provide information, produce documents or attend and answer questions. Failure to comply with such a notice is a criminal offence.

These powers recognise that compliance with Commonwealth workplace laws is a critical factor in the cultivation of productive, cooperative and harmonious workplaces. Significant penalties apply for failure to comply with a FWO Notice.

The FWO will only consider requesting the AAT to issue a FWO Notice if we reasonably believe a person:

- can give information relevant to an investigation
- can produce documents relevant to an investigation
- is capable of answering questions relevant to an investigation
- all other evidence gathering means have been exhausted or are not appropriate.

If a person receives a FWO Notice, it means we consider that person is capable of assisting and providing material relevant to an investigation.

More detailed information about the different types of these Notices, including:

- when and how we exercise these powers
- how to respond
- the examination process
- your rights and obligations

is set out in our [Guide to FWO Notices](#).

2. Expectations

During all and any investigations, we expect all parties (and anyone else involved) to:

- always tell us the truth
- fully disclose all relevant matters from the outset of the investigation
- provide us with relevant information as it comes to hand
- respond in a timely manner to our requests.

Penalties may be imposed by a court if a person provides a Fair Work Inspector with false information or hinders or obstructs an Inspector. In very serious cases, the FWO may refer such matters to the Commonwealth Director of Public Prosecutions for criminal prosecution.

The Fair Work Inspector handling the investigation will update the parties with developments at regular intervals.

The Fair Work Inspector will advise the parties in writing of investigation findings and include details of how the outcome was decided. The findings will be provided within seven working days of the Fair Work Inspector's decision.

We seek to be reasonable and proportionate when conducting investigations. The average duration of an investigation is four months.

CASE STUDY – Investigation

Ishan's employees had taken unprotected industrial action and he was successful in obtaining an order from the Fair Work Commission that required the employees to return to work. The industrial action had caused his business significant economic loss.

The FWO was told that Ishan had paid his employees during the unprotected industrial action. This is not allowed under the FW Act, so we initiated an investigation.

Fair Work Inspectors issued Ishan with a Notice to Produce documents to adequately assess whether breaches of the FW Act had occurred and provide Fair Work Inspectors with evidence about whether payments had been made to employees. The investigation process also involved various steps including assessing information and records, and speaking with the employer and staff at the business.

Ishan told Fair Work Inspectors that because of the nature of the industrial action, it was hard for him to tell which employees had participated. The FWO found that Ishan's business had a history of responding to industrial action by requesting certain orders from the Fair Work Commission, but that the business itself did not have proper processes and systems in place to identify the people who took part in unprotected industrial action.

The FWO could see that Ishan's business was trying to respond appropriately to industrial action because of the cost of the stoppages to the business. It also wanted to ensure the business would not breach the law in the future.

Ishan formally agreed to introduce processes and systems to manage compliance with industrial action obligations, so that he would comply with the FW Act in future. The FWO was satisfied that Ishan was taking proactive measures to redress the breaches. If similar allegations against this business presented in the future, the FWO would take into consideration the outcomes of this investigation.

4.5 Proactive compliance campaigns

Campaigns help us check, improve and ensure ongoing compliance with Commonwealth workplace laws in a targeted way.

Campaigns are designed to test an employer's awareness of and compliance with Commonwealth workplace laws, willingness to respond to issues of concern, and commitment to future compliance.

Using intelligence and data received from the public as well as that acquired by Fair Work Inspectors, we identify issues and trends in industry sectors or regions that suggest we need to take a closer look to ensure compliance.

An important part of our campaigns is working with groups such as industry associations, employer representatives, unions and community groups so that we can tailor our campaigns to ensure the greatest impact and benefit to the community.

During a campaign, we explain the purposes of our monitoring activity to employers and employees through letters, phone calls, visits from our Fair Work Inspectors, social media, and our website.

By checking employee time and wage records, we are able to identify any issues of concern and begin working with the businesses to fix any problems.

Often we will recommend systems that could be put in place to ensure ongoing compliance. We may test future compliance by re-visiting these businesses and assessing whether our assistance had a positive impact and led to behavioural change. While our focus in a campaign is to educate and assist, we will take appropriate and proportionate enforcement action where we find employers have intentionally breached their obligations or have failed to make appropriate efforts to ensure ongoing compliance after interacting with us.

Following each campaign, we release a report outlining the findings and detail any particular insights or trends as well as planned future activities. These reports are published on our website.

CASE STUDY - Campaign

After analysing information and intelligence we had received from customers as well as previous compliance activities, the FWO became concerned about non-compliance in a number of restaurant businesses located in an inner suburb of Sydney. The area was known for 'cheap eats', with a large university nearby doubling as both a customer base and a pool of young workers (many of them visa holders).

The FWO designed a campaign to test compliance in most restaurants in the area. A team of Fair Work Inspectors visited businesses in the area over two days, speaking with employers and employees in around 100 businesses, gathering information, evidence and testing the intelligence we had received.

In monitoring the businesses, Fair Work Inspectors audited the pay rates and record-keeping practices in each business and provided advice to help employers achieve or maintain compliance. Where employers were not paying staff correctly, Inspectors ensured that they corrected their practices and back paid employees, using Compliance Notices, where appropriate. Where employers were not meeting their pay slip and record-keeping obligations, Inspectors considered each case and issued Infringement Notices, where appropriate. Where there was significant non-compliance, the FWO commenced investigations and undertook an assessment as to whether stronger enforcement action was required.

The campaign provided a useful insight into the issues facing employees and employers in this industry. The FWO's concerns regarding the area were validated in the findings, and the activity provided further intelligence and data to inform future activities in this sector.

4.6 Proactive Inquiries

There are two types of inquiries at the FWO:

3. Inquiries

Sometimes we receive information from the media or the community which suggests non-compliance. We often decide to inquire initially into the matter rather than commence an investigation. In doing so, we encourage all parties involved to speak with us and provide information that supports their point of view. Our focus is on helping the parties, where possible, to comply with the law and resolve the matter quickly and informally.

During such an inquiry, we may ask parties to provide evidence such as time and wage records, or other documents. Where an inquiry identifies suspected deliberate or repeated breaches of Commonwealth workplace laws, the matter will be referred for investigation. Where evidence is disputed, parties may be encouraged to resolve the matter through a small claims process.

4. Comprehensive inquiries

In other situations, where we believe that the information we have received from the media or community warrants detailed research, we may decide to conduct a comprehensive inquiry. This type of inquiry reviews allegations of serious non-compliance with Commonwealth workplace laws by looking at information about what has happened or is happening in a particular industry, sector, supply chain or service network.

This form of inquiry is a more in-depth compliance activity, which enables us to better understand the working environment, business relationships and market conditions so that we can coordinate our approach to ensure we both identify and address any factors causing the non-compliance.

After we have conducted the various compliance activities involved in an inquiry, it is not uncommon for enforcement action to commence against a number of parties involved in the review. We use the findings of the inquiry to assist us to decide what needs to be done next to ensure future compliance. To promote deterrence, we publish the findings from this type of large-scale and thorough inquiry on our website.

CASE STUDY – Inquiry

The FWO launched an in-depth Inquiry into the cleaning services procured by 4 and 5 star Hotels following a significant increase in the number of requests for assistance received from hotel housekeepers alleging they were employees, not independent contractors.

Applying a holistic 'multi factor' test, the Inquiry examined a sample of contract cleaning companies engaged by 4 and 5 star Hotels to assess whether the workers were classified correctly as either employees or independent contractors.

The Inquiry included unannounced visits by Fair Work Inspectors to several major hotels, interviewing housekeepers, issuing Notices to Produce documents on various businesses in the labour supply chain, assessing contracts and interviewing procurement managers.

At two of the hotel groups, the Inquiry found evidence indicating the housekeepers had been misclassified as independent contractors when they were in fact employees. The cleaners were predominantly international students on visas working solely for a particular hotel with no autonomy in their day-to-day work. They were receiving a flat rate of pay and having to pay for the cost of chemicals, uniforms and administration fees. Consequently, these workers were denied applicable penalty rates, regular patterns of work and leave entitlements available to employees under the FW Act.

In our Findings Report, we recommended a range of compliance and enforcement outcomes against the respective hotel brands. In the case of one hotel group, our intervention through an Enforceable Undertaking resulted in the repayment of nearly \$2 million to housekeepers.

The report also recommended steps on how the hotel sector can improve compliance through better management of their procurement practices, ensuring principal contractors and sub-contractors comply with the law. These recommendations included actions the FWO will take in collaboration with relevant businesses and industry organisations.

The range of outcomes

5.1 Compliance outcomes with FWO

Due to the spectrum of issues dealt with at the FWO, we use a range of tools based on the individual circumstances of the matter to encourage compliance. Our compliance tools increase in seriousness and penalty depending on the risks to the community and the need for compliance. The tools we employ are outlined below.

1. Findings letter

A findings letter is sent to the parties at the end of an investigation. It sets out what we found from the evidence gathered and it tells each party what they need to do next, and what actions (if any) we intend to take.

For instance, we may find there was no evidence or insufficient evidence of any breaches. At other times, we may find breaches and will ask the party to fix these (e.g. by back paying an employee).

CASE STUDY – Findings letter

Pauline, a part-time employee, had worked for a coffee shop for over 12-months. Pauline asked us for help because she received less than the award pay rate and was not paid more for working on the weekend.

A Fair Work Inspector investigated the matter, gathering evidence including documents and statements from Pauline, her employer Chris, and a witness. The Fair Work Inspector assessed the evidence and found a number of breaches. The Fair Work Inspector sent a findings letter to Chris and Pauline.

The findings letter detailed the award obligations for minimum pay rates as well as the penalty rates applicable for weekend and evening work. The findings letter also explained the website tools that could help Chris to pay staff correctly and outlined that Chris needed to back pay Pauline \$850 to rectify the underpayment. If Chris ignored the findings letter, the FWO would seek to take further compliance action.

2. Formal caution

A formal caution is a written warning given to a party when we have found breaches and are putting them on notice that future breaches could result in us pursuing enforcement action.

A formal caution is typically used to make it clear to a party that its future activities will be closely monitored.

In the future, if further non-compliance is identified, the fact that the party was previously issued with a formal caution is a factor we will consider in deciding whether it is in the public interest to commence civil proceedings in respect of those further breaches, and if so, whether to apply to the court for a serious contravention.

CASE STUDY – Formal caution

Peng worked in sales for five months but did not receive a regular income during that time. Peng worked on commission and told the FWO that he received on average less than \$10 per hour over that time.

Peng's employer, Bertrand was initially hostile with the FWO officers who contacted him to let him know that a request for assistance had been received by the agency. The FWO commenced an investigation.

During the investigation, Bertrand confirmed that Peng only deserved to be paid when he made sales. The FWO explained to Bertrand that he had breached both the award and the FW Act, and failed to provide many of Peng's entitlements including wages, allowances and annual leave.

The employer disputed the findings. After several meetings at the FWO's offices with his accountant, the employer agreed to pay the entitlements owing to Peng. Due to the significant breaches, the FWO gave Bertrand a formal caution, advising him that if the FWO identified further non-compliance in the future, the formal caution would be a factor we would consider in deciding whether to initiate litigation or take other enforcement action against him.

3. Compliance partnerships

The FWO is keen to identify and work with major employers, brand owners and holding companies that want to build a culture of compliance in their workplaces by entering into formal compliance partnerships with us.

Formal compliance partnerships give employers, brand owners, holding companies, and importantly their staff, greater confidence that their systems and processes are working effectively and are helping to promote compliance.

Their public commitment to compliance is also a competitive advantage that helps attract talent, instil confidence in customers and appeal to organisations in their supply chain or service network. For example, compliance partnerships provide an opportunity for franchise operators and head contractors to work with franchisees and sub-contractors to drive workplace improvements throughout their supply chain or service network.

Compliance partnerships may take different forms depending upon the scale and maturity of the business. It is usual for compliance partnerships to contain the following expectations:

- self-audits (including third-party validations)
- the monitoring of contractors and franchisees
- effective dispute resolution processes
- regular and frequent workplace relations training for key managers and staff.

Compliance partnerships provide businesses with an opportunity to work closely with the FWO to ensure compliance with Commonwealth workplace laws is sustainable. The FWO offers participating businesses support, advice and assistance that promotes compliance.

To ensure transparency and accountability, and in order to inform greater awareness of workplace rights and obligations, the FWO publishes reports on the status and outcomes of all its compliance partnerships. Names of enterprises, entities or brands that have entered into a compliance partnership with the FWO can be found on our website: www.fairwork.gov.au/about-us/our-role/enforcing-the-legislation/proactive-compliance-deeds

CASE STUDY – Compliance partnership

Franchisor Pty Ltd had implemented a number of measures to improve compliance across its network, including introducing better systems and processes to assist franchisees. They approached the FWO to enter a formal compliance partnership to further enhance this work and to demonstrate its commitment to its franchisees, workers and customers.

Meeting with Franchisor Pty Ltd, we discussed a number of options that would promote compliance throughout its network and meet the specific business needs of the franchise, such as:

- committing more resources to a worker enquiry line available to both direct employees and employees of franchisees
- enhancing its business systems and processes to enable greater visibility of franchisee activity
- conducting self-audits of employee entitlements of direct employees
- facilitating self-audits of employee entitlements of a sample group of franchisees
- resolving requests for assistance received by us in the first instance and then reporting the outcome to us within a certain time period
- reporting annually on the status of the outcomes of the compliance partnership.

Having secured agreement on the terms of the partnership, a Proactive Compliance Deed was jointly signed by Franchisor Pty Ltd and the FWO, and the Partnership was publicly announced.

After six months, Franchisor Pty Ltd and its franchisees reported to us that they were finding it much easier to comply with their workplace obligations because of the compliance partnership, and were pleased with the positive impact it had had on their staff and the brand's image with their customers.

5.2 Enforcement outcomes under the FW Act

An enforcement outcome is where we decide that formal action under the FW Act is the appropriate response to breaches we have found.

There are four enforcement outcomes available to us. The FW Act sets out the legal requirements for each enforcement outcome, as well as time limits and the courts' powers to make orders and impose financial penalties.

1. Infringement Notice

An Infringement Notice is a fine given for breaching the record-keeping or pay slip requirements of the FW Act and the Regulations.

The FWO may issue Infringement Notices up to 12 months after the breach occurred.

We have discretion over whether to issue an Infringement Notice or not, and what amount the fine should be (up to the legal maximum). We consider these factors in determining the amount of the fine:

- whether the breach obstructs a Fair Work Inspector's ability to find or calculate underpayments
- whether the breach meant that an employee did not have the information needed to recover entitlements
- whether the employer has a history of breaching time and wage record-keeping or pay slip requirements
- the number of people affected by the breach
- whether the breach was deliberate to avoid obligations under workplace laws
- whether the breach resulted in other significant consequences, for example an employee being unable to secure a loan due to lack of pay records.

Currently the maximum fines available under an Infringement Notice for each breach of a record-keeping or pay slip obligation are:

- \$1260 for an individual or \$6300 for a body corporate for breaches of the FW Act
- \$420 for an individual or \$2100 for a body corporate for breaches of the Regulations.

If an employer has been issued an Infringement Notice, but thinks a mistake has occurred and they have not breached record-keeping or pay slip obligations, the person can make an application to us to have the Infringement Notice reconsidered and withdrawn.

CASE STUDY - Infringement Notice

Valentina worked for a company as a full-time administrative assistant. She was concerned that her pay had not increased after she turned 18. She thought she was still being paid the 17-year old rate, but she could not be sure as her employer Karl had not given her pay slips for seven months. She also worked some overtime, but was not always paid for this.

Valentina sought our assistance, and we found that Karl had not paid Valentina the correct entitlements. Karl paid Valentina the money owing and agreed he had overlooked her award increase when she turned 18.

We gave Karl's company two Infringement Notices for \$2100 each (one third of the maximum amount). This amount was settled on because Karl did not have a history of non-compliance. The first Infringement Notice was because Karl failed to keep proper records of Valentina's overtime hours, which may have caused Valentina to miss out on some entitlements. The second Infringement Notice was for failing to give Valentina pay slips, which meant she could not be sure of the gross wages or overtime paid to her each week.

These breaches of the FW Act by Karl's company resulted in total fines of \$4200 to be paid within 28 days. We also gave Karl information and templates to help him comply with his pay slip and record-keeping obligations in the future.

As Karl now understands his obligations under Commonwealth workplace laws, the FWO would consider a more serious intervention should Karl breach these provisions again.

2. Compliance Notice

A Compliance Notice is a legally-binding written notice that requires a person to do certain things to fix breaches of the FW Act.

A Compliance Notice can be used where a Fair Work Inspector reasonably believes that a person has breached a term of the National Employment Standards, a modern award, enterprise agreement or other instrument that specifies wage rates and entitlements.

We typically issue Compliance Notices where an employer has either not agreed to, or we reasonably suspect the employer will not, rectify an alleged breach. A person who has received a Compliance Notice may seek a review through the courts.

The decision to issue a Compliance Notice is not taken lightly, as a person's failure to do what the Compliance Notice requires in the time stated may result in us deciding to start legal proceedings against them. We can take action for both the original breaches and the failure to comply with the Compliance Notice. A failure to comply can result in significant financial penalties of up to \$31 500 for a company and \$6300 for an individual.

When considering whether to issue a Compliance Notice, a Fair Work Inspector will consider:

- the nature and extent of the breaches
- the level of cooperation from the employer
- whether the Compliance Notice will achieve a better and/or faster outcome such as to bring about a cost effective and quick resolution to recover underpayments owed to individuals.

CASE STUDY - Compliance Notice

A Fair Work Inspector investigated a matter involving Moshe, a 19-year-old working in a childcare centre. The investigation found that the employer, Kids R Us, had underpaid Moshe \$2300 in wages over a six-month period and failed to pay annual leave on termination.

Stella, the sole director of Kids R Us, told the Inspector that she would not back pay this amount, as Moshe had not been a hard worker and she did not deserve any more money. The Inspector advised Stella that Kids R Us was legally required to make the payment. Further, the Inspector explained that issues with Moshe's performance needed to be addressed during her employment and were not a reason to pay less than the legal minimum rate of pay. Kids R Us still refused to pay the money owing.

The Inspector issued a Compliance Notice to Kids R Us which outlined the requirement to make the payment within a set timeframe. The Fair Work Inspector advised Stella that if Kids R Us did not make the payment by the due date, it might face penalties in a court.

Kids R Us didn't pay the amount by the due date and continued to refuse to make the payment. The FWO brought proceedings against Kids R Us, alleging failure to comply with the Compliance Notice.

The court found that Kids R Us had failed to comply with the Compliance Notice and imposed a penalty of \$26 500; well in excess of the underpayment to Moshe.

3. Enforceable Undertaking

When we reasonably believe that someone has breached the FW Act, the breach is serious and the person acknowledges this, accepts responsibility and agrees to fix the harm, we can accept a written undertaking from the person.

Enforceable Undertakings are made in a legally binding document, which is published on our website. Importantly, if the terms of an Enforceable Undertaking are not complied with, we can take legal action in a court to enforce them, as well as seek other orders the court considers appropriate.

The key difference between an Enforceable Undertaking and a Compliance Notice is that an Enforceable Undertaking involves not only the payment of all monies owed to workers (for instance), but also admission of wrongdoing and demonstration of contrition from the party who has breached the law. In addition, an Enforceable Undertaking covers a broader range of conduct and broader remedies.

Enforceable Undertakings typically operate for a period of between two to five years and often include terms about fixing loss or damage caused (e.g. by paying compensation or back pay to employees). They are also 'forward looking' and deal with future compliance and what the person will do in the future to prevent more breaches, such as workplace law training sessions for senior managers. Enforceable Undertakings often require people to report to FWO on their compliance at specific times or when a particular action is undertaken (such as when they complete a self-audit).

We may offer a person the option to enter into an Enforceable Undertaking as an alternative to us starting legal proceedings. We also consider offering Enforceable Undertakings to persons who have approached us with admissions that they have breached the law and are committed to 'righting the wrongs' of the past.

When deciding whether to enter into an Enforceable Undertaking, we consider:

- the nature, extent and seriousness of the breaches
- the prior compliance history of the person
- whether the person admits the breaches and what they propose to do to fix or prevent further breaches, beyond simply committing to comply with minimum standards in the future
- the attitude of the party (e.g. whether they are cooperative)
- whether the undertakings are relevant to the breaches and will achieve positive outcomes for employees and/or the community
- whether a Compliance Notice would be better suited to the circumstances (if, for instance, it is suspected the party is not genuine about changing their behaviour)

- whether an undertaking would be a superior outcome compared to litigation in the circumstances, including whether it brings specific and general deterrence and promotes compliance with the FW Act. As an example, the broad range of remedies available under an Enforceable Undertaking could result in a broader range of outcomes including back payment to affected workers, a public apology, ongoing training, development and auditing, a monetary donation to an organisation, etc. These remedies can occur within shorter timeframes than can be anticipated throughout court processes, keeping the costs lower for all concerned, while bringing about specific and general deterrence.

CASE STUDY - Enforceable Undertaking

In running his business, Ricardo had ignored the pay rate increases in the last three annual wage reviews and consequently underpaid his employees a total of \$70 000. Ricardo had also failed to pay a number of allowances and other entitlements to his workers.

During the course of the investigation, Ricardo's staff advised the FWO that the business appeared to be facing some financial pressures. Ricardo explained that he had tried to resolve these matters, but that his cash-flow issues had contributed to the wage underpayments. He had been open with his staff about the financial problems and was apologetic about his inability to pay his staff their minimum entitlements.

In consideration of the severity of the underpayments, the FWO decided to enter into an Enforceable Undertaking with Ricardo, who had no compliance history with the FWO and was willing to rectify the breaches identified and back pay staff. The Enforceable Undertaking included:

- making full back payments to all employees involved
- apologising to his employees as well as issuing a public apology
- setting up a My account on fairwork.gov.au to ensure he was alerted to all future wage rises and implemented them
- undertaking a third-party approved self-audit for a three-week period each August for three years to prove annual wage reviews had been observed and that the workers were receiving their correct entitlements
- delivering workplace relations training to all managers and team leaders.

Ricardo's actions were made public on our website through the terms of the Enforceable Undertaking. The outcomes provided an array of proactive measures and allowed back payment to be made to underpaid staff quickly and without the need for a lengthy court process.

4. Litigation

In the most serious instances of non-compliance, we take cases to court to enforce the law or seek a penalty. We call these court cases litigations.

Detailed information about how we make decisions to start litigation is set out in our [Litigation Policy](#).

Publicising compliance and enforcement

As set out in our [Media policy](#), we publish information regarding our compliance activities and enforcement outcomes on our website. This forms an important part of our role in ensuring compliance with Commonwealth workplace laws by:

- enhancing general and specific deterrence
- informing and educating the community, or people in the same and similar industries, of the nature and outcome of enforcement activities.

Information we publish will be fair, accurate and timely. We may decide to publish information on our website, by media statements or through social media interventions. Our information is often contained in reports, presentations or other educative material which we promote in order to raise awareness of the importance of understanding and complying with Commonwealth workplace laws.

In deciding whether to comment publicly on compliance activities and in what form, we consider a range of factors such as the nature of the matter, who the statement is likely to impact and how it furthers the FWO's objectives.

At all times we:

- consider the likely and possible risk and consequences of making or not making a public comment
- weigh up the public interest, deterrence and risks associated with both making or not making a statement.

Any public comment regarding compliance activities that are underway are carefully made to protect the integrity of the compliance activity. Where the FWO does confirm the existence of a compliance activity, it does not mean that an adverse finding will be necessarily made.

In litigation matters, the FWO may publicise the decision to commence proceedings, the lodgement of court documents, milestones during proceedings, directions hearings, and/or decisions (whether there are financial penalties, other orders or neither).

We will publish information if we believe that publicising any or all of these stages will support compliance with Commonwealth workplace laws.

The FWO publishes this information for two reasons:

- visibility of our enforcement activity sends a powerful message of deterrence to others and promotes compliance, and
- clarification of the law and the level of penalties that certain breaches can incur may help people understand the seriousness of breaking the law.

Working with other government regulators

The FWO is not always the agency best placed to deal with an issue. For example, a number of authorities specialise in handling superannuation, health and safety, unfair dismissal, visa issues and bullying.

We want to help our customers and so where we believe another agency can provide greater assistance, we will refer the issue as early as possible.

We may share information with other government agencies or departments where authorised by the FW Act. For example, we may share information where disclosure is necessary, appropriate, or likely to assist administration or enforcement of a law of the Commonwealth, a State or a Territory.

Examples of agencies we may share information and work with on various activities include the Australian Building and Construction Commission, the Australian Competition and Consumer Commission, Australian Securities and Investments Commission, the Australian Taxation Office and the Department of Home Affairs.

In addition to receiving information from these government agencies at times, which assists us to do our work, we participate in joint education and compliance activities to monitor and influence compliance through different laws.

Feedback

We encourage feedback about your experience with us and invite people to contact us at

www.fairwork.gov.au/feedback.

If a person requests a review of our actions and is not satisfied with the result of our review, they can contact the Commonwealth Ombudsman on 1300 362 072, or at www.ombudsman.gov.au.



Fair Work
OMBUDSMAN

Compliance and Enforcement Policy

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Documents released by the Fair Work Ombudsman under the Freedom of Information Act

The Fair Work Ombudsman (FWO) is an independent statutory agency created by the *Fair Work Act 2009* (the FW Act). The role of the FWO is to promote harmonious, productive and cooperative workplace relations; and to monitor, inquire into, investigate, and enforce compliance with relevant Commonwealth workplace laws.

This policy explains how we seek to ensure compliance with Commonwealth workplace laws. By Commonwealth workplace laws, we mean the FW Act, its regulations and the awards and agreements that set wages and conditions for Australian workplaces.

Principles

The FWO wants to promote a culture of compliance by equipping workers and businesses in Australia with the information and support they need to make good choices in their workplaces, and be compliant with Commonwealth workplace laws.

Our work is guided by the following principles:

Principles	We:
Clear and effective communication	<ul style="list-style-type: none"> ■ listen to the workplace concerns of workers and businesses ■ provide information and advice that is easy to access, understand and apply
Professional customer service	<ul style="list-style-type: none"> ■ deliver a relevant and professional experience in every customer interaction ■ offer multiple ways to connect with us ■ provide practical advice and assistance that is timely, professional and impartial ■ ensure the security of our customers' personal details in line with privacy laws
Consistency	<ul style="list-style-type: none"> ■ give practical advice which can be relied upon ■ ensure a level playing field where the same rules apply to everyone ■ apply the same assessment principles to each request for assistance ■ consider the same range of factors when deciding how to assist
Risk-based and proportionate	<ul style="list-style-type: none"> ■ focus our compliance and enforcement efforts where there is serious non-compliance and where we can deliver the greatest benefit

	<ul style="list-style-type: none"> ■ consider risk in terms of potential impact on the community, as well as the relative risk of exploitation that individuals face ■ encourage and empower employees and employers to resolve issues in their workplace, where appropriate ■ offer a range of dispute resolution tools and resources
Open and transparent	<ul style="list-style-type: none"> ■ remain neutral and impartial ■ give parties (to a dispute) the right to review all our decisions ■ publish information on our compliance and enforcement activities in a format that is fair, clear, understandable and accessible
Collaborative	<ul style="list-style-type: none"> ■ build relationships with stakeholders and the community based on trust and respect ■ work with customers to find solutions to workplace issues and opportunities to collaborate ■ harness intelligence and insight from a range of sources including other government agencies to inform our compliance and enforcement activities
Continuous improvement	<ul style="list-style-type: none"> ■ listen and respond to the community's expectations of us ■ measure the impact of our interactions with customers and use this information to improve our work ■ seek feedback on our processes, policies and practices and make changes to improve them ■ adopt leading technologies to ensure our services are more efficient and effective
Affect cultural change	<ul style="list-style-type: none"> ■ work with business, unions, community groups and other government agencies to develop solutions which address structural and behavioural drivers of non-compliance in certain industries and sectors ■ focus our efforts on supporting productivity by preventing workplace disputes ■ inform the public regularly and frequently on the importance of understanding workplace rights and obligations ■ share the stories of businesses dedicated to building compliant, productive and inclusive workplaces

How the FWO advises, supports and educates

The FWO encourages people to access our online tools and resources to increase their understanding of workplaces laws, find answers, and conduct open and constructive conversations in the workplace. For most people, a better understanding of workplace rights and obligations means that they can resolve issues at the workplace level without formal intervention from us. We have a suite of online tools and resources, with a range of in-language resources, that support this work, including:

- A [Pay and Conditions Tool \(PACT\)](#), which calculates pay rates, penalty rates and allowances, leave, notice of termination and redundancy.
- A '[Record My Hours](#)' app which can be downloaded to a mobile phone, allowing the user to keep an accurate record of their working hours as well as other information about their employment.
- A web translator function that offers automatic in-language content in 40 languages and translated resources and videos in the top 16 priority languages.
- [My account](#), which allows users to save, tailored information and submit online enquiries and receive responses (on matters such as pay rates and conditions of employment) directly to their individual account. Users can log into their personalised My account and view their saved information at any time. Users can also submit individual enquiries and receive tailored responses based on their circumstances. [Webchat](#) is also available for registered My account users, seeking quick answers, advice or guidance.
- An [anonymous reporting tool](#) that enables the public to report concerns about workplace issues anonymously. The tool is available in multiple languages, allowing customers to report workplace issues to the FWO in their language with the knowledge that their identity will not be disclosed.
- An [online learning centre](#) that has video-based interactive courses to teach businesses and workers skills and strategies to help them at work.
- [Fact sheets](#) about the minimum rights and obligations of businesses and workers, including information on the National Employment Standards, record-keeping and pay slips.
- [Best practice guides](#) to help small to medium-sized businesses with implementing best practice workplace policies and procedures.
- [Templates](#) that simplify the requirements for keeping employment records.
- A [telephone translator service](#) operated by the Translating and Interpreting Service on 131 450.

CASE STUDY – Self-help tools

Ally is a small business owner and she recently signed up to FWO's My account service to save information on the award conditions of employees. Having this tailored information saved on her My account means that Ally can easily access relevant resources when she needs them.

When one of her employees queried their rate of pay on a public holiday and their uniform allowance, Ally logged into her My account to check the provisions under the award. After reading the information and using the FWO's Pay and Conditions Tool, Ally believed she was paying the correct entitlements but wanted to check her understanding with an expert. As she was busy during business hours, Ally lodged an online query through her My account later that night to clarify her understanding of the applicable pay rates and allowances.

After receiving and assessing the enquiry the next day, a FWO officer responded to Ally via My account and confirmed the penalty rates applicable for public holidays and the circumstances when a uniform allowance would be paid. Ally had been paying the correct penalty rates on the public holidays, and the employee wasn't entitled to a uniform allowance. The officer saved the relevant information about the entitlements for Ally so she could feel confident that she was paying the correct entitlements. The officer also linked to some educational resources from the FWO's Online Learning Centre to help Ally feel confident in approaching the discussion of these issues with her employee.

When the employee disagreed with the information during their meeting, Ally logged onto her My account and they went through the information together, including using the Pay and Conditions Tool. They printed the pay rates and pinned them on the noticeboard so that all employees were aware of the minimum rates of pay.

How the FWO assesses the information we receive

The FWO receives many requests for assistance from workers who have a dispute about their wages or other issues with their employer. We describe the worker and the business in these cases as 'the parties' to the request for assistance.

One of our key functions is to respond to people who are directly seeking information and help, and this policy explains how those requests for assistance are treated.

We also initiate our own activities, such as campaigns and inquiries. These activities are based on information that comes to us from a range of sources - including intelligence, anonymous tip offs, research and requests for assistance.

Our priorities are determined by analysing all of this information and directing our resources to where they are most needed and where they will have the most positive impact.

3.1 Assessment

When the FWO receives a request for assistance or we are alerted to a possible workplace dispute, experienced officers assess the situation to decide how we can best help.

We understand that not everyone or every situation needs the same type of assistance. We provide tailored assistance based on an individual's circumstances, the issues at the workplace and the situation more generally.

3.2 What the FWO considers

In deciding how we will act, the FWO considers the seriousness of the alleged conduct and the circumstances of the parties, as well as the practical issues involved in resolving the matter. There are a range of factors we consider including:

- the public interest (whether the community would expect us to get involved)
- FWO priorities based on our intelligence and experience, as well as stakeholder input
- whether a party is facing significant barriers to resolving the matter themselves (for example, low levels of literacy or comprehension)
- the size of the business and extent to which it sought advice from appropriate experts
- whether a party has had previous issues with compliance
- whether any alleged breach of Commonwealth workplace laws appears to be deliberate

- the nature and reliability of information available to support a finding or view that a breach has occurred
- confidentiality (where the employee has requested our assistance, but does not want to tell us the business the issue relates to)
- whether the parties have made reasonable attempts to resolve the matter
- in the case of alleged breaches of monetary entitlements, the amount of any underpayment
- whether there has been a failure to provide minimum entitlements as opposed to a failure to provide conditions above minimum award entitlements (we give priority to minimum entitlements, that is, entitlements set out in the FW Act, a Modern Award or Enterprise Agreement)
- whether the employment relationship is ongoing, or how long ago the employment ended (the age of the matter may be relevant to whether we take action).

3.3 Action the FWO is likely to take

Where a request for assistance concerns wages or conditions, and there is a willingness to address the issue, we help the parties resolve the issue quickly and informally.

In most cases, we have found that the issue can be resolved by the parties with some help from us. We want parties to resolve these matters with minimal expense, time and stress. A formal investigation is generally not the best approach in these cases. Rather, we help the parties work through their issues together.

Where appropriate, this informal approach may include assisting the worker who is a party to a request to understand how Commonwealth workplace laws apply to their situation and how they may be able to resolve the issue with their employer.

Where this approach is not successful or appropriate, as an impartial agency, we may look to contact both parties to the request, understand each side's view and provide a range of advice and services in an effort to achieve a resolution.

Similarly, when we receive information from the community, we may record, review and use that information to design and deliver future education and compliance activities. Information from the community is an invaluable means of gaining a better understanding of an industry or market.

If it appears that deliberate or systemic non-compliance has occurred, we may carry out a formal investigation or inquiry.

A request for assistance about a workplace dispute usually results in us taking one or more of the following actions:

- using the information provided in future education and compliance activities
- giving tailored advice to help parties deal with the matter and get a better understanding of Commonwealth workplace laws
- helping people to resolve an issue quickly and informally in the workplace by providing access to employment tools and resources
- assisting an employee to take their own action (such as through a small claims court)
- referring the information to another government agency (such as the Australian Taxation Office) because it is relevant to their work or they are better positioned to take action
- conducting an inquiry
- offering mediation
- conducting an investigation
- placing parties on notice about our concerns and the possibility of future action if the conduct continues or happens again
- determining that there is no action required at this time.

In all cases the information given to us is important, and helps us to determine our current and future activities.

How the FWO intervenes

4.1 Early intervention

Most matters can be resolved through assisted dispute resolution services and our 'early intervention' approach.

The FWO receives a large number of requests for assistance from employees and employers who have a concern about their workplace. In these situations, we find if we get involved early, we can help the parties resolve issues at the workplace level. We encourage and empower employees and employers to resolve issues directly in their workplace where possible.

CASE STUDY – Early intervention

Jenny, a casual truck driver, approached the FWO for assistance because she thought she was not getting paid correctly. A FWO officer helped Jenny to work out her minimum pay rates under the relevant award. The FWO officer then helped Jenny to write a letter to her employer setting out her minimum pay rates, so that Jenny could explain that she believed had been underpaid and wanted this issue to be resolved. This is a first step often recommended by the FWO after getting a request for assistance like Jenny's.

Jenny shared the information with three other colleagues who also contacted the FWO to seek assistance. The FWO officer contacted the employer, providing advice about the relevant award provisions and assistance in using our online Pay and Conditions Tool to calculate the applicable shift rates for casual employees.

The employer didn't agree with the advice provided and said he would be seeking assistance from his accountant. The accountant contacted the FWO officer and confirmed that he had provided incorrect advice to his client, which led to the underpayments. After several conversations, the accountant and the employer engaged with the employees and resolved their concerns by calculating and back paying the underpayments and rectifying the minimum rates of pay via an agreed payment plan. The FWO officer showed the accountant other educational resources to assist in preventing issues in the future or with other clients, and advised the accountant to review any similar advice provided to other clients.

The FWO officer also encouraged the accountant to sign up to FWO's employer newsletter. The accountant and employer were listed as businesses to follow up in further FWO activities.

4.2 Mediation

Mediation is a free, simple, confidential and voluntary process conducted by an accredited impartial mediator.

Mediation gives parties the opportunity to discuss their workplace dispute with the help of an impartial mediator and find mutually acceptable solutions. Many requests for assistance we receive are suitable for mediation and most mediations lead to a resolution.

As a guide, mediation may be suitable where one or more of the following circumstances exists:

- there is a desire to preserve the existing employment relationship
- there is conflicting evidence (e.g. one person's word against that of another)
- there are issues about final entitlements (e.g. payment in lieu of notice and/or annual leave)
- the employer has withheld money or made deductions from wages
- there are allegations that an employee has taken property from their employer
- there is a classification dispute between employer and employee
- the employee and employer seek a quick solution to an issue.

Mediation is a practical process held over the telephone. It usually takes less than 90 minutes. The mediator takes a neutral stance while helping parties reach a settlement on the day of the mediation; the parties control the outcome. For more information visit the [mediation page](#) on our website (www.fairwork.gov.au/mediation).

CASE STUDY - Mediation

An apprentice came to the FWO requesting assistance. He advised he had not been paid penalty rates for work performed on weekends and that his third-year apprentice documents hadn't been completed.

The apprentice was engaged by the business when he was in the second and third year of his apprenticeship. Upon commencement, the employer advised he couldn't afford to pay weekend penalties. The apprentice agreed to work weekends at the ordinary rate of pay, knowing he would be paid less than the award, because he had found it difficult to find an employer willing to take him on.

The apprentice resigned and advised the business he was going to make a claim for underpayment of wages. In response, the business refused to sign off his apprenticeship paperwork, which resulted in the employee not being recognised as a tradesperson.

Given the issues in the dispute, a FWO mediation took place and a monetary settlement resulted. The employee had his apprenticeship signed off as part of the overall settlement. Throughout the process of dealing with the dispute through FWO, both parties received education about their respective workplace rights and obligations and were advised to take their respective rights and responsibilities seriously.

Documents released by the Fair Work Ombudsman under the Freedom of Information Act

4.3 Tailored small claims assistance

Sometimes a request for assistance involving a workplace dispute is assessed by the FWO as suitable for an employee to seek their own recovery of unpaid entitlements through purpose-built small claims courts.

Small claims applications have low fees and are dealt with in a less formal manner than other courts. The small claims process is a fast and efficient way of resolving certain types of workplace disputes and helps both parties resolve the issue, not just the person who filed the small claim.

When deciding whether to recommend the small claims process to an employee, we consider:

- the amount of money being claimed
- the seriousness of the allegations
- whether the money being claimed is related to a common law contract or an above award payment
- whether attempts at voluntary recovery (such as mediation) have been made
- whether evidence is being disputed or there are written records
- the employee's ability to follow the small claims process
- whether the employment period ended more than two years ago.

When we suggest the small claims process, we assist both parties (employees and employers) by directing them to tools and resources that explain the small claims process and help them calculate minimum employment entitlements. These resources are available on our website at www.fairwork.gov.au/smallclaims.

In some cases, where we have found that an employee is owed money, we assist them through the small claims process, for example by helping with the small claims application. The level of assistance offered is considered on a case-by-case basis. For example, we may give greater help to a person with low literacy skills or someone from a culturally and linguistically diverse background.

CASE STUDY - Small claims

The FWO conducted an investigation into an employee's claim of non-payment of overtime. The investigation resulted in a Fair Work Inspector issuing a findings letter, which advised that the employer should rectify the overtime underpayment, calculated to be \$2500.

The employer disputed the investigation findings based on his view that his employee, Prasad, was not directed to work the overtime hours, despite Prasad's timesheets being signed by his supervisor. There was conflicting evidence as to the supervisor's intent and the amount of money in dispute, so we recommended that a small claims process would be the best way to resolve the dispute.

Prasad used our free online small claims resources such as 'A step by step guide to applying for small claims' and videos to learn more about the small claims process.

He also asked for the FWO's assistance in commencing the small claims application. We helped him write a pre-claim letter to his employer stating his intention to file a matter in a small claims court. We also provided information about lodgement options - including which courts he could lodge with, how to complete the forms, how to present his written evidence (such as diary records and text messages), and how to file the court papers.

We also offered assistance to Prasad's employer, Brad, on how to defend a small claims application through our online small claims resources and a discussion of his options.

We encouraged Prasad and Brad to try and resolve the issues to avoid the court process. We also explained to both parties that they may be required to give verbal evidence in court about whether Prasad was directed to work extra hours.

The matter proceeded to a court hearing where both parties represented themselves without lawyers present, and gave documentary and testimonial evidence. The parties also cross-examined each other. The judge found Prasad's evidence to be more persuasive and ordered Brad to pay Prasad \$2500 within 30 days.

4.4 Investigations

One of the FWO's main roles is to promote compliance with Commonwealth workplace laws. Our compliance priorities are based on our intelligence and experience as well as stakeholder input.

Our investigations and inquiries are important ways we obtain evidence of non-compliance. We assess the seriousness of non-compliance by the potential impact it has on an individual, group or market. We may decide to conduct an investigation or inquiry where the available evidence suggests one or more of the following exists:

- exploitation of vulnerable workers (e.g. aged, young, overseas)
- concerns presenting within a high-risk sector
- significant public interest
- deliberate disregard for the law, or an order of a court or tribunal
- such widespread non-compliance that its impact is to distort a part of the labour market, disadvantaging compliant businesses (e.g. large-scale non-compliance that undermines a level playing field, supply chains and networks that distance the beneficiary of the labour from those directly engaging the workers)
- an opportunity to provide an educative or deterrent effect.

CASE STUDY – Promoting compliance

Lina spent the last five years building her business. In this time, she opened a number of cafes in Melbourne. Her rapid growth increased her business from two outlets in the inner east of Melbourne to running 15 sites in greater Melbourne. In the last two years, the FWO received information from a range of sources (members of the public, former and current workers, and community groups) that employees were not receiving their minimum entitlements. While a steady stream of information has been received, less than 10 formal requests for assistance had been submitted. Many of the workers at Lina's cafes appeared to be international students, reluctant to approach the FWO.

After reviewing the information and intelligence, the FWO decided to audit seven of Lina's sites without notice. When the FWO undertakes an activity like this, Fair Work Inspectors interview workers at the sites (with the aid of interpreters if needed) and evidence is obtained using the powers available to the FWO under the FW Act. The activity also involved interviewing Lina, her senior managers and her accountant. At the end of the compliance activity, the FWO published a report on the FWO's website about what the FWO discovered and any further action taken as a result of the activity.

In circumstances which involve serious non-compliance we may conduct an investigation.

An investigation is where a Fair Work Inspector considers allegations and gathers and examines evidence to determine if there have been breaches of Commonwealth workplace laws.

All investigations are impartial. We do not represent any party. The Fair Work Inspector will rely on the evidence available when making a decision.

During an investigation, we will always provide each party the opportunity to be heard. We also use discretion to decide on the best process or reach the best outcome for an investigation.

In an investigation, a Fair Work Inspector can use powers under the FW Act to visit workplaces, interview people and require records or documents to be provided.

1. Section 712A Notices

Where Fair Work Inspectors have been unable to obtain evidence or information using voluntary or other methods, the Fair Work Ombudsman and specified Senior Executive officers have the power under section 712A of the Fair Work Act to apply to the Administrative Appeals Tribunal to issue a FWO Notice to require a person to provide information, produce documents or attend and answer questions.

These powers recognise that compliance with Commonwealth workplace laws is a critical factor in the cultivation of productive, cooperative and harmonious workplaces. Significant penalties apply for failure to comply with a FWO Notice.

The FWO will only consider requesting the AAT to issue a FWO Notice if we reasonably believe a person:

- can give information relevant to an investigation
- can produce documents relevant to an investigation
- is capable of answering questions relevant to an investigation
- all other evidence gathering means have been exhausted or are not appropriate.

If a person receives a FWO Notice, it means we consider that person is capable of assisting and providing material relevant to an investigation.

More detailed information about the different types of these Notices, including:

- when and how we exercise these powers
- how to respond
- the examination process
- your rights and obligations

is set out in our [Guide to FWO Notices](#).

2. Expectations

During all and any investigations, we expect all parties (and anyone else involved) to:

- always tell us the truth
- fully disclose all relevant matters from the outset of the investigation
- provide us with relevant information as it comes to hand
- respond in a timely manner to our requests.

Penalties may be imposed by a court if a person provides a Fair Work Inspector with false information or hinders or obstructs an Inspector. In very serious cases, the FWO may refer such matters to the Commonwealth Director of Public Prosecutions for criminal prosecution.

The Fair Work Inspector handling the investigation will update the parties with developments at regular intervals.

The Fair Work Inspector will advise the parties in writing of investigation findings and include details of how the outcome was decided. The findings will be provided within seven working days of the Fair Work Inspector's decision.

We seek to be reasonable and proportionate when conducting investigations. The average duration of an investigation is four months.

Documents released by the Fair Work Ombudsman under the Freedom of Information Act

CASE STUDY – Investigation

Ishan's employees had taken unprotected industrial action and he was successful in obtaining an order from the Fair Work Commission that required the employees to return to work. The industrial action had caused his business significant economic loss.

The FWO was told that Ishan had paid his employees during the unprotected industrial action. This is not allowed under the FW Act, so we initiated an investigation.

Fair Work Inspectors issued Ishan with a Notice to Produce documents to adequately assess whether breaches of the FW Act had occurred and provide Fair Work Inspectors with evidence about whether payments had been made to employees. The investigation process also involved various steps including assessing information and records, and speaking with the employer and staff at the business.

Ishan told Fair Work Inspectors that because of the nature of the industrial action, it was hard for him to tell which employees had participated. The FWO found that Ishan's business had a history of responding to industrial action by requesting certain orders from the Fair Work Commission, but that the business itself did not have proper processes and systems in place to identify the people who took part in unprotected industrial action.

The FWO could see that Ishan's business was trying to respond appropriately to industrial action because of the cost of the stoppages to the business. It also wanted to ensure the business would not breach the law in the future.

Ishan formally agreed to introduce processes and systems to manage compliance with industrial action obligations, so that he would comply with the FW Act in future. The FWO was satisfied that Ishan was taking proactive measures to redress the breaches. If similar allegations against this business presented in the future, the FWO would take into consideration the outcomes of this investigation.

4.5 Proactive compliance campaigns

Campaigns help us check, improve and ensure ongoing compliance with Commonwealth workplace laws in a targeted way.

Campaigns are designed to test an employer's awareness of and compliance with Commonwealth workplace laws, willingness to respond to issues of concern, and commitment to future compliance.

Using intelligence and data received from the public as well as that acquired by Fair Work Inspectors, we identify issues and trends in industry sectors or regions that suggest we need to take a closer look to ensure compliance.

An important part of our campaigns is working with groups such as industry associations, employer representatives, unions and community groups so that we can tailor our campaigns to ensure the greatest impact and benefit to the community.

During a campaign, we explain the purposes of our monitoring activity to employers and employees through letters, phone calls, visits from our Fair Work Inspectors, social media, and our website.

By checking employee time and wage records, we are able to identify any issues of concern and begin working with the businesses to fix any problems.

Often we will recommend systems that could be put in place to ensure ongoing compliance. We may test future compliance by re-visiting these businesses and assessing whether our assistance had a positive impact and led to behavioural change. While our focus in a campaign is to educate and assist, we will take appropriate and proportionate enforcement action where we find employers have intentionally breached their obligations or have failed to make appropriate efforts to ensure ongoing compliance after interacting with us.

Following each campaign, we release a report outlining the findings and detail any particular insights or trends as well as planned future activities. These reports are published on our website.

CASE STUDY - Campaign

After analysing information and intelligence we had received from customers as well as previous compliance activities, the FWO became concerned about non-compliance in a number of restaurant businesses located in an inner suburb of Sydney. The area was known for 'cheap eats', with a large university nearby doubling as both a customer base and a pool of young workers (many of them visa holders).

The FWO designed a campaign to test compliance in most restaurants in the area. A team of Fair Work Inspectors visited businesses in the area over two days, speaking with employers and employees in around 100 businesses, gathering information, evidence and testing the intelligence we had received.

In monitoring the businesses, Fair Work Inspectors audited the pay rates and record-keeping practices in each business and provided advice to help employers achieve or maintain compliance. Where employers were not paying staff correctly, Inspectors ensured that they corrected their practices and back paid employees, using Compliance Notices, where appropriate. Where employers were not meeting their pay slip and record-keeping obligations, Inspectors considered each case and issued Infringement Notices, where appropriate. Where there was significant non-compliance, the FWO commenced investigations and undertook an assessment as to whether stronger enforcement action was required.

The campaign provided a useful insight into the issues facing employees and employers in this industry. The FWO's concerns regarding the area were validated in the findings, and the activity provided further intelligence and data to inform future activities in this sector.

Documents released by the Fair Work Ombudsman under the Freedom of Information Act

4.6 Proactive Inquiries

There are two types of inquiries at the FWO:

3. Inquiries

Sometimes we receive information from the media or the community which suggests non-compliance. We often decide to inquire initially into the matter rather than commence an investigation. In doing so, we encourage all parties involved to speak with us and provide information that supports their point of view. Our focus is on helping the parties, where possible, to comply with the law and resolve the matter quickly and informally.

During such an inquiry, we may ask parties to provide evidence such as time and wage records, or other documents. Where an inquiry identifies suspected deliberate or repeated breaches of Commonwealth workplace laws, the matter will be referred for investigation. Where evidence is disputed, parties may be encouraged to resolve the matter through a small claims process.

4. Comprehensive inquiries

In other situations, where we believe that the information we have received from the media or community warrants detailed research, we may decide to conduct a comprehensive inquiry. This type of inquiry reviews allegations of serious non-compliance with Commonwealth workplace laws by looking at information about what has happened or is happening in a particular industry, sector, supply chain or service network.

This form of inquiry is a more in-depth compliance activity, which enables us to better understand the working environment, business relationships and market conditions so that we can coordinate our approach to ensure we both identify and address any factors causing the non-compliance.

After we have conducted the various compliance activities involved in an inquiry, it is not uncommon for enforcement action to commence against a number of parties involved in the review. We use the findings of the inquiry to assist us to decide what needs to be done next to ensure future compliance. To promote deterrence, we publish the findings from this type of large-scale and thorough inquiry on our website.

CASE STUDY – Inquiry

The FWO launched an in-depth Inquiry into the cleaning services procured by 4 and 5 star Hotels following a significant increase in the number of requests for assistance received from hotel housekeepers alleging they were employees, not independent contractors.

Applying a holistic 'multi factor' test, the Inquiry examined a sample of contract cleaning companies engaged by 4 and 5 star Hotels to assess whether the workers were classified correctly as either employees or independent contractors.

The Inquiry included unannounced visits by Fair Work Inspectors to several major hotels, interviewing housekeepers, issuing Notices to Produce documents on various businesses in the labour supply chain, assessing contracts and interviewing procurement managers.

At two of the hotel groups, the Inquiry found evidence indicating the housekeepers had been misclassified as independent contractors when they were in fact employees. The cleaners were predominantly international students on visas working solely for a particular hotel with no autonomy in their day-to-day work. They were receiving a flat rate of pay and having to pay for the cost of chemicals, uniforms and administration fees. Consequently, these workers were denied applicable penalty rates, regular patterns of work and leave entitlements available to employees under the FW Act.

In our Findings Report, we recommended a range of compliance and enforcement outcomes against the respective hotel brands. In the case of one hotel group, our intervention through an Enforceable Undertaking resulted in the repayment of nearly \$2 million to housekeepers.

The report also recommended steps on how the hotel sector can improve compliance through better management of their procurement practices, ensuring principal contractors and sub-contractors comply with the law. These recommendations included actions the FWO will take in collaboration with relevant businesses and industry organisations.

The range of outcomes

5.1 Compliance outcomes with FWO

Due to the spectrum of issues dealt with at the FWO, we use a range of tools based on the individual circumstances of the matter to encourage compliance. Our compliance tools increase in seriousness and penalty depending on the risks to the community and the need for compliance. The tools we employ are outlined below.

1. Findings letter

A findings letter is sent to the parties at the end of an investigation. It sets out what we found from the evidence gathered and it tells each party what they need to do next, and what actions (if any) we intend to take.

For instance, we may find there was no evidence or insufficient evidence of any breaches. At other times, we may find breaches and will ask the party to fix these (e.g. by back paying an employee).

CASE STUDY – Findings letter

Pauline, a part-time employee, had worked for a coffee shop for over 12-months. Pauline asked us for help because she received less than the award pay rate and was not paid more for working on the weekend.

A Fair Work Inspector investigated the matter, gathering evidence including documents and statements from Pauline, her employer Chris, and a witness. The Fair Work Inspector assessed the evidence and found a number of breaches. The Fair Work Inspector sent a findings letter to Chris and Pauline.

The findings letter detailed the award obligations for minimum pay rates as well as the penalty rates applicable for weekend and evening work. The findings letter also explained the website tools that could help Chris to pay staff correctly and outlined that Chris needed to back pay Pauline \$850 to rectify the underpayment. If Chris ignored the findings letter, the FWO would seek to take further compliance action.

2. Formal caution

A formal caution is a written warning given to a party when we have found breaches and are putting them on notice that future breaches could result in us pursuing enforcement action.

A formal caution is typically used to make it clear to a party that its future activities will be closely monitored.

In the future, if further non-compliance is identified, the fact that the party was previously issued with a formal caution is a factor we will consider in deciding whether it is in the public interest to commence civil proceedings in respect of those further breaches, and if so, whether to apply to the court for a serious contravention.

CASE STUDY – Formal caution

Peng worked in sales for five months but did not receive a regular income during that time. Peng worked on commission and told the FWO that he received on average less than \$10 per hour over that time.

Peng's employer, Bertrand was initially hostile with the FWO officers who contacted him to let him know that a request for assistance had been received by the agency. The FWO commenced an investigation.

During the investigation, Bertrand confirmed that Peng only deserved to be paid when he made sales. The FWO explained to Bertrand that he had breached both the award and the FW Act, and failed to provide many of Peng's entitlements including wages, allowances and annual leave.

The employer disputed the findings. After several meetings at the FWO's offices with his accountant, the employer agreed to pay the entitlements owing to Peng. Due to the significant breaches, the FWO gave Bertrand a formal caution, advising him that if the FWO identified further non-compliance in the future, the formal caution would be a factor we would consider in deciding whether to initiate litigation or take other enforcement action against him.

3. Compliance partnerships

The FWO is keen to identify and work with major employers, brand owners and holding companies that want to build a culture of compliance in their workplaces by entering into formal compliance partnerships with us.

Formal compliance partnerships give employers, brand owners, holding companies, and importantly their staff, greater confidence that their systems and processes are working effectively and are helping to promote compliance.

Their public commitment to compliance is also a competitive advantage that helps attract talent, instil confidence in customers and appeal to organisations in their supply chain or service network. For example, compliance partnerships provide an opportunity for franchise operators and head contractors to work with franchisees and sub-contractors to drive workplace improvements throughout their supply chain or service network.

Compliance partnerships may take different forms depending upon the scale and maturity of the business. It is usual for compliance partnerships to contain the following expectations:

- self-audits (including third-party validations)
- the monitoring of contractors and franchisees
- effective dispute resolution processes
- regular and frequent workplace relations training for key managers and staff.

Compliance partnerships provide businesses with an opportunity to work closely with the FWO to ensure compliance with Commonwealth workplace laws is sustainable. The FWO offers participating businesses support, advice and assistance that promotes compliance.

To ensure transparency and accountability, and in order to inform greater awareness of workplace rights and obligations, the FWO publishes reports on the status and outcomes of all its compliance partnerships. Names of enterprises, entities or brands that have entered into a compliance partnership with the FWO can be found on our website: www.fairwork.gov.au/about-us/our-role/enforcing-the-legislation/proactive-compliance-deeds

CASE STUDY – Compliance partnership

Franchisor Pty Ltd had implemented a number of measures to improve compliance across its network, including introducing better systems and processes to assist franchisees. They approached the FWO to enter a formal compliance partnership to further enhance this work and to demonstrate its commitment to its franchisees, workers and customers.

Meeting with Franchisor Pty Ltd, we discussed a number of options that would promote compliance throughout its network and meet the specific business needs of the franchise, such as:

- committing more resources to a worker enquiry line available to both direct employees and employees of franchisees
- enhancing its business systems and processes to enable greater visibility of franchisee activity
- conducting self-audits of employee entitlements of direct employees
- facilitating self-audits of employee entitlements of a sample group of franchisees
- resolving requests for assistance received by us in the first instance and then reporting the outcome to us within a certain time period
- reporting annually on the status of the outcomes of the compliance partnership.

Having secured agreement on the terms of the partnership, a Proactive Compliance Deed was jointly signed by Franchisor Pty Ltd and the FWO, and the Partnership was publicly announced.

After six months, Franchisor Pty Ltd and its franchisees reported to us that they were finding it much easier to comply with their workplace obligations because of the compliance partnership, and were pleased with the positive impact it had had on their staff and the brand's image with their customers.

5.2 Enforcement outcomes under the FW Act

An enforcement outcome is where we decide that formal action under the FW Act is the appropriate response to breaches we have found.

There are four enforcement outcomes available to us. The FW Act sets out the legal requirements for each enforcement outcome, as well as time limits and the courts' powers to make orders and impose financial penalties.

1. Infringement Notice

An Infringement Notice is a fine given for breaching the record-keeping or pay slip requirements of the FW Act and the Regulations.

The FWO may issue Infringement Notices up to 12 months after the breach occurred.

We have discretion over whether to issue an Infringement Notice or not, and what amount the fine should be (up to the legal maximum). We consider these factors in determining the amount of the fine:

- whether the breach obstructs a Fair Work Inspector's ability to find or calculate underpayments
- whether the breach meant that an employee did not have the information needed to recover entitlements
- whether the employer has a history of breaching time and wage record-keeping or pay slip requirements
- the number of people affected by the breach
- whether the breach was deliberate to avoid obligations under workplace laws
- whether the breach resulted in other significant consequences, for example an employee being unable to secure a loan due to lack of pay records.

Currently the maximum fines available under an Infringement Notice for each breach of a record-keeping or pay slip obligation are:

- \$1260 for an individual or \$6300 for a body corporate for breaches of the FW Act
- \$420 for an individual or \$2100 for a body corporate for breaches of the Regulations.

If an employer has been issued an Infringement Notice, but thinks a mistake has occurred and they have not breached record-keeping or pay slip obligations, the person can make an application to us to have the Infringement Notice reconsidered and withdrawn.

CASE STUDY - Infringement Notice

Valentina worked for a company as a full-time administrative assistant. She was concerned that her pay had not increased after she turned 18. She thought she was still being paid the 17-year old rate, but she could not be sure as her employer Karl had not given her pay slips for seven months. She also worked some overtime, but was not always paid for this.

Valentina sought our assistance, and we found that Karl had not paid Valentina the correct entitlements. Karl paid Valentina the money owing and agreed he had overlooked her award increase when she turned 18.

We gave Karl's company two Infringement Notices for \$2100 each (one third of the maximum amount). This amount was settled on because Karl did not have a history of non-compliance. The first Infringement Notice was because Karl failed to keep proper records of Valentina's overtime hours, which may have caused Valentina to miss out on some entitlements. The second Infringement Notice was for failing to give Valentina pay slips, which meant she could not be sure of the gross wages or overtime paid to her each week.

These breaches of the FW Act by Karl's company resulted in total fines of \$4200 to be paid within 28 days. We also gave Karl information and templates to help him comply with his pay slip and record-keeping obligations in the future.

As Karl now understands his obligations under Commonwealth workplace laws, the FWO would consider a more serious intervention should Karl breach these provisions again.

2. Compliance Notice

A Compliance Notice is a legally-binding written notice that requires a person to do certain things to fix breaches of the FW Act.

A Compliance Notice can be used where a Fair Work Inspector reasonably believes that a person has breached a term of the National Employment Standards, a modern award, enterprise agreement or other instrument that specifies wage rates and entitlements.

We typically issue Compliance Notices where an employer has either not agreed to, or we reasonably suspect the employer will not, rectify an alleged breach. A person who has received a Compliance Notice may seek a review through the courts.

The decision to issue a Compliance Notice is not taken lightly, as a person's failure to do what the Compliance Notice requires in the time stated may result in us deciding to start legal proceedings against them. We can take action for both the original breaches and the failure to comply with the Compliance Notice. A failure to comply can result in significant financial penalties of up to \$31 500 for a company and \$6300 for an individual.

When considering whether to issue a Compliance Notice, a Fair Work Inspector will consider:

- the nature and extent of the breaches
- the level of cooperation from the employer
- whether the Compliance Notice will achieve a better and/or faster outcome such as to bring about a cost effective and quick resolution to recover underpayments owed to individuals.

CASE STUDY - Compliance Notice

A Fair Work Inspector investigated a matter involving Moshe, a 19-year-old working in a childcare centre. The investigation found that the employer, Kids R Us, had underpaid Moshe \$2300 in wages over a six-month period and failed to pay annual leave on termination.

Stella, the sole director of Kids R Us, told the Inspector that she would not back pay this amount, as Moshe had not been a hard worker and she did not deserve any more money. The Inspector advised Stella that Kids R Us was legally required to make the payment. Further, the Inspector explained that issues with Moshe's performance needed to be addressed during her employment and were not a reason to pay less than the legal minimum rate of pay. Kids R Us still refused to pay the money owing.

The Inspector issued a Compliance Notice to Kids R Us which outlined the requirement to make the payment within a set timeframe. The Fair Work Inspector advised Stella that if Kids R Us did not make the payment by the due date, it might face penalties in a court.

Kids R Us didn't pay the amount by the due date and continued to refuse to make the payment. The FWO brought proceedings against Kids R Us, alleging failure to comply with the Compliance Notice.

The court found that Kids R Us had failed to comply with the Compliance Notice and imposed a penalty of \$26 500; well in excess of the underpayment to Moshe.

3. Enforceable Undertaking

When we reasonably believe that someone has breached the FW Act, the breach is serious and the person acknowledges this, accepts responsibility and agrees to fix the harm, we can accept a written undertaking from the person.

Enforceable Undertakings are made in a legally binding document, which is published on our website. Importantly, if the terms of an Enforceable Undertaking are not complied with, we can take legal action in a court to enforce them, as well as seek other orders the court considers appropriate.

The key difference between an Enforceable Undertaking and a Compliance Notice is that an Enforceable Undertaking involves not only the payment of all monies owed to workers (for instance), but also admission of wrongdoing and demonstration of contrition from the party who has breached the law. In addition, an Enforceable Undertaking covers a broader range of conduct and broader remedies.

Enforceable Undertakings typically operate for a period of between two to five years and often include terms about fixing loss or damage caused (e.g. by paying compensation or back pay to employees). They are also 'forward looking' and deal with future compliance and what the person will do in the future to prevent more breaches, such as workplace law training sessions for senior managers. Enforceable Undertakings often require people to report to FWO on their compliance at specific times or when a particular action is undertaken (such as when they complete a self-audit).

We may offer a person the option to enter into an Enforceable Undertaking as an alternative to us starting legal proceedings. We also consider offering Enforceable Undertakings to persons who have approached us with admissions that they have breached the law and are committed to 'righting the wrongs' of the past.

When deciding whether to enter into an Enforceable Undertaking, we consider:

- the nature, extent and seriousness of the breaches
- the prior compliance history of the person
- whether the person admits the breaches and what they propose to do to fix or prevent further breaches, beyond simply committing to comply with minimum standards in the future
- the attitude of the party (e.g. whether they are cooperative)
- whether the undertakings are relevant to the breaches and will achieve positive outcomes for employees and/or the community
- whether a Compliance Notice would be better suited to the circumstances (if, for instance, it is suspected the party is not genuine about changing their behaviour)

- whether an undertaking would be a superior outcome compared to litigation in the circumstances, including whether it brings specific and general deterrence and promotes compliance with the FW Act. As an example, the broad range of remedies available under an Enforceable Undertaking could result in a broader range of outcomes including back payment to affected workers, a public apology, ongoing training, development and auditing, a monetary donation to an organisation, etc. These remedies can occur within shorter timeframes than can be anticipated throughout court processes, keeping the costs lower for all concerned, while bringing about specific and general deterrence.

CASE STUDY - Enforceable Undertaking

In running his business, Ricardo had ignored the pay rate increases in the last three annual wage reviews and consequently underpaid his employees a total of \$70 000. Ricardo had also failed to pay a number of allowances and other entitlements to his workers.

During the course of the investigation, Ricardo's staff advised the FWO that the business appeared to be facing some financial pressures. Ricardo explained that he had tried to resolve these matters, but that his cash-flow issues had contributed to the wage underpayments. He had been open with his staff about the financial problems and was apologetic about his inability to pay his staff their minimum entitlements.

In consideration of the severity of the underpayments, the FWO decided to enter into an Enforceable Undertaking with Ricardo, who had no compliance history with the FWO and was willing to rectify the breaches identified and back pay staff. The Enforceable Undertaking included:

- making full back payments to all employees involved
- apologising to his employees as well as issuing a public apology
- setting up a My account on fairwork.gov.au to ensure he was alerted to all future wage rises and implemented them
- undertaking a third-party approved self-audit for a three-week period each August for three years to prove annual wage reviews had been observed and that the workers were receiving their correct entitlements
- delivering workplace relations training to all managers and team leaders.

Ricardo's actions were made public on our website through the terms of the Enforceable Undertaking. The outcomes provided an array of proactive measures and allowed back payment to be made to underpaid staff quickly and without the need for a lengthy court process.

4. Litigation

In the most serious instances of non-compliance, we take cases to court to enforce the law or seek a penalty. We call these court cases litigations.

Detailed information about how we make decisions to start litigation is set out in our [Litigation Policy](#).

Publicising compliance and enforcement

As set out in our [Media policy](#), we publish information regarding our compliance activities and enforcement outcomes on our website. This forms an important part of our role in ensuring compliance with Commonwealth workplace laws by:

- enhancing general and specific deterrence
- informing and educating the community, or people in the same and similar industries, of the nature and outcome of enforcement activities.

Information we publish will be fair, accurate and timely. We may decide to publish information on our website, by media statements or through social media interventions. Our information is often contained in reports, presentations or other educative material which we promote in order to raise awareness of the importance of understanding and complying with Commonwealth workplace laws.

In deciding whether to comment publicly on compliance activities and in what form, we consider a range of factors such as the nature of the matter, who the statement is likely to impact and how it furthers the FWO's objectives.

At all times we:

- consider the likely and possible risk and consequences of making or not making a public comment
- weigh up the public interest, deterrence and risks associated with both making or not making a statement.

Any public comment regarding compliance activities that are underway are carefully made to protect the integrity of the compliance activity. Where the FWO does confirm the existence of a compliance activity, it does not mean that an adverse finding will be necessarily made.

In litigation matters, the FWO may publicise the decision to commence proceedings, the lodgement of court documents, milestones during proceedings, directions hearings, and/or decisions (whether there are financial penalties, other orders or neither).

We will publish information if we believe that publicising any or all of these stages will support compliance with Commonwealth workplace laws.

The FWO publishes this information for two reasons:

- visibility of our enforcement activity sends a powerful message of deterrence to others and promotes compliance, and
- clarification of the law and the level of penalties that certain breaches can incur may help people understand the seriousness of breaking the law.

Working with other government regulators

The FWO is not always the agency best placed to deal with an issue. For example, a number of authorities specialise in handling superannuation, health and safety, unfair dismissal, visa issues and bullying.

We want to help our customers and so where we believe another agency can provide greater assistance, we will refer the issue as early as possible.

We may share information with other government agencies or departments where authorised by the FW Act. For example, we may share information where disclosure is necessary, appropriate, or likely to assist administration or enforcement of a law of the Commonwealth, a State or a Territory.

Examples of agencies we may share information and work with on various activities include the Australian Building and Construction Commission, the Australian Competition and Consumer Commission, Australian Securities and Investments Commission, the Australian Taxation Office and the Department of Home Affairs.

In addition to receiving information from these government agencies at times, which assists us to do our work, we participate in joint education and compliance activities to monitor and influence compliance through different laws.

Feedback

We encourage feedback about your experience with us and invite people to contact us at

www.fairwork.gov.au/feedback.

If a person requests a review of our actions and is not satisfied with the result of our review, they can contact the Commonwealth Ombudsman on 1300 362 072, or at www.ombudsman.gov.au.



Fair Work
OMBUDSMAN

Compliance and Enforcement Policy

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Documents released by the Fair Work Ombudsman under the Freedom of Information Act

The Fair Work Ombudsman (FWO) is an independent statutory agency created by the *Fair Work Act 2009* (the FW Act). The role of the FWO is to promote harmonious, productive and cooperative workplace relations; and to monitor, inquire into, investigate, and enforce compliance with relevant Commonwealth workplace laws.

This policy explains how we seek to ensure compliance with Commonwealth workplace laws. By Commonwealth workplace laws, we mean the FW Act, its regulations and the awards and agreements that set wages and conditions for Australian workplaces.

Principles

The FWO wants to promote a culture of compliance by equipping workers and businesses in Australia with the information and support they need to make good choices in their workplaces, and be compliant with Commonwealth workplace laws.

Our work is guided by the following principles:

Principles	We:
Clear and effective communication	<ul style="list-style-type: none"> ■ listen to the workplace concerns of workers and businesses ■ provide information and advice that is easy to access, understand and apply
Professional customer service	<ul style="list-style-type: none"> ■ deliver a relevant and professional experience in every customer interaction ■ offer multiple ways to connect with us ■ provide practical advice and assistance that is timely, professional and impartial ■ ensure the security of our customers' personal details in line with privacy laws
Consistency	<ul style="list-style-type: none"> ■ give practical advice which can be relied upon ■ ensure a level playing field where the same rules apply to everyone ■ apply the same assessment principles to each request for assistance ■ consider the same range of factors when deciding how to assist
Risk-based and proportionate	<ul style="list-style-type: none"> ■ focus our compliance and enforcement efforts where there is serious non-compliance and where we can deliver the greatest benefit

	<ul style="list-style-type: none"> ■ consider risk in terms of potential impact on the community, as well as the relative risk of exploitation that individuals face ■ encourage and empower employees and employers to resolve issues in their workplace, where appropriate ■ offer a range of dispute resolution tools and resources
Open and transparent	<ul style="list-style-type: none"> ■ remain neutral and impartial ■ give parties (to a dispute) the right to review all our decisions ■ publish information on our compliance and enforcement activities in a format that is fair, clear, understandable and accessible
Collaborative	<ul style="list-style-type: none"> ■ build relationships with stakeholders and the community based on trust and respect ■ work with customers to find solutions to workplace issues and opportunities to collaborate ■ harness intelligence and insight from a range of sources including other government agencies to inform our compliance and enforcement activities
Continuous improvement	<ul style="list-style-type: none"> ■ listen and respond to the community's expectations of us ■ measure the impact of our interactions with customers and use this information to improve our work ■ seek feedback on our processes, policies and practices and make changes to improve them ■ adopt leading technologies to ensure our services are more efficient and effective
Affect cultural change	<ul style="list-style-type: none"> ■ work with business, unions, community groups and other government agencies to develop solutions which address structural and behavioural drivers of non-compliance in certain industries and sectors ■ focus our efforts on supporting productivity by preventing workplace disputes ■ inform the public regularly and frequently on the importance of understanding workplace rights and obligations ■ share the stories of businesses dedicated to building compliant, productive and inclusive workplaces

How the FWO advises, supports and educates

The FWO encourages people to access our online tools and resources to increase their understanding of workplaces laws, find answers, and conduct open and constructive conversations in the workplace. For most people, a better understanding of workplace rights and obligations means that they can resolve issues at the workplace level without formal intervention from us. We have a suite of online tools and resources, with a range of in-language resources, that support this work, including:

- A [Pay and Conditions Tool \(PACT\)](#), which calculates pay rates, penalty rates and allowances, leave, notice of termination and redundancy.
- A '[Record My Hours](#)' app which can be downloaded to a mobile phone, allowing the user to keep an accurate record of their working hours as well as other information about their employment.
- A web translator function that offers automatic in-language content in 40 languages and translated resources and videos in the top 16 priority languages.
- [My account](#), which allows users to save, tailored information and submit online enquiries and receive responses (on matters such as pay rates and conditions of employment) directly to their individual account. Users can log into their personalised My account and view their saved information at any time. Users can also submit individual enquiries and receive tailored responses based on their circumstances. [Webchat](#) is also available for registered My account users, seeking quick answers, advice or guidance.
- An [anonymous reporting tool](#) that enables the public to report concerns about workplace issues anonymously. The tool is available in multiple languages, allowing customers to report workplace issues to the FWO in their language with the knowledge that their identity will not be disclosed.
- An [online learning centre](#) that has video-based interactive courses to teach businesses and workers skills and strategies to help them at work.
- [Fact sheets](#) about the minimum rights and obligations of businesses and workers, including information on the National Employment Standards, record-keeping and pay slips.
- [Best practice guides](#) to help small to medium-sized businesses with implementing best practice workplace policies and procedures.
- [Templates](#) that simplify the requirements for keeping employment records.
- A [telephone translator service](#) operated by the Translating and Interpreting Service on 131 450.

CASE STUDY – Self-help tools

Ally is a small business owner and she recently signed up to FWO's My account service to save information on the award conditions of employees. Having this tailored information saved on her My account means that Ally can easily access relevant resources when she needs them.

When one of her employees queried their rate of pay on a public holiday and their uniform allowance, Ally logged into her My account to check the provisions under the award. After reading the information and using the FWO's Pay and Conditions Tool, Ally believed she was paying the correct entitlements but wanted to check her understanding with an expert. As she was busy during business hours, Ally lodged an online query through her My account later that night to clarify her understanding of the applicable pay rates and allowances.

After receiving and assessing the enquiry the next day, a FWO officer responded to Ally via My account and confirmed the penalty rates applicable for public holidays and the circumstances when a uniform allowance would be paid. Ally had been paying the correct penalty rates on the public holidays, and the employee wasn't entitled to a uniform allowance. The officer saved the relevant information about the entitlements for Ally so she could feel confident that she was paying the correct entitlements. The officer also linked to some educational resources from the FWO's Online Learning Centre to help Ally feel confident in approaching the discussion of these issues with her employee.

When the employee disagreed with the information during their meeting, Ally logged onto her My account and they went through the information together, including using the Pay and Conditions Tool. They printed the pay rates and pinned them on the noticeboard so that all employees were aware of the minimum rates of pay.

How the FWO assesses the information we receive

The FWO receives many requests for assistance from workers who have a dispute about their wages or other issues with their employer. We describe the worker and the business in these cases as 'the parties' to the request for assistance.

One of our key functions is to respond to people who are directly seeking information and help, and this policy explains how those requests for assistance are treated.

We also initiate our own activities, such as campaigns and inquiries. These activities are based on information that comes to us from a range of sources - including intelligence, anonymous tip offs, research and requests for assistance.

Our priorities are determined by analysing all of this information and directing our resources to where they are most needed and where they will have the most positive impact.

3.1 Assessment

When the FWO receives a request for assistance or we are alerted to a possible workplace dispute, experienced officers assess the situation to decide how we can best help.

We understand that not everyone or every situation needs the same type of assistance. We provide tailored assistance based on an individual's circumstances, the issues at the workplace and the situation more generally.

3.2 What the FWO considers

In deciding how we will act, the FWO considers the seriousness of the alleged conduct and the circumstances of the parties, as well as the practical issues involved in resolving the matter. There are a range of factors we consider including:

- the public interest (whether the community would expect us to get involved)
- FWO priorities based on our intelligence and experience, as well as stakeholder input
- whether a party is facing significant barriers to resolving the matter themselves (for example, low levels of literacy or comprehension)
- the size of the business and extent to which it sought advice from appropriate experts
- whether a party has had previous issues with compliance
- whether any alleged breach of Commonwealth workplace laws appears to be deliberate

- the nature and reliability of information available to support a finding or view that a breach has occurred
- confidentiality (where the employee has requested our assistance, but does not want to tell us the business the issue relates to)
- whether the parties have made reasonable attempts to resolve the matter
- in the case of alleged breaches of monetary entitlements, the amount of any underpayment
- whether there has been a failure to provide minimum entitlements as opposed to a failure to provide conditions above minimum award entitlements (we give priority to minimum entitlements, that is, entitlements set out in the FW Act, a Modern Award or Enterprise Agreement)
- whether the employment relationship is ongoing, or how long ago the employment ended (the age of the matter may be relevant to whether we take action).

3.3 Action the FWO is likely to take

Where a request for assistance concerns wages or conditions, and there is a willingness to address the issue, we help the parties resolve the issue quickly and informally.

In most cases, we have found that the issue can be resolved by the parties with some help from us. We want parties to resolve these matters with minimal expense, time and stress. A formal investigation is generally not the best approach in these cases. Rather, we help the parties work through their issues together.

Where appropriate, this informal approach may include assisting the worker who is a party to a request to understand how Commonwealth workplace laws apply to their situation and how they may be able to resolve the issue with their employer.

Where this approach is not successful or appropriate, as an impartial agency, we may look to contact both parties to the request, understand each side's view and provide a range of advice and services in an effort to achieve a resolution.

Similarly, when we receive information from the community, we may record, review and use that information to design and deliver future education and compliance activities. Information from the community is an invaluable means of gaining a better understanding of an industry or market.

If it appears that deliberate or systemic non-compliance has occurred, we may carry out a formal investigation or inquiry.

A request for assistance about a workplace dispute usually results in us taking one or more of the following actions:

- using the information provided in future education and compliance activities
- giving tailored advice to help parties deal with the matter and get a better understanding of Commonwealth workplace laws
- helping people to resolve an issue quickly and informally in the workplace by providing access to employment tools and resources
- assisting an employee to take their own action (such as through a small claims court)
- referring the information to another government agency (such as the Australian Taxation Office) because it is relevant to their work or they are better positioned to take action
- conducting an inquiry
- offering mediation
- conducting an investigation
- placing parties on notice about our concerns and the possibility of future action if the conduct continues or happens again
- determining that there is no action required at this time.

In all cases the information given to us is important, and helps us to determine our current and future activities.

How the FWO intervenes

4.1 Early intervention

Most matters can be resolved through assisted dispute resolution services and our 'early intervention' approach.

The FWO receives a large number of requests for assistance from employees and employers who have a concern about their workplace. In these situations, we find if we get involved early, we can help the parties resolve issues at the workplace level. We encourage and empower employees and employers to resolve issues directly in their workplace where possible.

CASE STUDY – Early intervention

Jenny, a casual truck driver, approached the FWO for assistance because she thought she was not getting paid correctly. A FWO officer helped Jenny to work out her minimum pay rates under the relevant award. The FWO officer then helped Jenny to write a letter to her employer setting out her minimum pay rates, so that Jenny could explain that she believed had been underpaid and wanted this issue to be resolved. This is a first step often recommended by the FWO after getting a request for assistance like Jenny's.

Jenny shared the information with three other colleagues who also contacted the FWO to seek assistance. The FWO officer contacted the employer, providing advice about the relevant award provisions and assistance in using our online Pay and Conditions Tool to calculate the applicable shift rates for casual employees.

The employer didn't agree with the advice provided and said he would be seeking assistance from his accountant. The accountant contacted the FWO officer and confirmed that he had provided incorrect advice to his client, which led to the underpayments. After several conversations, the accountant and the employer engaged with the employees and resolved their concerns by calculating and back paying the underpayments and rectifying the minimum rates of pay via an agreed payment plan. The FWO officer showed the accountant other educational resources to assist in preventing issues in the future or with other clients, and advised the accountant to review any similar advice provided to other clients.

The FWO officer also encouraged the accountant to sign up to FWO's employer newsletter. The accountant and employer were listed as businesses to follow up in further FWO activities.

4.2 Mediation

Mediation is a free, simple, confidential and voluntary process conducted by an accredited impartial mediator.

Mediation gives parties the opportunity to discuss their workplace dispute with the help of an impartial mediator and find mutually acceptable solutions. Many requests for assistance we receive are suitable for mediation and most mediations lead to a resolution.

As a guide, mediation may be suitable where one or more of the following circumstances exists:

- there is a desire to preserve the existing employment relationship
- there is conflicting evidence (e.g. one person's word against that of another)
- there are issues about final entitlements (e.g. payment in lieu of notice and/or annual leave)
- the employer has withheld money or made deductions from wages
- there are allegations that an employee has taken property from their employer
- there is a classification dispute between employer and employee
- the employee and employer seek a quick solution to an issue.

Mediation is a practical process held over the telephone. It usually takes less than 90 minutes. The mediator takes a neutral stance while helping parties reach a settlement on the day of the mediation; the parties control the outcome. For more information visit the [mediation page](#) on our website (www.fairwork.gov.au/mediation).

CASE STUDY - Mediation

An apprentice came to the FWO requesting assistance. He advised he had not been paid penalty rates for work performed on weekends and that his third-year apprentice documents hadn't been completed.

The apprentice was engaged by the business when he was in the second and third year of his apprenticeship. Upon commencement, the employer advised he couldn't afford to pay weekend penalties. The apprentice agreed to work weekends at the ordinary rate of pay, knowing he would be paid less than the award, because he had found it difficult to find an employer willing to take him on.

The apprentice resigned and advised the business he was going to make a claim for underpayment of wages. In response, the business refused to sign off his apprenticeship paperwork, which resulted in the employee not being recognised as a tradesperson.

Given the issues in the dispute, a FWO mediation took place and a monetary settlement resulted. The employee had his apprenticeship signed off as part of the overall settlement. Throughout the process of dealing with the dispute through FWO, both parties received education about their respective workplace rights and obligations and were advised to take their respective rights and responsibilities seriously.

Documents released by the Fair Work Ombudsman under the Freedom of Information Act

4.3 Tailored small claims assistance

Sometimes a request for assistance involving a workplace dispute is assessed by the FWO as suitable for an employee to seek their own recovery of unpaid entitlements through purpose-built small claims courts.

Small claims applications have low fees and are dealt with in a less formal manner than other courts. The small claims process is a fast and efficient way of resolving certain types of workplace disputes and helps both parties resolve the issue, not just the person who filed the small claim.

When deciding whether to recommend the small claims process to an employee, we consider:

- the amount of money being claimed
- the seriousness of the allegations
- whether the money being claimed is related to a common law contract or an above award payment
- whether attempts at voluntary recovery (such as mediation) have been made
- whether evidence is being disputed or there are written records
- the employee's ability to follow the small claims process
- whether the employment period ended more than two years ago.

When we suggest the small claims process, we assist both parties (employees and employers) by directing them to tools and resources that explain the small claims process and help them calculate minimum employment entitlements. These resources are available on our website at www.fairwork.gov.au/smallclaims.

In some cases, where we have found that an employee is owed money, we assist them through the small claims process, for example by helping with the small claims application. The level of assistance offered is considered on a case-by-case basis. For example, we may give greater help to a person with low literacy skills or someone from a culturally and linguistically diverse background.

CASE STUDY - Small claims

The FWO conducted an investigation into an employee's claim of non-payment of overtime. The investigation resulted in a Fair Work Inspector issuing a findings letter, which advised that the employer should rectify the overtime underpayment, calculated to be \$2500.

The employer disputed the investigation findings based on his view that his employee, Prasad, was not directed to work the overtime hours, despite Prasad's timesheets being signed by his supervisor. There was conflicting evidence as to the supervisor's intent and the amount of money in dispute, so we recommended that a small claims process would be the best way to resolve the dispute.

Prasad used our free online small claims resources such as 'A step by step guide to applying for small claims' and videos to learn more about the small claims process.

He also asked for the FWO's assistance in commencing the small claims application. We helped him write a pre-claim letter to his employer stating his intention to file a matter in a small claims court. We also provided information about lodgement options - including which courts he could lodge with, how to complete the forms, how to present his written evidence (such as diary records and text messages), and how to file the court papers.

We also offered assistance to Prasad's employer, Brad, on how to defend a small claims application through our online small claims resources and a discussion of his options.

We encouraged Prasad and Brad to try and resolve the issues to avoid the court process. We also explained to both parties that they may be required to give verbal evidence in court about whether Prasad was directed to work extra hours.

The matter proceeded to a court hearing where both parties represented themselves without lawyers present, and gave documentary and testimonial evidence. The parties also cross-examined each other. The judge found Prasad's evidence to be more persuasive and ordered Brad to pay Prasad \$2500 within 30 days.

4.4 Investigations

One of the FWO's main roles is to promote compliance with Commonwealth workplace laws. Our compliance priorities are based on our intelligence and experience as well as stakeholder input.

Our investigations and inquiries are important ways we obtain evidence of non-compliance. We assess the seriousness of non-compliance by the potential impact it has on an individual, group or market. We may decide to conduct an investigation or inquiry where the available evidence suggests one or more of the following exists:

- exploitation of vulnerable workers (e.g. aged, young, overseas)
- concerns presenting within a high-risk sector
- significant public interest
- deliberate disregard for the law, or an order of a court or tribunal
- such widespread non-compliance that its impact is to distort a part of the labour market, disadvantaging compliant businesses (e.g. large-scale non-compliance that undermines a level playing field, supply chains and networks that distance the beneficiary of the labour from those directly engaging the workers)
- an opportunity to provide an educative or deterrent effect.

CASE STUDY – Promoting compliance

Lina spent the last five years building her business. In this time, she opened a number of cafes in Melbourne. Her rapid growth increased her business from two outlets in the inner east of Melbourne to running 15 sites in greater Melbourne. In the last two years, the FWO received information from a range of sources (members of the public, former and current workers, and community groups) that employees were not receiving their minimum entitlements. While a steady stream of information has been received, less than 10 formal requests for assistance had been submitted. Many of the workers at Lina's cafes appeared to be international students, reluctant to approach the FWO.

After reviewing the information and intelligence, the FWO decided to audit seven of Lina's sites without notice. When the FWO undertakes an activity like this, Fair Work Inspectors interview workers at the sites (with the aid of interpreters if needed) and evidence is obtained using the powers available to the FWO under the FW Act. The activity also involved interviewing Lina, her senior managers and her accountant. At the end of the compliance activity, the FWO published a report on the FWO's website about what the FWO discovered and any further action taken as a result of the activity.

In circumstances which involve serious non-compliance we may conduct an investigation.

An investigation is where a Fair Work Inspector considers allegations and gathers and examines evidence to determine if there have been breaches of Commonwealth workplace laws.

All investigations are impartial. We do not represent any party. The Fair Work Inspector will rely on the evidence available when making a decision.

During an investigation, we will always provide each party the opportunity to be heard. We also use discretion to decide on the best process or reach the best outcome for an investigation.

In an investigation, a Fair Work Inspector can use powers under the FW Act to visit workplaces, interview people and require records or documents to be provided.

1. Section 712A Notices

Where Fair Work Inspectors have been unable to obtain evidence or information using voluntary or other methods, the Fair Work Ombudsman and specified Senior Executive officers have the power under section 712A of the Fair Work Act to apply to the Administrative Appeals Tribunal to issue a FWO Notice to require a person to provide information, produce documents or attend and answer questions.

These powers recognise that compliance with Commonwealth workplace laws is a critical factor in the cultivation of productive, cooperative and harmonious workplaces. Significant penalties apply for failure to comply with a FWO Notice.

The FWO will only consider requesting the AAT to issue a FWO Notice if we reasonably believe a person:

- can give information relevant to an investigation
- can produce documents relevant to an investigation
- is capable of answering questions relevant to an investigation
- all other evidence gathering means have been exhausted or are not appropriate.

If a person receives a FWO Notice, it means we consider that person is capable of assisting and providing material relevant to an investigation.

More detailed information about the different types of these Notices, including:

- when and how we exercise these powers
- how to respond
- the examination process
- your rights and obligations

is set out in our [Guide to FWO Notices](#).

2. Expectations

During all and any investigations, we expect all parties (and anyone else involved) to:

- always tell us the truth
- fully disclose all relevant matters from the outset of the investigation
- provide us with relevant information as it comes to hand
- respond in a timely manner to our requests.

Penalties may be imposed by a court if a person provides a Fair Work Inspector with false information or hinders or obstructs an Inspector. In very serious cases, the FWO may refer such matters to the Commonwealth Director of Public Prosecutions for criminal prosecution.

The Fair Work Inspector handling the investigation will update the parties with developments at regular intervals.

The Fair Work Inspector will advise the parties in writing of investigation findings and include details of how the outcome was decided. The findings will be provided within seven working days of the Fair Work Inspector's decision.

We seek to be reasonable and proportionate when conducting investigations. The average duration of an investigation is four months.

Documents released by the Fair Work Ombudsman under the Freedom of Information Act

CASE STUDY – Investigation

Ishan's employees had taken unprotected industrial action and he was successful in obtaining an order from the Fair Work Commission that required the employees to return to work. The industrial action had caused his business significant economic loss.

The FWO was told that Ishan had paid his employees during the unprotected industrial action. This is not allowed under the FW Act, so we initiated an investigation.

Fair Work Inspectors issued Ishan with a Notice to Produce documents to adequately assess whether breaches of the FW Act had occurred and provide Fair Work Inspectors with evidence about whether payments had been made to employees. The investigation process also involved various steps including assessing information and records, and speaking with the employer and staff at the business.

Ishan told Fair Work Inspectors that because of the nature of the industrial action, it was hard for him to tell which employees had participated. The FWO found that Ishan's business had a history of responding to industrial action by requesting certain orders from the Fair Work Commission, but that the business itself did not have proper processes and systems in place to identify the people who took part in unprotected industrial action.

The FWO could see that Ishan's business was trying to respond appropriately to industrial action because of the cost of the stoppages to the business. It also wanted to ensure the business would not breach the law in the future.

Ishan formally agreed to introduce processes and systems to manage compliance with industrial action obligations, so that he would comply with the FW Act in future. The FWO was satisfied that Ishan was taking proactive measures to redress the breaches. If similar allegations against this business presented in the future, the FWO would take into consideration the outcomes of this investigation.

4.5 Proactive compliance campaigns

Campaigns help us check, improve and ensure ongoing compliance with Commonwealth workplace laws in a targeted way.

Campaigns are designed to test an employer's awareness of and compliance with Commonwealth workplace laws, willingness to respond to issues of concern, and commitment to future compliance.

Using intelligence and data received from the public as well as that acquired by Fair Work Inspectors, we identify issues and trends in industry sectors or regions that suggest we need to take a closer look to ensure compliance.

An important part of our campaigns is working with groups such as industry associations, employer representatives, unions and community groups so that we can tailor our campaigns to ensure the greatest impact and benefit to the community.

During a campaign, we explain the purposes of our monitoring activity to employers and employees through letters, phone calls, visits from our Fair Work Inspectors, social media, and our website.

By checking employee time and wage records, we are able to identify any issues of concern and begin working with the businesses to fix any problems.

Often we will recommend systems that could be put in place to ensure ongoing compliance. We may test future compliance by re-visiting these businesses and assessing whether our assistance had a positive impact and led to behavioural change. While our focus in a campaign is to educate and assist, we will take appropriate and proportionate enforcement action where we find employers have intentionally breached their obligations or have failed to make appropriate efforts to ensure ongoing compliance after interacting with us.

Following each campaign, we release a report outlining the findings and detail any particular insights or trends as well as planned future activities. These reports are published on our website.

CASE STUDY - Campaign

After analysing information and intelligence we had received from customers as well as previous compliance activities, the FWO became concerned about non-compliance in a number of restaurant businesses located in an inner suburb of Sydney. The area was known for 'cheap eats', with a large university nearby doubling as both a customer base and a pool of young workers (many of them visa holders).

The FWO designed a campaign to test compliance in most restaurants in the area. A team of Fair Work Inspectors visited businesses in the area over two days, speaking with employers and employees in around 100 businesses, gathering information, evidence and testing the intelligence we had received.

In monitoring the businesses, Fair Work Inspectors audited the pay rates and record-keeping practices in each business and provided advice to help employers achieve or maintain compliance. Where employers were not paying staff correctly, Inspectors ensured that they corrected their practices and back paid employees, using Compliance Notices, where appropriate. Where employers were not meeting their pay slip and record-keeping obligations, Inspectors considered each case and issued Infringement Notices, where appropriate. Where there was significant non-compliance, the FWO commenced investigations and undertook an assessment as to whether stronger enforcement action was required.

The campaign provided a useful insight into the issues facing employees and employers in this industry. The FWO's concerns regarding the area were validated in the findings, and the activity provided further intelligence and data to inform future activities in this sector.

Documents released by the Fair Work Ombudsman under the Freedom of Information Act

4.6 Proactive Inquiries

There are two types of inquiries at the FWO:

3. Inquiries

Sometimes we receive information from the media or the community which suggests non-compliance. We often decide to inquire initially into the matter rather than commence an investigation. In doing so, we encourage all parties involved to speak with us and provide information that supports their point of view. Our focus is on helping the parties, where possible, to comply with the law and resolve the matter quickly and informally.

During such an inquiry, we may ask parties to provide evidence such as time and wage records, or other documents. Where an inquiry identifies suspected deliberate or repeated breaches of Commonwealth workplace laws, the matter will be referred for investigation. Where evidence is disputed, parties may be encouraged to resolve the matter through a small claims process.

4. Comprehensive inquiries

In other situations, where we believe that the information we have received from the media or community warrants detailed research, we may decide to conduct a comprehensive inquiry. This type of inquiry reviews allegations of serious non-compliance with Commonwealth workplace laws by looking at information about what has happened or is happening in a particular industry, sector, supply chain or service network.

This form of inquiry is a more in-depth compliance activity, which enables us to better understand the working environment, business relationships and market conditions so that we can coordinate our approach to ensure we both identify and address any factors causing the non-compliance.

After we have conducted the various compliance activities involved in an inquiry, it is not uncommon for enforcement action to commence against a number of parties involved in the review. We use the findings of the inquiry to assist us to decide what needs to be done next to ensure future compliance. To promote deterrence, we publish the findings from this type of large-scale and thorough inquiry on our website.

CASE STUDY – Inquiry

The FWO launched an in-depth Inquiry into the cleaning services procured by 4 and 5 star Hotels following a significant increase in the number of requests for assistance received from hotel housekeepers alleging they were employees, not independent contractors.

Applying a holistic 'multi factor' test, the Inquiry examined a sample of contract cleaning companies engaged by 4 and 5 star Hotels to assess whether the workers were classified correctly as either employees or independent contractors.

The Inquiry included unannounced visits by Fair Work Inspectors to several major hotels, interviewing housekeepers, issuing Notices to Produce documents on various businesses in the labour supply chain, assessing contracts and interviewing procurement managers.

At two of the hotel groups, the Inquiry found evidence indicating the housekeepers had been misclassified as independent contractors when they were in fact employees. The cleaners were predominantly international students on visas working solely for a particular hotel with no autonomy in their day-to-day work. They were receiving a flat rate of pay and having to pay for the cost of chemicals, uniforms and administration fees. Consequently, these workers were denied applicable penalty rates, regular patterns of work and leave entitlements available to employees under the FW Act.

In our Findings Report, we recommended a range of compliance and enforcement outcomes against the respective hotel brands. In the case of one hotel group, our intervention through an Enforceable Undertaking resulted in the repayment of nearly \$2 million to housekeepers.

The report also recommended steps on how the hotel sector can improve compliance through better management of their procurement practices, ensuring principal contractors and sub-contractors comply with the law. These recommendations included actions the FWO will take in collaboration with relevant businesses and industry organisations.

The range of outcomes

5.1 Compliance outcomes with FWO

Due to the spectrum of issues dealt with at the FWO, we use a range of tools based on the individual circumstances of the matter to encourage compliance. Our compliance tools increase in seriousness and penalty depending on the risks to the community and the need for compliance. The tools we employ are outlined below.

1. Findings letter

A findings letter is sent to the parties at the end of an investigation. It sets out what we found from the evidence gathered and it tells each party what they need to do next, and what actions (if any) we intend to take.

For instance, we may find there was no evidence or insufficient evidence of any breaches. At other times, we may find breaches and will ask the party to fix these (e.g. by back paying an employee).

CASE STUDY – Findings letter

Pauline, a part-time employee, had worked for a coffee shop for over 12-months. Pauline asked us for help because she received less than the award pay rate and was not paid more for working on the weekend.

A Fair Work Inspector investigated the matter, gathering evidence including documents and statements from Pauline, her employer Chris, and a witness. The Fair Work Inspector assessed the evidence and found a number of breaches. The Fair Work Inspector sent a findings letter to Chris and Pauline.

The findings letter detailed the award obligations for minimum pay rates as well as the penalty rates applicable for weekend and evening work. The findings letter also explained the website tools that could help Chris to pay staff correctly and outlined that Chris needed to back pay Pauline \$850 to rectify the underpayment. If Chris ignored the findings letter, the FWO would seek to take further compliance action.

2. Formal caution

A formal caution is a written warning given to a party when we have found breaches and are putting them on notice that future breaches could result in us pursuing enforcement action.

A formal caution is typically used to make it clear to a party that its future activities will be closely monitored.

In the future, if further non-compliance is identified, the fact that the party was previously issued with a formal caution is a factor we will consider in deciding whether it is in the public interest to commence civil proceedings in respect of those further breaches, and if so, whether to apply to the court for a serious contravention.

CASE STUDY – Formal caution

Peng worked in sales for five months but did not receive a regular income during that time. Peng worked on commission and told the FWO that he received on average less than \$10 per hour over that time.

Peng's employer, Bertrand was initially hostile with the FWO officers who contacted him to let him know that a request for assistance had been received by the agency. The FWO commenced an investigation.

During the investigation, Bertrand confirmed that Peng only deserved to be paid when he made sales. The FWO explained to Bertrand that he had breached both the award and the FW Act, and failed to provide many of Peng's entitlements including wages, allowances and annual leave.

The employer disputed the findings. After several meetings at the FWO's offices with his accountant, the employer agreed to pay the entitlements owing to Peng. Due to the significant breaches, the FWO gave Bertrand a formal caution, advising him that if the FWO identified further non-compliance in the future, the formal caution would be a factor we would consider in deciding whether to initiate litigation or take other enforcement action against him.

3. Compliance partnerships

The FWO is keen to identify and work with major employers, brand owners and holding companies that want to build a culture of compliance in their workplaces by entering into formal compliance partnerships with us.

Formal compliance partnerships give employers, brand owners, holding companies, and importantly their staff, greater confidence that their systems and processes are working effectively and are helping to promote compliance.

Their public commitment to compliance is also a competitive advantage that helps attract talent, instil confidence in customers and appeal to organisations in their supply chain or service network. For example, compliance partnerships provide an opportunity for franchise operators and head contractors to work with franchisees and sub-contractors to drive workplace improvements throughout their supply chain or service network.

Compliance partnerships may take different forms depending upon the scale and maturity of the business. It is usual for compliance partnerships to contain the following expectations:

- self-audits (including third-party validations)
- the monitoring of contractors and franchisees
- effective dispute resolution processes
- regular and frequent workplace relations training for key managers and staff.

Compliance partnerships provide businesses with an opportunity to work closely with the FWO to ensure compliance with Commonwealth workplace laws is sustainable. The FWO offers participating businesses support, advice and assistance that promotes compliance.

To ensure transparency and accountability, and in order to inform greater awareness of workplace rights and obligations, the FWO publishes reports on the status and outcomes of all its compliance partnerships. Names of enterprises, entities or brands that have entered into a compliance partnership with the FWO can be found on our website: www.fairwork.gov.au/about-us/our-role/enforcing-the-legislation/proactive-compliance-deeds

CASE STUDY – Compliance partnership

Franchisor Pty Ltd had implemented a number of measures to improve compliance across its network, including introducing better systems and processes to assist franchisees. They approached the FWO to enter a formal compliance partnership to further enhance this work and to demonstrate its commitment to its franchisees, workers and customers.

Meeting with Franchisor Pty Ltd, we discussed a number of options that would promote compliance throughout its network and meet the specific business needs of the franchise, such as:

- committing more resources to a worker enquiry line available to both direct employees and employees of franchisees
- enhancing its business systems and processes to enable greater visibility of franchisee activity
- conducting self-audits of employee entitlements of direct employees
- facilitating self-audits of employee entitlements of a sample group of franchisees
- resolving requests for assistance received by us in the first instance and then reporting the outcome to us within a certain time period
- reporting annually on the status of the outcomes of the compliance partnership.

Having secured agreement on the terms of the partnership, a Proactive Compliance Deed was jointly signed by Franchisor Pty Ltd and the FWO, and the Partnership was publicly announced.

After six months, Franchisor Pty Ltd and its franchisees reported to us that they were finding it much easier to comply with their workplace obligations because of the compliance partnership, and were pleased with the positive impact it had had on their staff and the brand's image with their customers.

5.2 Enforcement outcomes under the FW Act

An enforcement outcome is where we decide that formal action under the FW Act is the appropriate response to breaches we have found.

There are four enforcement outcomes available to us. The FW Act sets out the legal requirements for each enforcement outcome, as well as time limits and the courts' powers to make orders and impose financial penalties.

1. Infringement Notice

An Infringement Notice is a fine given for breaching the record-keeping or pay slip requirements of the FW Act and the Regulations.

The FWO may issue Infringement Notices up to 12 months after the breach occurred.

We have discretion over whether to issue an Infringement Notice or not, and what amount the fine should be (up to the legal maximum). We consider these factors in determining the amount of the fine:

- whether the breach obstructs a Fair Work Inspector's ability to find or calculate underpayments
- whether the breach meant that an employee did not have the information needed to recover entitlements
- whether the employer has a history of breaching time and wage record-keeping or pay slip requirements
- the number of people affected by the breach
- whether the breach was deliberate to avoid obligations under workplace laws
- whether the breach resulted in other significant consequences, for example an employee being unable to secure a loan due to lack of pay records.

Currently the maximum fines available under an Infringement Notice for each breach of a record-keeping or pay slip obligation are:

- \$1260 for an individual or \$6300 for a body corporate for breaches of the FW Act
- \$420 for an individual or \$2100 for a body corporate for breaches of the Regulations.

If an employer has been issued an Infringement Notice, but thinks a mistake has occurred and they have not breached record-keeping or pay slip obligations, the person can make an application to us to have the Infringement Notice reconsidered and withdrawn.

CASE STUDY - Infringement Notice

Valentina worked for a company as a full-time administrative assistant. She was concerned that her pay had not increased after she turned 18. She thought she was still being paid the 17-year old rate, but she could not be sure as her employer Karl had not given her pay slips for seven months. She also worked some overtime, but was not always paid for this.

Valentina sought our assistance, and we found that Karl had not paid Valentina the correct entitlements. Karl paid Valentina the money owing and agreed he had overlooked her award increase when she turned 18.

We gave Karl's company two Infringement Notices for \$2100 each (one third of the maximum amount). This amount was settled on because Karl did not have a history of non-compliance. The first Infringement Notice was because Karl failed to keep proper records of Valentina's overtime hours, which may have caused Valentina to miss out on some entitlements. The second Infringement Notice was for failing to give Valentina pay slips, which meant she could not be sure of the gross wages or overtime paid to her each week.

These breaches of the FW Act by Karl's company resulted in total fines of \$4200 to be paid within 28 days. We also gave Karl information and templates to help him comply with his pay slip and record-keeping obligations in the future.

As Karl now understands his obligations under Commonwealth workplace laws, the FWO would consider a more serious intervention should Karl breach these provisions again.

2. Compliance Notice

A Compliance Notice is a legally-binding written notice that requires a person to do certain things to fix breaches of the FW Act.

A Compliance Notice can be used where a Fair Work Inspector reasonably believes that a person has breached a term of the National Employment Standards, a modern award, enterprise agreement or other instrument that specifies wage rates and entitlements.

We typically issue Compliance Notices where an employer has either not agreed to, or we reasonably suspect the employer will not, rectify an alleged breach. A person who has received a Compliance Notice may seek a review through the courts.

The decision to issue a Compliance Notice is not taken lightly, as a person's failure to do what the Compliance Notice requires in the time stated may result in us deciding to start legal proceedings against them. We can take action for both the original breaches and the failure to comply with the Compliance Notice. A failure to comply can result in significant financial penalties of up to \$31 500 for a company and \$6300 for an individual.

When considering whether to issue a Compliance Notice, a Fair Work Inspector will consider:

- the nature and extent of the breaches
- the level of cooperation from the employer
- whether the Compliance Notice will achieve a better and/or faster outcome such as to bring about a cost effective and quick resolution to recover underpayments owed to individuals.

CASE STUDY - Compliance Notice

A Fair Work Inspector investigated a matter involving Moshe, a 19-year-old working in a childcare centre. The investigation found that the employer, Kids R Us, had underpaid Moshe \$2300 in wages over a six-month period and failed to pay annual leave on termination.

Stella, the sole director of Kids R Us, told the Inspector that she would not back pay this amount, as Moshe had not been a hard worker and she did not deserve any more money. The Inspector advised Stella that Kids R Us was legally required to make the payment. Further, the Inspector explained that issues with Moshe's performance needed to be addressed during her employment and were not a reason to pay less than the legal minimum rate of pay. Kids R Us still refused to pay the money owing.

The Inspector issued a Compliance Notice to Kids R Us which outlined the requirement to make the payment within a set timeframe. The Fair Work Inspector advised Stella that if Kids R Us did not make the payment by the due date, it might face penalties in a court.

Kids R Us didn't pay the amount by the due date and continued to refuse to make the payment. The FWO brought proceedings against Kids R Us, alleging failure to comply with the Compliance Notice.

The court found that Kids R Us had failed to comply with the Compliance Notice and imposed a penalty of \$26 500; well in excess of the underpayment to Moshe.

3. Enforceable Undertaking

When we reasonably believe that someone has breached the FW Act, the breach is serious and the person acknowledges this, accepts responsibility and agrees to fix the harm, we can accept a written undertaking from the person.

Enforceable Undertakings are made in a legally binding document, which is published on our website. Importantly, if the terms of an Enforceable Undertaking are not complied with, we can take legal action in a court to enforce them, as well as seek other orders the court considers appropriate.

The key difference between an Enforceable Undertaking and a Compliance Notice is that an Enforceable Undertaking involves not only the payment of all monies owed to workers (for instance), but also admission of wrongdoing and demonstration of contrition from the party who has breached the law. In addition, an Enforceable Undertaking covers a broader range of conduct and broader remedies.

Enforceable Undertakings typically operate for a period of between two to five years and often include terms about fixing loss or damage caused (e.g. by paying compensation or back pay to employees). They are also 'forward looking' and deal with future compliance and what the person will do in the future to prevent more breaches, such as workplace law training sessions for senior managers. Enforceable Undertakings often require people to report to FWO on their compliance at specific times or when a particular action is undertaken (such as when they complete a self-audit).

We may offer a person the option to enter into an Enforceable Undertaking as an alternative to us starting legal proceedings. We also consider offering Enforceable Undertakings to persons who have approached us with admissions that they have breached the law and are committed to 'righting the wrongs' of the past.

When deciding whether to enter into an Enforceable Undertaking, we consider:

- the nature, extent and seriousness of the breaches
- the prior compliance history of the person
- whether the person admits the breaches and what they propose to do to fix or prevent further breaches, beyond simply committing to comply with minimum standards in the future
- the attitude of the party (e.g. whether they are cooperative)
- whether the undertakings are relevant to the breaches and will achieve positive outcomes for employees and/or the community
- whether a Compliance Notice would be better suited to the circumstances (if, for instance, it is suspected the party is not genuine about changing their behaviour)

- whether an undertaking would be a superior outcome compared to litigation in the circumstances, including whether it brings specific and general deterrence and promotes compliance with the FW Act. As an example, the broad range of remedies available under an Enforceable Undertaking could result in a broader range of outcomes including back payment to affected workers, a public apology, ongoing training, development and auditing, a monetary donation to an organisation, etc. These remedies can occur within shorter timeframes than can be anticipated throughout court processes, keeping the costs lower for all concerned, while bringing about specific and general deterrence.

CASE STUDY - Enforceable Undertaking

In running his business, Ricardo had ignored the pay rate increases in the last three annual wage reviews and consequently underpaid his employees a total of \$70 000. Ricardo had also failed to pay a number of allowances and other entitlements to his workers.

During the course of the investigation, Ricardo's staff advised the FWO that the business appeared to be facing some financial pressures. Ricardo explained that he had tried to resolve these matters, but that his cash-flow issues had contributed to the wage underpayments. He had been open with his staff about the financial problems and was apologetic about his inability to pay his staff their minimum entitlements.

In consideration of the severity of the underpayments, the FWO decided to enter into an Enforceable Undertaking with Ricardo, who had no compliance history with the FWO and was willing to rectify the breaches identified and back pay staff. The Enforceable Undertaking included:

- making full back payments to all employees involved
- apologising to his employees as well as issuing a public apology
- setting up a My account on fairwork.gov.au to ensure he was alerted to all future wage rises and implemented them
- undertaking a third-party approved self-audit for a three-week period each August for three years to prove annual wage reviews had been observed and that the workers were receiving their correct entitlements
- delivering workplace relations training to all managers and team leaders.

Ricardo's actions were made public on our website through the terms of the Enforceable Undertaking. The outcomes provided an array of proactive measures and allowed back payment to be made to underpaid staff quickly and without the need for a lengthy court process.

4. Litigation

In the most serious instances of non-compliance, we take cases to court to enforce the law or seek a penalty. We call these court cases litigations.

Detailed information about how we make decisions to start litigation is set out in our [Litigation Policy](#).

Publicising compliance and enforcement

As set out in our [Media policy](#), we publish information regarding our compliance activities and enforcement outcomes on our website. This forms an important part of our role in ensuring compliance with Commonwealth workplace laws by:

- enhancing general and specific deterrence
- informing and educating the community, or people in the same and similar industries, of the nature and outcome of enforcement activities.

Information we publish will be fair, accurate and timely. We may decide to publish information on our website, by media statements or through social media interventions. Our information is often contained in reports, presentations or other educative material which we promote in order to raise awareness of the importance of understanding and complying with Commonwealth workplace laws.

In deciding whether to comment publicly on compliance activities and in what form, we consider a range of factors such as the nature of the matter, who the statement is likely to impact and how it furthers the FWO's objectives.

At all times we:

- consider the likely and possible risk and consequences of making or not making a public comment
- weigh up the public interest, deterrence and risks associated with both making or not making a statement.

Any public comment regarding compliance activities that are underway are carefully made to protect the integrity of the compliance activity. Where the FWO does confirm the existence of a compliance activity, it does not mean that an adverse finding will be necessarily made.

In litigation matters, the FWO may publicise the decision to commence proceedings, the lodgement of court documents, milestones during proceedings, directions hearings, and/or decisions (whether there are financial penalties, other orders or neither).

We will publish information if we believe that publicising any or all of these stages will support compliance with Commonwealth workplace laws.

The FWO publishes this information for two reasons:

- visibility of our enforcement activity sends a powerful message of deterrence to others and promotes compliance, and
- clarification of the law and the level of penalties that certain breaches can incur may help people understand the seriousness of breaking the law.

Working with other government regulators

The FWO is not always the agency best placed to deal with an issue. For example, a number of authorities specialise in handling superannuation, health and safety, unfair dismissal, visa issues and bullying.

We want to help our customers and so where we believe another agency can provide greater assistance, we will refer the issue as early as possible.

We may share information with other government agencies or departments where authorised by the FW Act. For example, we may share information where disclosure is necessary, appropriate, or likely to assist administration or enforcement of a law of the Commonwealth, a State or a Territory.

Examples of agencies we may share information and work with on various activities include the Australian Building and Construction Commission, the Australian Competition and Consumer Commission, Australian Securities and Investments Commission, the Australian Taxation Office and the Department of Home Affairs.

In addition to receiving information from these government agencies at times, which assists us to do our work, we participate in joint education and compliance activities to monitor and influence compliance through different laws.

Feedback

We encourage feedback about your experience with us and invite people to contact us at

www.fairwork.gov.au/feedback.

If a person requests a review of our actions and is not satisfied with the result of our review, they can contact the Commonwealth Ombudsman on 1300 362 072, or at www.ombudsman.gov.au.



Fair Work
OMBUDSMAN

Compliance and Enforcement Policy

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Purpose

The Fair Work Ombudsman (**FWO**) is an independent statutory agency created by the *Fair Work Act 2009* (Cth) (**FW Act**). The purpose of the Compliance and Enforcement Policy (**Policy**) is to provide simple and clear information about how the FWO performs its statutory compliance and enforcement functions under section 682 of the FW Act. These functions include:

- promoting harmonious, productive and cooperative workplace relations and compliance with the FW Act and fair work instruments¹ including through the provision of education, assistance and advice;
- monitoring compliance with the FW Act and fair work instruments;
- inquiring into and investigating any act or practice that may be contrary to the FW Act, a fair work instrument or a safety net contractual entitlement;²
- commencing proceedings in a Court (or in limited circumstances making an application to the Fair Work Commission) to enforce the FW Act, a fair work instrument or a safety net contractual entitlement; and
- referring matters to other relevant authorities where appropriate.

¹ A "fair work instrument" is defined as a modern award, an enterprise agreement, a workplace determination or a Fair Work Commission order: See FW Act s.12.

² A "safety net contractual entitlement" is defined as an entitlement under a contract between an employee and an employer that relates to any of the subject matters described in s.61(2) (which deals with the National Employment Standards) or s.139(1) (which deals with modern awards): See FW Act s.12.

Assessment

When the FWO becomes aware of allegations of non-compliance with the FW Act and/or a fair work instrument, we assess each matter to decide how we will respond.

Before any investigation or inquiry is commenced, a case assessment process is undertaken first to determine, amongst other things, whether the FWO has jurisdiction, and whether the use of our investigative powers is in the public interest (which involves an assessment of whether any proposed compliance activity would be an efficient, effective and ethical use of public resources).

As part of this process, the FWO considers its strategic priorities. Further information about [Our Priorities can be found here](#).

Additional public interest factors taken into account as part of the assessment process include:

- whether the matter involves vulnerable workers;
- whether the matter demonstrates a blatant disregard of laws or repeat offending;
- whether the matter is of significant scale or impact on workers or the community;
- whether the employment relationship is ongoing, or how long ago the employment ended;
- whether there is likely to be reliable evidence available to support a finding or view that a contravention has occurred; and
- confidentiality (where the employee does not want us to advise the employer that they have raised allegations of potential non-compliance with the FW Act and/or fair work instruments).

Assistance

In response to requests for assistance involving a workplace dispute, the FWO may provide education, advice and various dispute resolution tools to assist parties resolve instances of potential non-compliance.

Investigation and Inquiries

Where the FWO becomes aware of potential non-compliance with the FW Act, a fair work instrument or a safety net contractual entitlement, a Fair Work Inspector may commence an investigation or an inquiry into the potential non-compliance.

An inquiry may also be commenced where the FWO is seeking to monitor compliance with the FW Act or a fair work instrument. This may occur without the FWO receiving allegations of non-compliance.

Fair Work Inspectors have access to a number of statutory compliance powers to assist them in their functions.

All investigations and inquiries are impartial. Fair Work Inspectors will seek evidence from parties and other sources and will make decisions based on the available evidence.

Compliance Powers

Fair Work Inspectors are able to use statutory compliance powers for a 'compliance purpose', which includes determining whether a person is complying with the FW Act or a fair work instrument, or, in certain circumstances, whether a safety net contractual entitlement has been contravened.³

Where a provision of the *Fair Work Regulations 2009* (Cth) (**FW Regulations**) or another Act confers powers on Fair Work Inspectors, compliance powers can also be used for the purposes of that provision or Act.⁴

Entering Premises

A Fair Work Inspector may enter:

- premises if they reasonably believe that the FW Act or a fair work instrument applies (or applied) to work that is (or was) performed there; or
- business premises if they reasonably believe that records or documents relevant to a compliance purpose are on, or are accessible from, the premises.⁵

Before entering premises, a Fair Work Inspector must show their identity card to the occupier of the premises or their representative. If this isn't possible, the Fair Work Inspector must show their identity card as soon as practicable after entering.⁶

Fair Work Inspectors are not able to enter any area of a workplace that is used for residential purposes unless they reasonably believe that work is being performed in that area.⁷

While on the premises Fair Work Inspectors may:⁸

- inspect any work, process or object;
 - conduct interviews;
 - require a person to tell them who has, or has access to, a record or document;
 - require the person with, or with access to, a record or document to produce the document, either while they are on the premises or by a particular date;
 - make copies of any document kept on the premises or accessible from a computer on the premises;
- and

³ FW Act s.706(1)(a) & (b) and s.706(2).

⁴ FW Act s.706(1)(c) & (d).

⁵ FW Act s.708(1).

⁶ FW Act s.708(3).

⁷ FW Act s.708(2).

⁸ FW Act s.709.

- in certain circumstances, take samples of goods or substances.⁹

In certain circumstances when entering premises, the Fair Work Inspector may be accompanied by a suitably qualified person to assist them in exercising their compliance powers.¹⁰ By way of example, a Fair Work Inspector may be accompanied by an interpreter to assist with translating, or a forensic accountant to assist with copying and interpreting digital records.

Notice to produce records or documents

A Fair Work Inspector may require a person or entity to produce to them any record or document relevant to a compliance purpose by issuing a notice to produce records or documents (**NTP**). An NTP is a formal notice that requires specific documents to be produced to a Fair Work Inspector within a specified timeframe at a specified place.¹¹ An NTP must on its face, demonstrate that it is issued in accordance with a compliance purpose and must sufficiently identify the nature of the suspected contravention or contraventions.¹²

Unless a person has a reasonable excuse for not complying with the NTP, failure to comply is a contravention of the FW Act, and may result in enforcement action, including litigation. If a person fails to comply with an NTP, a Court may order penalties of up to \$12,600 for an individual or \$63,000 for a body corporate.¹³

FWO Notices

The FWO has the power under section 712AA of the FW Act to apply to the Administrative Appeals Tribunal (**AAT**) for a FWO Notice. A FWO Notice may require a person to provide information, produce documents or attend and answer questions.

Failure to comply with a FWO Notice may result in a Court ordering penalties of up to \$126,000 against an individual.¹⁴

The FWO will only request that the AAT issue a FWO Notice if we reasonably believe a person:

- can give information relevant to an investigation;
- can produce documents relevant to an investigation;

⁹ See FW Regulations reg. 5.06 for further information regarding a Fair Work Inspector's power to take a sample of a good or substance.

¹⁰ FW Act s.710.

¹¹ FW Act s.712.

¹² *Construction, Forestry, Maritime, Mining & Energy Union v Fair Work Inspector Lam* [2018] FCA 1379 at [26] and [30] (per Bromberg J).

¹³ FW Act s.539: a failure to comply with s.712(3) can result in a maximum penalty equal to 60 penalty units. Pursuant to s.546(2) of the FW Act a body corporate may face a pecuniary penalty of up to five times 60 penalty units. A penalty unit is \$210 (as at 21 June 2019): *Crimes Act 1914* (Cth) (Crimes Act) s.4AA.

¹⁴ FW Act s.539: Failure to comply with s.712B(1) can result in a maximum penalty of equal to 600 penalty units. A penalty unit is \$210 (as at 21 June 2019): *Crimes Act* s.4AA.

- is capable of answering questions relevant to an investigation;
- all evidence gathering means have been exhausted or are not appropriate.

If a person receives a FWO Notice, it means we consider that person is capable of assisting and providing material relevant to an investigation.

Further information about [FWO Notices can be found here](#).

Enforcement Outcomes: Compliance Notices and Enforceable Undertakings

The FW Act provides the FWO with simple enforcement mechanisms to deal with possible contraventions of the FW Act quickly and efficiently.

Compliance Notice¹⁵

Compliance Notices are a non-punitive mechanism for the FWO to address alleged contraventions of the FW Act instead of commencing Court proceedings.¹⁶

If at any stage while undertaking their functions a Fair Work Inspector forms a reasonable belief that a person or other entity has contravened:

- a provision of the National Employment Standards;
- a term of a modern award;
- a term of an enterprise agreement;
- a term of a workplace determination;
- a term of a national minimum wage order; or
- a term of an equal remuneration order,

then, a Fair Work Inspector can issue the person with a Compliance Notice.

This may occur in parallel with other matters which are investigated and addressed using other enforcement mechanisms.

A Compliance Notice will require that the person take specified action to remedy the direct effects of the identified contraventions and/or require the person to produce reasonable evidence of compliance.¹⁷ A person who complies with a Compliance Notice is not taken to have admitted the contraventions or to have been found to have committed the contraventions.¹⁸

¹⁵ FW Act s.716.

¹⁶ *Hindu Society of Victoria (Australia) Inc v FWO* [2016] FCCA 221 (**Hindu Society**) at [30] (per Judge Riethmuller). See also, *FWO v Darna Pty Ltd & Anor* [2015] FCCA 709 at [11] (per Judge Hartnett).

¹⁷ FW Act s.716(2).

¹⁸ FW Act s.716(4B).

Where a person complies with a Compliance Notice the FWO is unable to commence Court proceedings against that person for the particular contraventions that are the subject of the Compliance Notice.¹⁹

If a person fails to comply with the Compliance Notice and does not have a reasonable excuse,²⁰ that person has contravened the FW Act and a Court may impose penalties of up to \$6,300 for an individual or \$31,500 for a body corporate.²¹ It is open to the FWO to commence litigation for non-compliance with a Compliance Notice, as well as for any other contraventions identified, including the underlying contraventions referred to in the Compliance Notice.

A person may apply to the Court to have a Compliance Notice reviewed if they have not committed a contravention set out in the Compliance Notice, or if the Compliance Notice does not comply with the necessary requirements under the FW Act.²²

Enforceable Undertaking²³

If at any stage while undertaking their functions, the FWO forms a reasonable belief that a person has contravened the FW Act, the FWO may accept a written undertaking from the person in relation to the contravention. Enforceable Undertakings are a simple mechanism for the FWO to deal with contraventions of the FW Act while *"[t]he benefits to the recipients of the preparedness of the FWO to accept an undertaking is the avoidance of the considerable costs involved in court proceedings and the avoidance of the payment of a penalty"*.²⁴

Where the FWO has accepted an undertaking from a person the FWO cannot commence proceedings against the person in respect of the particular contraventions the undertaking has been given in relation to.²⁵

If a person fails to comply with the undertaking (i.e. the steps agreed to in the Enforceable Undertaking), the FWO may commence proceedings in Court to seek orders directing the person to comply, for compensation, or any other appropriate order.²⁶

The FWO will generally only accept Enforceable Undertakings in limited circumstances. These may include matters involving self-disclosure and where a person has demonstrated a willingness to rectify underpayments, address any other impact of their contraventions and fully cooperate with the FWO.

¹⁹ FW Act s.716(4A).

²⁰ FW Act s.716(6).

²¹ FW Act s.539: a failure to comply with s.716(5) can result in a maximum penalty equal to 30 penalty units. Pursuant to s.546 of the FW Act a body corporate may face a pecuniary penalty of up to five times 30 penalty units. A penalty unit is \$210 (as at 21 June 2019): Crimes Act s.4AA.

²² FW Act s.717.

²³ FW Act s.715.

²⁴ *Hindu Society* at [18] (per Judge Riethmuller).

²⁵ FW Act s.715(4).

²⁶ FW Act s.715(6)&(7).

Enforcement Outcomes: Outcomes of Investigations or Inquiries

There are a range of outcomes that may occur as a result of an investigation or inquiry by a Fair Work Inspector. While this may include a Compliance Notice or an Enforceable Undertaking, the FWO may also determine a different enforcement outcome is appropriate. The enforcement action taken will depend upon the assessment made.

Assessment Letter - notification at the end of an investigation or inquiry

Where a Fair Work Inspector has completed an investigation or inquiry, the FWO will notify a party of the outcome of that assessment. The notification may state that no contraventions were identified in relation to the specific investigation or inquiry. In some instances, the notification may state that the Fair Work Inspector determined that there was insufficient evidence to sustain the finding that a contravention occurred, but may caution or recommend a party take steps in order to ensure that they are compliant; for example, seeking independent legal advice. Where specified contraventions are identified, a Contravention Letter may be issued (as set out below).

Contravention Letter – notification of failure to observe requirements²⁷

If a Fair Work Inspector is satisfied that a person has failed to observe a requirement imposed by the FW Act, the FW Regulations or a fair work instrument, the Fair Work Inspector may issue a person with a written notification which:

- informs the person of the failure;
- requires the person to take specified action, within a specified period, to rectify the failure;
- requires the person to notify the Fair Work Inspector of any action taken to comply with the notice; and
- advises the person of the actions the Fair Work Inspector may take if the person fails to comply with the notice.

Depending on the nature of the contraventions and the person's response to the Contravention Letter, the FWO may decide to pursue one of the other available enforcement mechanisms.

Infringement Notice

If a Fair Work Inspector reasonably believes there has been one or more contraventions of particular provisions of the FW Act or the FW Regulations in relation to record keeping or pay slip obligations, the Fair Work Inspector may issue an Infringement Notice.²⁸ An Infringement Notice requires the person to pay a

²⁷ FW Regulations reg. 5.05.

²⁸ FW Regulations reg. 4.03 & 4.04.

penalty for committing the contravention. The maximum penalties that a person can be required to pay under an Infringement Notice are:

- \$1,260 for an individual or \$6,300 for a body corporate for contraventions of the FW Act; and
- \$420 for an individual or \$2,100 for a body corporate for contraventions of the FW Regulations.²⁹

An Infringement Notice can be issued up to 12 months after the contravention occurred.³⁰

A person who complies with an Infringement Notice is not taken to have admitted the contravention.³¹

Where a person complies with an Infringement Notice the FWO is unable to commence Court proceedings against that person for the particular contravention(s) that are the subject of the Infringement Notice.³²

Litigation

Commencing legal proceedings, which we refer to as “litigation”, is another enforcement mechanism available to the FWO and is generally reserved for more serious cases of non-compliance. Litigation is an essential enforcement mechanism for three reasons:

- enforcing the law and obtaining Court orders sends a powerful public message to others not to engage in similar conduct (general deterrence);
- stopping and deterring people from engaging in unlawful behaviour now and in the future makes the need to comply with Commonwealth workplace laws real for individuals (specific deterrence); and
- clarifying the law helps the community understand the various obligations and rights arising from Commonwealth workplace laws.

The FWO is more likely to litigate in cases involving:

- deliberate and/or repeated non-compliance with Commonwealth workplace laws;
- exploitation of vulnerable workers;
- failure to cooperate with us and fix contraventions after being given the opportunity to do so; and/or
- parties who have a prior history of contraventions who have not taken adequate steps to ensure compliance despite being advised of the consequences in the past.

Even in circumstances where contraventions have been rectified, it may still be appropriate for the FWO to commence legal proceedings (e.g. to obtain a penalty in respect of a contravention to achieve specific

²⁹ FW Act s.558(2).

³⁰ FW Regulations reg. 4.04(2).

³¹ FW Regulations reg. 4.09.

³² FW Regulations reg. 4.09.

or general deterrence).

In addition to the FWO commencing its own proceedings,³³ section 682(1)(f) of the FW Act provides that the FWO may represent employees or outworkers who are, or may become, a party to proceedings in a court or the FWC, if the FWO considers that the representation will promote compliance with the FW Act or fair work instrument.

Who we litigate against

Liability for contraventions of Commonwealth workplace laws may lie with more than just one person or body. Sections 550 and 557A(5A) of the FW Act describe how a person can be “involved in” a contravention, and says that such persons are treated as having committed a contravention themselves.

We may commence legal proceedings and seek orders against any person who contravenes their obligations under Commonwealth workplace laws, as well as those who are “involved” in such contraventions. This might include:

- employers;
- registered organisations;
- company directors or company secretaries;
- officials of organisations;
- human resources managers or other managers;
- external agents or advisors, such as accountants, bookkeepers or external human resources consultants;
- companies and people involved in supply chains involving the procurement of labour;
- a holding company of a subsidiary employing entity or its directors; and/or
- a franchisor.

When does the FWO commence litigation?

The FWO will only commence proceedings if it considers that there is sufficient evidence to do so and it would be in the public interest.

In deciding whether to institute any appeal, the FWO will consider whether there are reasonable prospects of success and whether the appeal is in the public interest.

As a regulator utilising public funds, the FWO will consider the impact on its resources and costs before

³³ FW Act s.682(1)(d).

making a decision to commence first instance proceedings or an appeal.

The public interest factors the FWO considers in determining to commence, or not commence, litigation varies depending on the particular circumstances of each case. The following table sets out some of the matters the FWO typically considers.

Public interest factors	Examples of matters the FWO considers
Nature, seriousness and circumstances of the alleged contraventions	<ul style="list-style-type: none"> ■ The seriousness of the alleged contraventions ■ Prevalence in the community of the type of behaviour ■ Any mitigating or aggravating circumstances ■ Whether the person(s) alleged to have committed the contraventions sought and relied on relevant professional advice ■ Evidence of deliberate or reckless conduct including omitting to take steps to ensure compliance ■ Whether contraventions have been admitted and/or fixed
Characteristics of person(s) alleged to have committed the contraventions	<ul style="list-style-type: none"> ■ Compliance history ■ Business experience and size ■ Whether the person has actively assisted the FWO's inquiries and whether they genuinely accept their non-compliance ■ What steps they have taken to prevent further contraventions
Characteristics of person(s) affected by the alleged contraventions	<ul style="list-style-type: none"> ■ Any special vulnerability, such as whether the person has a disability, is a young or mature worker, is present in Australia on a visa or is from a culturally and linguistically diverse background ■ Whether the person has the ability and resources to commence their own proceedings
Impact of the alleged contraventions	<ul style="list-style-type: none"> ■ Direct and indirect impact on the people who have been affected by the alleged contraventions ■ Impact on any other person(s), including other businesses/competitors ■ The impact of the alleged contraventions and their size, such as the number of people affected or the quantum of any underpayments
Impact of litigation on general and specific deterrence	<ul style="list-style-type: none"> ■ Whether litigation will reduce the likelihood that others will engage in similar behaviour (general deterrence) ■ Whether litigation will reduce the likelihood of further contraventions of workplace laws by the person(s) involved in the proceedings (specific deterrence)
Effect of litigation	<ul style="list-style-type: none"> ■ Suitability and efficacy of other enforcement mechanisms as an alternative to litigation ■ Likely outcome in the event the contraventions are found to have occurred (e.g. penalties, compensation or other orders)

Public interest factors	Examples of matters the FWO considers
	<ul style="list-style-type: none"> ■ Whether the likely outcome would be unduly harsh or oppressive
Administration of justice	<ul style="list-style-type: none"> ■ Passage of time since the alleged contraventions ■ Likely length and cost of litigation ■ Whether proceedings are necessary to maintain public confidence in the administration of workplace laws

The FWO's decision to commence or not commence proceedings must be made impartially, and must not be influenced by any inappropriate consideration of race, religion, sex, national origin or political association. The decision must not be influenced by any political advantage or disadvantage to the Government, any political group or party or any union, industrial or employer group or association.

Conduct of proceedings

The FWO will conduct litigation honestly, fairly, consistently and in accordance with the Commonwealth's Obligation to Act as a Model Litigant (Appendix B to the *Legal Services Directions 2017*).

The FWO will make decisions about the conduct of litigation on the basis of the available evidence. If another party asks the FWO to agree to a particular course, or to put a submission to the Court, we may ask them to provide us with evidence to support their request.

Where evidence discloses a number of potential contraventions of Commonwealth workplace laws, the FWO will take care to plead the contraventions which adequately reflect the nature and extent of the relevant behaviour. Where the FWO alleges there have been serious contraventions within the meaning of section 557A of the FW Act, we will specify the relevant serious contraventions. A breach will only be a serious contravention where a person knowingly contravened the relevant provision, and that breach was part of a systematic pattern of conduct.

After proceedings have been commenced, the FWO participates in discussions to limit any issues in dispute, for example, during Court mediations. As a regulator, the FWO approaches such discussions from a public interest perspective. In circumstances where a party provides new evidence alleging that the contravention(s) did not occur, the FWO will consider the evidence and may:

- proceed with the original contraventions;
- proceed in relation to fewer contraventions than originally identified; and/or
- accept admissions only in relation to some contraventions and not press or seek orders in relation to other contraventions. All admissions must reflect a genuine acceptance of responsibility.

We will discontinue legal proceedings if it is appropriate to do so. It will be rare for us to make this decision, given the detailed assessment we undertake before we commence proceedings.

Admissions or payments made just before or after proceedings are commenced will usually not justify discontinuing the proceedings, but the FWO will take such action into account when seeking orders and making submissions to the Court on appropriate penalties.

Orders and penalties

The FW Act allows eligible Courts to make a wide range of orders if a person is found to have contravened the FW Act. Orders that the FWO may seek in proceedings include orders:

- that underpayments be rectified and interest be paid;
- that compensation be paid to person(s) affected by the contraventions. Such compensation would be paid by person(s) responsible for contraventions and/or other persons who were “involved” in them;
- for a civil penalty to be paid to the Commonwealth³⁴ or, where appropriate, the penalty be redirected to an impacted party;
- that a person pay any civil penalty personally, without seeking or accepting indemnity from a third party;
- for injunctions to stop, prevent or restrain further contraventions from occurring; and/or
- that a person take specific steps, for example by undertaking training or conducting wage audits.

Submissions on penalty

The Courts are responsible for deciding what orders are appropriate in a case and the amount of any civil penalty. Courts may have regard to submissions made by the parties to proceedings in relation to penalty, including as to what facts are relevant.³⁵ The FWO may put evidence before the Court to support our submissions on penalty, including evidence about compliance in particular industries, places or amongst particular groups of workplace participants.

The FWO will seek penalties that:

- are proportionate to the nature of the behaviour;
- will achieve general and specific deterrence; and
- avoid a harsh or oppressive outcome.

³⁴ As a result of the *Fair Work Amendment (Protecting Vulnerable Workers) Act 2017* (Cth), the maximum penalties for serious contraventions, within the meaning of s.557A of the FW Act, are higher than for other contraventions of the FW Act.

³⁵ *Commonwealth of Australia v Director, Fair Work Building Industry Inspectorate* [2015] HCA 46 (**Commonwealth v FWBII**) at [46]-[64] (per French CJ, Kiefel, Bell, Nettle and Gordon JJ).

In appropriate cases, we may reach agreement with other parties about the amount of penalty we ask the Court to order. The Court may accept the agreed penalty if it is satisfied that the amount is appropriate.³⁶

Discounts on penalty

Courts may reduce the penalty to be ordered if a person admits the contraventions and cooperates with the Court process.³⁷ We will draw the Court's attention to any conduct that justifies a discount on penalty, in particular any admissions made early in the course of an investigation or soon after the commencement of proceedings. If admissions are made close to, or during, the Court hearing, we may submit to the Court that a lesser or no discount on penalty is appropriate.

Costs

Under the FW Act, parties to litigation will normally pay their own costs of the proceeding. However, the Court can order a party to pay someone else's costs in some circumstances, such as when a party has acted unreasonably. In appropriate cases, the FWO may seek orders that a party pay costs.

Referrals

Where the FWO becomes aware of issues that are outside of its statutory functions the FWO will refer the matter, or provide the information obtained, to the relevant bodies.³⁸

Publicising compliance and enforcement

The FWO will publish information regarding its compliance activities and enforcement outcomes.

[Our Media Policy can be found here.](#)

Feedback

We encourage feedback about your experience with us and invite people to contact us at

www.fairwork.gov.au/feedback.

If a person requests a review of our actions and is not satisfied with the result of our review, they can contact the Commonwealth Ombudsman on 1300 362 072, or at www.ombudsman.gov.au.

³⁶ Commonwealth v FWBII at [48], [57]-[59] (per French CJ, Kiefel, Bell, Nettle and Gordon JJ).

³⁷ *Mornington Inn Pty Ltd v Jordan* [2008] FCAFC 70 at [74]-[76] (per Stone and Buchanan JJ).

³⁸ See FW Act s.682(1)(e) and s.718.



Fair Work
OMBUDSMAN

Compliance and Enforcement Policy

Date of publication July 2020

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Fair Work Act 2009

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Purpose

The Fair Work Ombudsman (**FWO**) is an independent statutory agency created by the *Fair Work Act 2009* (Cth) (**FW Act**). The purpose of the Compliance and Enforcement Policy (**Policy**) is to provide simple and clear information about how the FWO performs its statutory compliance and enforcement functions under section 682 of the FW Act. These functions include:

- promoting harmonious, productive and cooperative workplace relations and compliance with the FW Act and fair work instruments¹ including through the provision of education, assistance and advice;
- monitoring compliance with the FW Act and fair work instruments;
- inquiring into and investigating any act or practice that may be contrary to the FW Act, a fair work instrument or a safety net contractual entitlement;²
- commencing proceedings in a Court (or in limited circumstances making an application to the Fair Work Commission) to enforce the FW Act, a fair work instrument or a safety net contractual entitlement; and
- referring matters to other relevant authorities where appropriate.

¹ A “fair work instrument” is defined as a modern award, an enterprise agreement, a workplace determination or a Fair Work Commission order: See FW Act s.12.

² A “safety net contractual entitlement” is defined as an entitlement under a contract between an employee and an employer that relates to any of the subject matters described in s.61(2) (which deals with the National Employment Standards) or s.139(1) (which deals with modern awards): See FW Act s.12.

Assessment

When the FWO becomes aware of allegations of non-compliance with the FW Act and/or a fair work instrument, we assess each matter to decide how we will respond.

Before any investigation or inquiry is commenced, a case assessment process is undertaken first to determine, amongst other things, whether the FWO has jurisdiction, and whether the use of our investigative powers is in the public interest (which involves an assessment of whether any proposed compliance activity would be an efficient, effective and ethical use of public resources).

As part of this process, the FWO considers its strategic priorities. Further information about [Our Priorities can be found here](#).³

Additional public interest factors taken into account as part of the assessment process include:

- whether the matter involves vulnerable workers;
- whether the matter demonstrates a blatant disregard of laws or repeat offending;
- whether the matter is of significant scale or impact on workers or the community;
- whether the employment relationship is ongoing, or how long ago the employment ended;
- whether there is likely to be reliable evidence available to support a finding or view that a contravention has occurred; and
- confidentiality (where the employee does not want us to advise the employer that they have raised allegations of potential non-compliance with the FW Act and/or fair work instruments).

Assistance

In response to requests for assistance involving a workplace dispute, the FWO may provide education, advice and various dispute resolution tools to assist parties resolve instances of potential non-compliance.

Investigation and Inquiries

Where the FWO becomes aware of potential non-compliance with the FW Act, a fair work instrument or a safety net contractual entitlement, a Fair Work Inspector may commence an investigation or an inquiry into the potential non-compliance.

An inquiry may also be commenced where the FWO is seeking to monitor compliance with the FW Act or a fair work instrument. This may occur without the FWO receiving allegations of non-compliance.

³ <https://www.fairwork.gov.au/about-us/our-purpose/our-priorities>

Fair Work Inspectors have access to a number of statutory compliance powers to assist them in their functions.

All investigations and inquiries are impartial. Fair Work Inspectors will seek evidence from parties and other sources and will make decisions based on the available evidence.

Compliance Powers

Fair Work Inspectors are able to use statutory compliance powers for a 'compliance purpose', which includes determining whether a person is complying with the FW Act or a fair work instrument, or, in certain circumstances, whether a safety net contractual entitlement has been contravened.⁴

Where a provision of the *Fair Work Regulations 2009* (Cth) (**FW Regulations**) or another Act confers powers on Fair Work Inspectors, compliance powers can also be used for the purposes of that provision or Act.⁵

Entering Premises

A Fair Work Inspector may enter:

- premises if they reasonably believe that the FW Act or a fair work instrument applies (or applied) to work that is (or was) performed there; or
- business premises if they reasonably believe that records or documents relevant to a compliance purpose are on, or are accessible from, the premises.⁶

Before entering premises, a Fair Work Inspector must show their identity card to the occupier of the premises or their representative. If this isn't possible, the Fair Work Inspector must show their identity card as soon as practicable after entering.⁷

Fair Work Inspectors are not able to enter any area of a workplace that is used for residential purposes unless they reasonably believe that work is being performed in that area.⁸

While on the premises Fair Work Inspectors may:⁹

- inspect any work, process or object;
- conduct interviews;
- require a person to tell them who has, or has access to, a record or document;
- require the person with, or with access to, a record or document to produce the document, either while they are on the premises or by a particular date;

⁴ FW Act s.706(1)(a) & (b) and s.706(2).

⁵ FW Act s.706(1)(c) & (d).

⁶ FW Act s.708(1).

⁷ FW Act s.708(3).

⁸ FW Act s.708(2).

⁹ FW Act s.709.

- make copies of any document kept on the premises or accessible from a computer on the premises; and
- in certain circumstances, take samples of goods or substances.¹⁰

In certain circumstances when entering premises, the Fair Work Inspector may be accompanied by a suitably qualified person to assist them in exercising their compliance powers.¹¹ By way of example, a Fair Work Inspector may be accompanied by an interpreter to assist with translating, or a forensic accountant to assist with copying and interpreting digital records.

Notice to produce records or documents

A Fair Work Inspector may require a person or entity to produce to them any record or document relevant to a compliance purpose by issuing a notice to produce records or documents (**NTP**). An NTP is a formal notice that requires specific documents to be produced to a Fair Work Inspector within a specified timeframe at a specified place.¹² An NTP must on its face, demonstrate that it is issued in accordance with a compliance purpose and must sufficiently identify the nature of the suspected contravention or contraventions.¹³

Unless a person has a reasonable excuse for not complying with the NTP, failure to comply is a contravention of the FW Act, and may result in enforcement action, including litigation. If a person fails to comply with an NTP, a Court may order penalties of up to \$18,780 for an individual or \$93,900 for a body corporate.¹⁴

FWO Notices

The FWO has the power under section 712AA of the FW Act to apply to the Administrative Appeals Tribunal (**AAT**) for a FWO Notice. A FWO Notice may require a person to provide information, produce documents or attend and answer questions.

Failure to comply with a FWO Notice may result in a Court ordering penalties of up to \$187,800 against an individual.¹⁵

The FWO will only request that the AAT issue a FWO Notice if we reasonably believe a person:

¹⁰ See FW Regulations reg. 5.06 for further information regarding a Fair Work Inspector's power to take a sample of a good or substance.

¹¹ FW Act s.710.

¹² FW Act s.712.

¹³ *Construction, Forestry, Maritime, Mining & Energy Union v Fair Work Inspector Lam* [2018] FCA 1379 at [26] and [30] (per Bromberg J).

¹⁴ FW Act s.539: a failure to comply with s.712(3) can result in a maximum penalty equal to 60 penalty units. Pursuant to s.546(2) of the FW Act a body corporate may face a pecuniary penalty of up to five times 60 penalty units. A penalty unit is \$313 (as at 1 July 2023): *Crimes Act 1914* (Cth) (Crimes Act) s.4AA.

¹⁵ FW Act s.539: Failure to comply with s.712B(1) can result in a maximum penalty of equal to 600 penalty units. A penalty unit is \$313 (as at 1 July 2023): Crimes Act s.4AA.

- can give information relevant to an investigation;
- can produce documents relevant to an investigation;
- is capable of answering questions relevant to an investigation;
- all evidence gathering means have been exhausted or are not appropriate.

If a person receives a FWO Notice, it means we consider that person is capable of assisting and providing material relevant to an investigation.

Further information about [FWO Notices can be found here](#).¹⁶

Enforcement Outcomes: Compliance Notices and Enforceable Undertakings

The FW Act provides the FWO with simple enforcement mechanisms to deal with possible contraventions of the FW Act quickly and efficiently.

Compliance Notice¹⁷

Compliance Notices are a non-punitive mechanism for the FWO to address alleged contraventions of the FW Act instead of commencing Court proceedings.¹⁸

If at any stage while undertaking their functions a Fair Work Inspector forms a reasonable belief that a person or other entity has contravened:

- a provision of the National Employment Standards;
- a term of a modern award;
- a term of an enterprise agreement;
- a term of a workplace determination;
- a term of a national minimum wage order; or
- a term of an equal remuneration order,

then, a Fair Work Inspector can issue the person with a Compliance Notice.

This may occur in parallel with other matters which are investigated and addressed using other enforcement mechanisms.

A Compliance Notice will require that the person take specified action to remedy the direct effects of the identified contraventions and/or require the person to produce reasonable evidence of compliance.¹⁹ A

¹⁶ <https://www.fairwork.gov.au/how-we-will-help/templates-and-guides/fact-sheets/about-us/fwo-notices>

¹⁷ FW Act s.716.

¹⁸ *Hindu Society of Victoria (Australia) Inc v FWO* [2016] FCCA 221 (**Hindu Society**) at [30] (per Judge Riethmuller). See also, *FWO v Darna Pty Ltd & Anor* [2015] FCCA 709 at [11] (per Judge Hartnett).

¹⁹ FW Act s.716(2).

person who complies with a Compliance Notice is not taken to have admitted the contraventions or to have been found to have committed the contraventions.²⁰

Where a person complies with a Compliance Notice the FWO is unable to commence Court proceedings against that person for the particular contraventions that are the subject of the Compliance Notice.²¹

If a person fails to comply with the Compliance Notice and does not have a reasonable excuse,²² that person has contravened the FW Act and a Court may impose penalties of up to \$9,390 for an individual or \$46,950 for a body corporate.²³ It is open to the FWO to commence litigation for non-compliance with a Compliance Notice, as well as for any other contraventions identified, including the underlying contraventions referred to in the Compliance Notice.

A person may apply to the Court to have a Compliance Notice reviewed if they have not committed a contravention set out in the Compliance Notice, or if the Compliance Notice does not comply with the necessary requirements under the FW Act.²⁴

Enforceable Undertaking²⁵

If at any stage while undertaking their functions, the FWO forms a reasonable belief that a person has contravened the FW Act, the FWO may accept a written undertaking from the person in relation to the contravention. Enforceable Undertakings are a simple mechanism for the FWO to deal with contraventions of the FW Act while *"[t]he benefits to the recipients of the preparedness of the FWO to accept an undertaking is the avoidance of the considerable costs involved in court proceedings and the avoidance of the payment of a penalty"*.²⁶

Where the FWO has accepted an undertaking from a person the FWO cannot commence proceedings against the person in respect of the particular contraventions the undertaking has been given in relation to.²⁷

If a person fails to comply with the undertaking (i.e. the steps agreed to in the Enforceable Undertaking), the FWO may commence proceedings in Court to seek orders directing the person to comply, for compensation, or any other appropriate order.²⁸

²⁰ FW Act s.716(4B).

²¹ FW Act s.716(4A).

²² FW Act s.716(6).

²³ FW Act s.539: a failure to comply with s.716(5) can result in a maximum penalty equal to 30 penalty units. Pursuant to s.546 of the FW Act a body corporate may face a pecuniary penalty of up to five times 30 penalty units. A penalty unit is \$313 (as at 1 July 2023): Crimes Act s.4AA.

²⁴ FW Act s.717.

²⁵ FW Act s.715.

²⁶ *Hindu Society* at [18] (per Judge Riethmuller).

²⁷ FW Act s.715(4).

²⁸ FW Act s.715(6)&(7).

The FWO will generally only accept Enforceable Undertakings in limited circumstances. These may include matters involving self-disclosure and where a person has demonstrated a willingness to rectify underpayments, address any other impact of their contraventions and fully cooperate with the FWO.

In some matters, the FWO may determine it will only accept an Enforceable Undertaking where an appropriate contrition payment is offered. Decisions about the amount of such payments are made on a case-by-case basis. FWO considers a number of factors, including:

- the nature and extent of the contraventions;
- rectification of underpayments and other remedial steps taken; and
- proportionality to any penalties that a court may impose if the matter were litigated.

Enforcement Outcomes: Outcomes of Investigations or Inquiries

There are a range of outcomes that may occur as a result of an investigation or inquiry by a Fair Work Inspector. While this may include a Compliance Notice or an Enforceable Undertaking, the FWO may also determine a different enforcement outcome is appropriate. The enforcement action taken will depend upon the assessment made.

Assessment Letter - notification at the end of an investigation or inquiry

Where a Fair Work Inspector has completed an investigation or inquiry, the FWO will notify a party of the outcome of that assessment. The notification may state that no contraventions were identified in relation to the specific investigation or inquiry. In some instances, the notification may state that the Fair Work Inspector determined that there was insufficient evidence to sustain the finding that a contravention occurred, but may caution or recommend a party take steps in order to ensure that they are compliant; for example, seeking independent legal advice. Where specified contraventions are identified, a Contravention Letter may be issued (as set out below).

Contravention Letter – notification of failure to observe requirements²⁹

If a Fair Work Inspector is satisfied that a person has failed to observe a requirement imposed by the FW Act, the FW Regulations or a fair work instrument, the Fair Work Inspector may issue a person with a written notification which:

- informs the person of the failure;
- requires the person to take specified action, within a specified period, to rectify the failure;
- requires the person to notify the Fair Work Inspector of any action taken to comply with the notice; and

²⁹ FW Regulations reg. 5.05.

- advises the person of the actions the Fair Work Inspector may take if the person fails to comply with the notice.

Depending on the nature of the contraventions and the person's response to the Contravention Letter, the FWO may decide to pursue one of the other available enforcement mechanisms.

Infringement Notice

If a Fair Work Inspector reasonably believes there has been one or more contraventions of particular provisions of the FW Act or the FW Regulations in relation to record keeping, pay slip or job advertisement obligations, the Fair Work Inspector may issue an Infringement Notice.³⁰ An Infringement Notice requires the person to pay a penalty for committing the contravention. The maximum penalties that a person can be required to pay under an Infringement Notice are:

- \$1,878 for an individual or \$9,390 for a body corporate for contraventions of the FW Act; and
- \$626 for an individual or \$3,130 for a body corporate for contraventions of the FW Regulations.³¹

An Infringement Notice can be issued up to 12 months after the contravention occurred.³²

A person who complies with an Infringement Notice is not taken to have admitted the contravention.³³

Where a person complies with an Infringement Notice the FWO is unable to commence Court proceedings against that person for the particular contravention(s) that are the subject of the Infringement Notice.³⁴

Litigation

Commencing legal proceedings, which we refer to as "litigation", is another enforcement mechanism available to the FWO and is generally reserved for more serious cases of non-compliance. Litigation is an essential enforcement mechanism for three reasons:

- enforcing the law and obtaining Court orders sends a powerful public message to others not to engage in similar conduct (general deterrence);
- stopping and deterring people from engaging in unlawful behaviour now and in the future makes the need to comply with Commonwealth workplace laws real for individuals (specific deterrence); and
- clarifying the law helps the community understand the various obligations and rights arising from Commonwealth workplace laws.

The FWO is more likely to litigate in cases involving:

³⁰ FW Regulations reg. 4.03 & 4.04.

³¹ FW Act s.558(2).

³² FW Regulations reg. 4.04(2).

³³ FW Regulations reg. 4.09.

³⁴ FW Regulations reg. 4.09.

- deliberate and/or repeated non-compliance with Commonwealth workplace laws;
- exploitation of vulnerable workers;
- failure to cooperate with us and fix contraventions after being given the opportunity to do so; and/or
- parties who have a prior history of contraventions who have not taken adequate steps to ensure compliance despite being advised of the consequences in the past.

Even in circumstances where contraventions have been rectified, it may still be appropriate for the FWO to commence legal proceedings (e.g. to obtain a penalty in respect of a contravention to achieve specific or general deterrence).

In addition to the FWO commencing its own proceedings,³⁵ section 682(1)(f) of the FW Act provides that the FWO may represent employees or outworkers who are, or may become, a party to proceedings in a court or the FWC, if the FWO considers that the representation will promote compliance with the FW Act or fair work instrument.

Who we litigate against

Liability for contraventions of Commonwealth workplace laws may lie with more than just one person or body. Sections 550 and 557A(5A) of the FW Act describe how a person can be “involved in” a contravention, and says that such persons are treated as having committed a contravention themselves.

We may commence legal proceedings and seek orders against any person who contravenes their obligations under Commonwealth workplace laws, as well as those who are “involved” in such contraventions. This might include:

- employers;
- registered organisations;
- company directors or company secretaries;
- officials of organisations;
- human resources managers or other managers;
- external agents or advisors, such as accountants, bookkeepers or external human resources consultants;
- companies and people involved in supply chains involving the procurement of labour;
- a holding company of a subsidiary employing entity or its directors; and/or

³⁵ FW Act s.682(1)(d).

- a franchisor.

When does the FWO commence litigation?

The FWO will only commence proceedings if it considers that there is sufficient evidence to do so and it would be in the public interest.

In deciding whether to institute any appeal, the FWO will consider whether there are reasonable prospects of success and whether the appeal is in the public interest.

As a regulator utilising public funds, the FWO will consider the impact on its resources and costs before making a decision to commence first instance proceedings or an appeal.

The public interest factors the FWO considers in determining to commence, or not commence, litigation varies depending on the particular circumstances of each case. The following table sets out some of the matters the FWO typically considers.

Public interest factors	Examples of matters the FWO considers
Nature, seriousness and circumstances of the alleged contraventions	<ul style="list-style-type: none"> ■ The seriousness of the alleged contraventions ■ Prevalence in the community of the type of behaviour ■ Any mitigating or aggravating circumstances ■ Whether the person(s) alleged to have committed the contraventions sought and relied on relevant professional advice ■ Evidence of deliberate or reckless conduct including omitting to take steps to ensure compliance ■ Whether contraventions have been admitted and/or fixed
Characteristics of person(s) alleged to have committed the contraventions	<ul style="list-style-type: none"> ■ Compliance history ■ Sophistication and financial position (including the impact on business viability, service delivery and employees if excessive costs and sanction imposed) ■ Whether the person has actively assisted the FWO's inquiries and whether they genuinely accept their non-compliance ■ What steps they have taken to prevent further contraventions
Characteristics of person(s) affected by the alleged contraventions	<ul style="list-style-type: none"> ■ Any special vulnerability, such as whether the person has a disability, is a young or mature worker, is present in Australia on a visa or is from a culturally and linguistically diverse background ■ Whether the person has the ability and resources to commence their own proceedings
Impact of the alleged contraventions	<ul style="list-style-type: none"> ■ Direct and indirect impact on the people who have been affected by the alleged contraventions ■ Impact on any other person(s), including other businesses/competitors

Public interest factors	Examples of matters the FWO considers
	<ul style="list-style-type: none"> ■ The impact of the alleged contraventions and their size, such as the number of people affected or the quantum of any underpayments
Impact of litigation on general and specific deterrence	<ul style="list-style-type: none"> ■ Whether litigation will reduce the likelihood that others will engage in similar behaviour (general deterrence) ■ Whether litigation will reduce the likelihood of further contraventions of workplace laws by the person(s) involved in the proceedings (specific deterrence)
Effect of litigation	<ul style="list-style-type: none"> ■ Suitability and efficacy of other enforcement mechanisms as an alternative to litigation ■ Likely outcome in the event the contraventions are found to have occurred (e.g. penalties, compensation or other orders) ■ Whether the likely outcome would be unduly harsh or oppressive
Administration of justice	<ul style="list-style-type: none"> ■ Passage of time since the alleged contraventions ■ Likely length and cost of litigation ■ Whether proceedings are necessary to maintain public confidence in the administration of workplace laws

The FWO's decision to commence or not commence proceedings must be made impartially, and must not be influenced by any inappropriate consideration of race, religion, sex, national origin or political association. The decision must not be influenced by any political advantage or disadvantage to the Government, any political group or party or any union, industrial or employer group or association.

Approach to self-reported non-compliance

The FWO takes a practical and proportionate approach to self-reported non-compliance. Isolated payroll errors resulting in underpayments over a short period of time (up to 12 months) do not need to be actively reported to the FWO, as long as:

- employees are appropriately informed of the underpayment;
- employees are back paid in full as soon as practicable; and
- changes are implemented to ensure the error does not happen again.

For broader and/or potential systemic non-compliance, it is best to notify the FWO as soon as possible. Reports should be made through the FWO's Corporate Sector team via email – corporateassurance@fwo.gov.au.

Any self-reports should identify the following:

- details of the non-compliance;
- what led to or contributed to it;

- the action taken to assess and rectify it; and
- confirmation of notification to the Australian Tax Office (ATO) (if there will be likely tax and superannuation implications). Notifications to the ATO can be made via email to employerobligationsworkinggroup@ato.gov.au.

Self-reporting, cooperation and remediation can justify the FWO's use of non-litigious and non-punitive compliance tools to resolve the matter, such as contravention letters or compliance notices.

Where more serious contraventions are involved (for example large scale underpayments going back many years), the FWO may accept an Enforceable Undertaking offered by an employer with terms reflecting the scale of the underpayment and the employer's cooperative response. Such undertakings (discussed above) are provided for by section 715 of the FW Act, and provide an opportunity for a cooperative and self-reporting employer to avoid costly litigation. Of course, the FWO will continue to use litigation for the most serious and/or deliberate contraventions as appropriate.

Apart from the statutory requirements that must be satisfied before the FWO can accept an Enforceable Undertaking, the FWO will generally accept such undertakings where it has established:

- the amount of the underpayments owed (or agreed to a process for establishing this), and
- the nature and/or number of the contraventions of the FW Act relating to the underpayments.

Through offering and acceptance of an Enforceable Undertaking, an employer will avoid significant legal costs and civil penalties. Where an employer could expect to receive significant civil penalties for contraventions of the FW Act, the FWO may consider that an Enforceable Undertaking should include a contrition payment (discussed above). The amount of the contrition payment will be comparable to a penalty, but with significant discounts for early disclosure and cooperation. Like any penalty awarded by a court, the contrition payment will go into Consolidated Revenue for the benefit of the Australian community.

Conduct of proceedings

The FWO will conduct litigation honestly, fairly, consistently and in accordance with the Commonwealth's Obligation to Act as a Model Litigant (Appendix B to the *Legal Services Directions 2017*).

The FWO will make decisions about the conduct of litigation on the basis of the available evidence. If another party asks the FWO to agree to a particular course, or to put a submission to the Court, we may ask them to provide us with evidence to support their request.

Where evidence discloses a number of potential contraventions of Commonwealth workplace laws, the FWO will take care to plead the contraventions which adequately reflect the nature and extent of the relevant behaviour. Where the FWO alleges there have been serious contraventions within the meaning of section 557A of the FW Act, we will specify the relevant serious contraventions. A breach will only be a

serious contravention where a person knowingly contravened the relevant provision, and that breach was part of a systematic pattern of conduct.

After proceedings have been commenced, the FWO participates in discussions to limit any issues in dispute, for example, during Court mediations. As a regulator, the FWO approaches such discussions from a public interest perspective. In circumstances where a party provides new evidence alleging that the contravention(s) did not occur, the FWO will consider the evidence and may:

- proceed with the original contraventions;
- proceed in relation to fewer contraventions than originally identified; and/or
- accept admissions only in relation to some contraventions and not press or seek orders in relation to other contraventions. All admissions must reflect a genuine acceptance of responsibility.

We will discontinue legal proceedings if it is appropriate to do so. It will be rare for us to make this decision, given the detailed assessment we undertake before we commence proceedings.

Admissions or payments made just before or after proceedings are commenced will usually not justify discontinuing the proceedings, but the FWO will take such action into account when seeking orders and making submissions to the Court on appropriate penalties.

Orders and penalties

The FW Act allows eligible Courts to make a wide range of orders if a person is found to have contravened the FW Act. Orders that the FWO may seek in proceedings include orders:

- that underpayments be rectified and interest be paid;
- that compensation be paid to person(s) affected by the contraventions. Such compensation would be paid by person(s) responsible for contraventions and/or other persons who were “involved” in them;
- for a civil penalty to be paid to the Commonwealth³⁶ or, where appropriate, the penalty be redirected to an impacted party;
- that a person pay any civil penalty personally, without seeking or accepting indemnity from a third party;
- for injunctions to stop, prevent or restrain further contraventions from occurring; and/or
- that a person take specific steps, for example by undertaking training or conducting wage audits.

³⁶ As a result of the *Fair Work Amendment (Protecting Vulnerable Workers) Act 2017* (Cth), the maximum penalties for serious contraventions, within the meaning of s.557A of the FW Act, are higher than for other contraventions of the FW Act.

Submissions on penalty

The Courts are responsible for deciding what orders are appropriate in a case and the amount of any civil penalty. Courts may have regard to submissions made by the parties to proceedings in relation to penalty, including as to what facts are relevant.³⁷ The FWO may put evidence before the Court to support our submissions on penalty, including evidence about compliance in particular industries, places or amongst particular groups of workplace participants.

The FWO will seek penalties that:

- are proportionate to the nature of the behaviour;
- will achieve general and specific deterrence; and
- avoid a harsh or oppressive outcome.

In appropriate cases, we may reach agreement with other parties about the amount of penalty we ask the Court to order. The Court may accept the agreed penalty if it is satisfied that the amount is appropriate.³⁸

Discounts on penalty

Courts may reduce the penalty to be ordered if a person admits the contraventions and cooperates with the Court process.³⁹ We will draw the Court's attention to any conduct that justifies a discount on penalty, in particular any admissions made early in the course of an investigation or soon after the commencement of proceedings. If admissions are made close to, or during, the Court hearing, we may submit to the Court that a lesser or no discount on penalty is appropriate.

Costs

Under the FW Act, parties to litigation will normally pay their own costs of the proceeding. However, the Court can order a party to pay someone else's costs in some circumstances, such as when a party has acted unreasonably. In appropriate cases, the FWO may seek orders that a party pay costs.

Referrals

Where the FWO becomes aware of issues that are outside of its statutory functions the FWO will refer the matter, or provide the information obtained, to the relevant bodies.⁴⁰

³⁷ *Commonwealth of Australia v Director, Fair Work Building Industry Inspectorate* [2015] HCA 46 (**Commonwealth v FWBII**) at [46]-[64] (per French CJ, Kiefel, Bell, Nettle and Gordon JJ).

³⁸ *Commonwealth v FWBII* at [48], [57]-[59] (per French CJ, Kiefel, Bell, Nettle and Gordon JJ).

³⁹ *Mornington Inn Pty Ltd v Jordan* [2008] FCAFC 70 at [74]-[76] (per Stone and Buchanan JJ).

⁴⁰ See FW Act s.682(1)(e) and s.718.

Publicising compliance and enforcement

The FWO will publish information regarding its compliance activities and enforcement outcomes.

[Our Media Policy can be found here.](#)⁴¹

Feedback

We encourage feedback about your experience with us and invite people to contact us at

www.fairwork.gov.au/feedback.

If a person requests a review of our actions and is not satisfied with the result of our review, they can contact the Commonwealth Ombudsman on 1300 362 072, or at www.ombudsman.gov.au.

⁴¹ <https://www.fairwork.gov.au/ArticleDocuments/725/fwo-media-policy.pdf.aspx>



Fair Work
OMBUDSMAN

Compliance and Enforcement Policy

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Purpose

The Fair Work Ombudsman (**FWO**) is an independent statutory agency created by the *Fair Work Act 2009* (Cth) (**FW Act**). The purpose of the Compliance and Enforcement Policy (**Policy**) is to provide simple and clear information about how the FWO performs its statutory compliance and enforcement functions under section 682 of the FW Act. These functions include:

- promoting harmonious, productive and cooperative workplace relations and compliance with the FW Act and fair work instruments¹ including through the provision of education, assistance and advice;
- monitoring compliance with the FW Act and fair work instruments;
- inquiring into and investigating any act or practice that may be contrary to the FW Act, a fair work instrument or a safety net contractual entitlement;²
- commencing proceedings in a Court (or in limited circumstances making an application to the Fair Work Commission) to enforce the FW Act, a fair work instrument or a safety net contractual entitlement; and
- referring matters to other relevant authorities where appropriate.

¹ A “fair work instrument” is defined as a modern award, an enterprise agreement, a workplace determination or a Fair Work Commission order: See FW Act s.12.

² A “safety net contractual entitlement” is defined as an entitlement under a contract between an employee and an employer that relates to any of the subject matters described in s.61(2) (which deals with the National Employment Standards) or s.139(1) (which deals with modern awards): See FW Act s.12.

Assessment

When the FWO becomes aware of allegations of non-compliance with the FW Act and/or a fair work instrument, we assess each matter to decide how we will respond.

Before any investigation or inquiry is commenced, a case assessment process is undertaken first to determine, amongst other things, whether the FWO has jurisdiction, and whether the use of our investigative powers is in the public interest (which involves an assessment of whether any proposed compliance activity would be an efficient, effective and ethical use of public resources).

As part of this process, the FWO considers its strategic priorities. Further information about [Our Priorities can be found here](#).³

Additional public interest factors taken into account as part of the assessment process include:

- whether the matter involves vulnerable workers;
- whether the matter demonstrates a blatant disregard of laws or repeat offending;
- whether the matter is of significant scale or impact on workers or the community;
- whether the employment relationship is ongoing, or how long ago the employment ended;
- whether there is likely to be reliable evidence available to support a finding or view that a contravention has occurred; and
- confidentiality (where the employee does not want us to advise the employer that they have raised allegations of potential non-compliance with the FW Act and/or fair work instruments).

Assistance

In response to requests for assistance involving a workplace dispute, the FWO may provide education, advice and various dispute resolution tools to assist parties resolve instances of potential non-compliance.

Investigation and Inquiries

Where the FWO becomes aware of potential non-compliance with the FW Act, a fair work instrument or a safety net contractual entitlement, a Fair Work Inspector may commence an investigation or an inquiry into the potential non-compliance.

An inquiry may also be commenced where the FWO is seeking to monitor compliance with the FW Act or a fair work instrument. This may occur without the FWO receiving allegations of non-compliance.

³ <https://www.fairwork.gov.au/about-us/our-purpose/our-priorities>

Fair Work Inspectors have access to a number of statutory compliance powers to assist them in their functions.

All investigations and inquiries are impartial. Fair Work Inspectors will seek evidence from parties and other sources and will make decisions based on the available evidence.

Compliance Powers

Fair Work Inspectors are able to use statutory compliance powers for a 'compliance purpose', which includes determining whether a person is complying with the FW Act or a fair work instrument, or, in certain circumstances, whether a safety net contractual entitlement has been contravened.⁴

Where a provision of the *Fair Work Regulations 2009* (Cth) (**FW Regulations**) or another Act confers powers on Fair Work Inspectors, compliance powers can also be used for the purposes of that provision or Act.⁵

Entering Premises

A Fair Work Inspector may enter:

- premises if they reasonably believe that the FW Act or a fair work instrument applies (or applied) to work that is (or was) performed there; or
- business premises if they reasonably believe that records or documents relevant to a compliance purpose are on, or are accessible from, the premises.⁶

Before entering premises, a Fair Work Inspector must show their identity card to the occupier of the premises or their representative. If this isn't possible, the Fair Work Inspector must show their identity card as soon as practicable after entering.⁷

Fair Work Inspectors are not able to enter any area of a workplace that is used for residential purposes unless they reasonably believe that work is being performed in that area.⁸

While on the premises Fair Work Inspectors may:⁹

- inspect any work, process or object;
- conduct interviews;
- require a person to tell them who has, or has access to, a record or document;
- require the person with, or with access to, a record or document to produce the document, either while they are on the premises or by a particular date;

⁴ FW Act s.706(1)(a) & (b) and s.706(2).

⁵ FW Act s.706(1)(c) & (d).

⁶ FW Act s.708(1).

⁷ FW Act s.708(3).

⁸ FW Act s.708(2).

⁹ FW Act s.709.

- make copies of any document kept on the premises or accessible from a computer on the premises; and
- in certain circumstances, take samples of goods or substances.¹⁰

In certain circumstances when entering premises, the Fair Work Inspector may be accompanied by a suitably qualified person to assist them in exercising their compliance powers.¹¹ By way of example, a Fair Work Inspector may be accompanied by an interpreter to assist with translating, or a forensic accountant to assist with copying and interpreting digital records.

Notice to produce records or documents

A Fair Work Inspector may require a person or entity to produce to them any record or document relevant to a compliance purpose by issuing a notice to produce records or documents (**NTP**). An NTP is a formal notice that requires specific documents to be produced to a Fair Work Inspector within a specified timeframe at a specified place.¹² An NTP must on its face, demonstrate that it is issued in accordance with a compliance purpose and must sufficiently identify the nature of the suspected contravention or contraventions.¹³

Unless a person has a reasonable excuse for not complying with the NTP, failure to comply is a contravention of the FW Act, and may result in enforcement action, including litigation. If a person fails to comply with an NTP, a Court may order penalties of up to \$18,780 for an individual or \$93,900 for a body corporate.¹⁴

FWO Notices

The FWO has the power under section 712AA of the FW Act to apply to the Administrative Appeals Tribunal (**AAT**) for a FWO Notice. A FWO Notice may require a person to provide information, produce documents or attend and answer questions.

Failure to comply with a FWO Notice may result in a Court ordering penalties of up to \$187,800 against an individual.¹⁵

The FWO will only request that the AAT issue a FWO Notice if we reasonably believe a person:

¹⁰ See FW Regulations reg. 5.06 for further information regarding a Fair Work Inspector's power to take a sample of a good or substance.

¹¹ FW Act s.710.

¹² FW Act s.712.

¹³ *Construction, Forestry, Maritime, Mining & Energy Union v Fair Work Inspector Lam* [2018] FCA 1379 at [26] and [30] (per Bromberg J).

¹⁴ FW Act s.539: a failure to comply with s.712(3) can result in a maximum penalty equal to 60 penalty units. Pursuant to s.546(2) of the FW Act a body corporate may face a pecuniary penalty of up to five times 60 penalty units. A penalty unit is \$313 (as at 1 July 2023): *Crimes Act 1914* (Cth) (Crimes Act) s.4AA.

¹⁵ FW Act s.539: Failure to comply with s.712B(1) can result in a maximum penalty of equal to 600 penalty units. A penalty unit is \$313 (as at 1 July 2023): Crimes Act s.4AA.

- can give information relevant to an investigation;
- can produce documents relevant to an investigation;
- is capable of answering questions relevant to an investigation;
- all evidence gathering means have been exhausted or are not appropriate.

If a person receives a FWO Notice, it means we consider that person is capable of assisting and providing material relevant to an investigation.

Further information about [FWO Notices can be found here](#).¹⁶

Enforcement Outcomes: Compliance Notices and Enforceable Undertakings

The FW Act provides the FWO with simple enforcement mechanisms to deal with possible contraventions of the FW Act quickly and efficiently.

Compliance Notice¹⁷

Compliance Notices are a non-punitive mechanism for the FWO to address alleged contraventions of the FW Act instead of commencing Court proceedings.¹⁸

If at any stage while undertaking their functions a Fair Work Inspector forms a reasonable belief that a person or other entity has contravened:

- a provision of the National Employment Standards;
- a term of a modern award;
- a term of an enterprise agreement;
- a term of a workplace determination;
- a term of a national minimum wage order; or
- a term of an equal remuneration order,

then, a Fair Work Inspector can issue the person with a Compliance Notice.

This may occur in parallel with other matters which are investigated and addressed using other enforcement mechanisms.

A Compliance Notice will require that the person take specified action to remedy the direct effects of the identified contraventions and/or require the person to produce reasonable evidence of compliance.¹⁹ A

¹⁶ <https://www.fairwork.gov.au/how-we-will-help/templates-and-guides/fact-sheets/about-us/fwo-notices>

¹⁷ FW Act s.716.

¹⁸ *Hindu Society of Victoria (Australia) Inc v FWO* [2016] FCCA 221 (**Hindu Society**) at [30] (per Judge Riethmuller). See also, *FWO v Darna Pty Ltd & Anor* [2015] FCCA 709 at [11] (per Judge Hartnett).

¹⁹ FW Act s.716(2).

person who complies with a Compliance Notice is not taken to have admitted the contraventions or to have been found to have committed the contraventions.²⁰

Where a person complies with a Compliance Notice the FWO is unable to commence Court proceedings against that person for the particular contraventions that are the subject of the Compliance Notice.²¹

If a person fails to comply with the Compliance Notice and does not have a reasonable excuse,²² that person has contravened the FW Act and a Court may impose penalties of up to \$9,390 for an individual or \$46,950 for a body corporate.²³ It is open to the FWO to commence litigation for non-compliance with a Compliance Notice, as well as for any other contraventions identified, including the underlying contraventions referred to in the Compliance Notice.

A person may apply to the Court to have a Compliance Notice reviewed if they have not committed a contravention set out in the Compliance Notice, or if the Compliance Notice does not comply with the necessary requirements under the FW Act.²⁴

Enforceable Undertaking²⁵

If at any stage while undertaking their functions, the FWO forms a reasonable belief that a person has contravened the FW Act, the FWO may accept a written undertaking from the person in relation to the contravention. Enforceable Undertakings are a simple mechanism for the FWO to deal with contraventions of the FW Act while *"[t]he benefits to the recipients of the preparedness of the FWO to accept an undertaking is the avoidance of the considerable costs involved in court proceedings and the avoidance of the payment of a penalty"*.²⁶

Where the FWO has accepted an undertaking from a person the FWO cannot commence proceedings against the person in respect of the particular contraventions the undertaking has been given in relation to.²⁷

If a person fails to comply with the undertaking (i.e. the steps agreed to in the Enforceable Undertaking), the FWO may commence proceedings in Court to seek orders directing the person to comply, for compensation, or any other appropriate order.²⁸

²⁰ FW Act s.716(4B).

²¹ FW Act s.716(4A).

²² FW Act s.716(6).

²³ FW Act s.539: a failure to comply with s.716(5) can result in a maximum penalty equal to 30 penalty units. Pursuant to s.546 of the FW Act a body corporate may face a pecuniary penalty of up to five times 30 penalty units. A penalty unit is \$313 (as at 1 July 2023): Crimes Act s.4AA.

²⁴ FW Act s.717.

²⁵ FW Act s.715.

²⁶ *Hindu Society* at [18] (per Judge Riethmuller).

²⁷ FW Act s.715(4).

²⁸ FW Act s.715(6)&(7).

The FWO will generally only accept Enforceable Undertakings in limited circumstances. These may include matters involving self-disclosure and where a person has demonstrated a willingness to rectify underpayments, address any other impact of their contraventions and fully cooperate with the FWO.

In some matters, the FWO may determine it will only accept an Enforceable Undertaking where an appropriate contrition payment is offered. Decisions about the amount of such payments are made on a case-by-case basis. FWO considers a number of factors, including:

- the nature and extent of the contraventions;
- rectification of underpayments and other remedial steps taken; and
- proportionality to any penalties that a court may impose if the matter were litigated.

Enforcement Outcomes: Outcomes of Investigations or Inquiries

There are a range of outcomes that may occur as a result of an investigation or inquiry by a Fair Work Inspector. While this may include a Compliance Notice or an Enforceable Undertaking, the FWO may also determine a different enforcement outcome is appropriate. The enforcement action taken will depend upon the assessment made.

Assessment Letter - notification at the end of an investigation or inquiry

Where a Fair Work Inspector has completed an investigation or inquiry, the FWO will notify a party of the outcome of that assessment. The notification may state that no contraventions were identified in relation to the specific investigation or inquiry. In some instances, the notification may state that the Fair Work Inspector determined that there was insufficient evidence to sustain the finding that a contravention occurred, but may caution or recommend a party take steps in order to ensure that they are compliant; for example, seeking independent legal advice. Where specified contraventions are identified, a Contravention Letter may be issued (as set out below).

Contravention Letter – notification of failure to observe requirements²⁹

If a Fair Work Inspector is satisfied that a person has failed to observe a requirement imposed by the FW Act, the FW Regulations or a fair work instrument, the Fair Work Inspector may issue a person with a written notification which:

- informs the person of the failure;
- requires the person to take specified action, within a specified period, to rectify the failure;
- requires the person to notify the Fair Work Inspector of any action taken to comply with the notice; and

²⁹ FW Regulations reg. 5.05.

- advises the person of the actions the Fair Work Inspector may take if the person fails to comply with the notice.

Depending on the nature of the contraventions and the person's response to the Contravention Letter, the FWO may decide to pursue one of the other available enforcement mechanisms.

Infringement Notice

If a Fair Work Inspector reasonably believes there has been one or more contraventions of particular provisions of the FW Act or the FW Regulations in relation to record keeping, pay slip or job advertisement obligations, the Fair Work Inspector may issue an Infringement Notice.³⁰ An Infringement Notice requires the person to pay a penalty for committing the contravention. The maximum penalties that a person can be required to pay under an Infringement Notice are:

- \$1,878 for an individual or \$9,390 for a body corporate for contraventions of the FW Act; and
- \$626 for an individual or \$3,130 for a body corporate for contraventions of the FW Regulations.³¹

An Infringement Notice can be issued up to 12 months after the contravention occurred.³²

A person who complies with an Infringement Notice is not taken to have admitted the contravention.³³

Where a person complies with an Infringement Notice the FWO is unable to commence Court proceedings against that person for the particular contravention(s) that are the subject of the Infringement Notice.³⁴

Litigation

Commencing legal proceedings, which we refer to as "litigation", is another enforcement mechanism available to the FWO and is generally reserved for more serious cases of non-compliance. Litigation is an essential enforcement mechanism for three reasons:

- enforcing the law and obtaining Court orders sends a powerful public message to others not to engage in similar conduct (general deterrence);
- stopping and deterring people from engaging in unlawful behaviour now and in the future makes the need to comply with Commonwealth workplace laws real for individuals (specific deterrence); and
- clarifying the law helps the community understand the various obligations and rights arising from Commonwealth workplace laws.

The FWO is more likely to litigate in cases involving:

³⁰ FW Regulations reg. 4.03 & 4.04.

³¹ FW Act s.558(2).

³² FW Regulations reg. 4.04(2).

³³ FW Regulations reg. 4.09.

³⁴ FW Regulations reg. 4.09.

- deliberate and/or repeated non-compliance with Commonwealth workplace laws;
- exploitation of vulnerable workers;
- failure to cooperate with us and fix contraventions after being given the opportunity to do so; and/or
- parties who have a prior history of contraventions who have not taken adequate steps to ensure compliance despite being advised of the consequences in the past.

Even in circumstances where contraventions have been rectified, it may still be appropriate for the FWO to commence legal proceedings (e.g. to obtain a penalty in respect of a contravention to achieve specific or general deterrence).

In addition to the FWO commencing its own proceedings,³⁵ section 682(1)(f) of the FW Act provides that the FWO may represent employees or outworkers who are, or may become, a party to proceedings in a court or the FWC, if the FWO considers that the representation will promote compliance with the FW Act or fair work instrument.

Who we litigate against

Liability for contraventions of Commonwealth workplace laws may lie with more than just one person or body. Sections 550 and 557A(5A) of the FW Act describe how a person can be “involved in” a contravention, and says that such persons are treated as having committed a contravention themselves.

We may commence legal proceedings and seek orders against any person who contravenes their obligations under Commonwealth workplace laws, as well as those who are “involved” in such contraventions. This might include:

- employers;
- registered organisations;
- company directors or company secretaries;
- officials of organisations;
- human resources managers or other managers;
- external agents or advisors, such as accountants, bookkeepers or external human resources consultants;
- companies and people involved in supply chains involving the procurement of labour;
- a holding company of a subsidiary employing entity or its directors; and/or

³⁵ FW Act s.682(1)(d).

- a franchisor.

When does the FWO commence litigation?

The FWO will only commence proceedings if it considers that there is sufficient evidence to do so and it would be in the public interest.

In deciding whether to institute any appeal, the FWO will consider whether there are reasonable prospects of success and whether the appeal is in the public interest.

As a regulator utilising public funds, the FWO will consider the impact on its resources and costs before making a decision to commence first instance proceedings or an appeal.

The public interest factors the FWO considers in determining to commence, or not commence, litigation varies depending on the particular circumstances of each case. The following table sets out some of the matters the FWO typically considers.

Public Interest factors	Examples of matters the FWO considers
Nature, seriousness and circumstances of the alleged contraventions	<ul style="list-style-type: none"> ■ The seriousness of the alleged contraventions ■ Prevalence in the community of the type of behaviour ■ Any mitigating or aggravating circumstances ■ Whether the person(s) alleged to have committed the contraventions sought and relied on relevant professional advice ■ Evidence of deliberate or reckless conduct including omitting to take steps to ensure compliance ■ Whether contraventions have been admitted and/or fixed
Characteristics of person(s) alleged to have committed the contraventions	<ul style="list-style-type: none"> ■ Compliance history ■ Sophistication and financial position (including the impact on business viability, service delivery and employees if excessive costs and sanction imposed) ■ Whether the person has actively assisted the FWO's inquiries and whether they genuinely accept their non-compliance ■ What steps they have taken to prevent further contraventions
Characteristics of person(s) affected by the alleged contraventions	<ul style="list-style-type: none"> ■ Any special vulnerability, such as whether the person has a disability, is a young or mature worker, is present in Australia on a visa or is from a culturally and linguistically diverse background ■ Whether the person has the ability and resources to commence their own proceedings
Impact of the alleged contraventions	<ul style="list-style-type: none"> ■ Direct and indirect impact on the people who have been affected by the alleged contraventions ■ Impact on any other person(s), including other businesses/competitors

Public interest factors	Examples of matters the FWO considers
	<ul style="list-style-type: none"> ■ The impact of the alleged contraventions and their size, such as the number of people affected or the quantum of any underpayments
Impact of litigation on general and specific deterrence	<ul style="list-style-type: none"> ■ Whether litigation will reduce the likelihood that others will engage in similar behaviour (general deterrence) ■ Whether litigation will reduce the likelihood of further contraventions of workplace laws by the person(s) involved in the proceedings (specific deterrence)
Effect of litigation	<ul style="list-style-type: none"> ■ Suitability and efficacy of other enforcement mechanisms as an alternative to litigation ■ Likely outcome in the event the contraventions are found to have occurred (e.g. penalties, compensation or other orders) ■ Whether the likely outcome would be unduly harsh or oppressive
Administration of justice	<ul style="list-style-type: none"> ■ Passage of time since the alleged contraventions ■ Likely length and cost of litigation ■ Whether proceedings are necessary to maintain public confidence in the administration of workplace laws

The FWO's decision to commence or not commence proceedings must be made impartially, and must not be influenced by any inappropriate consideration of race, religion, sex, national origin or political association. The decision must not be influenced by any political advantage or disadvantage to the Government, any political group or party or any union, industrial or employer group or association.

Approach to self-reported non-compliance

The FWO takes a practical and proportionate approach to self-reported non-compliance. Isolated payroll errors resulting in underpayments over a short period of time (up to 12 months) do not need to be actively reported to the FWO, as long as:

- employees are appropriately informed of the underpayment;
- employees are back paid in full as soon as practicable; and
- changes are implemented to ensure the error does not happen again.

For broader and/or potential systemic non-compliance, it is best to notify the FWO as soon as possible. Reports should be made through the FWO's Corporate Sector team via email – corporateassurance@fwo.gov.au.

Any self-reports should identify the following:

- details of the non-compliance;
- what led to or contributed to it;

- the action taken to assess and rectify it; and
- confirmation of notification to the Australian Tax Office (ATO) (if there will be likely tax and superannuation implications). Notifications to the ATO can be made via email to employerobligationsworkinggroup@ato.gov.au.

Self-reporting, cooperation and remediation can justify the FWO's use of non-litigious and non-punitive compliance tools to resolve the matter, such as contravention letters or compliance notices.

Where more serious contraventions are involved (for example large scale underpayments going back many years), the FWO may accept an Enforceable Undertaking offered by an employer with terms reflecting the scale of the underpayment and the employer's cooperative response. Such undertakings (discussed above) are provided for by section 715 of the FW Act, and provide an opportunity for a cooperative and self-reporting employer to avoid costly litigation. Of course, the FWO will continue to use litigation for the most serious and/or deliberate contraventions as appropriate.

Apart from the statutory requirements that must be satisfied before the FWO can accept an Enforceable Undertaking, the FWO will generally accept such undertakings where it has established:

- the amount of the underpayments owed (or agreed to a process for establishing this), and
- the nature and/or number of the contraventions of the FW Act relating to the underpayments.

Through offering and acceptance of an Enforceable Undertaking, an employer will avoid significant legal costs and civil penalties. Where an employer could expect to receive significant civil penalties for contraventions of the FW Act, the FWO may consider that an Enforceable Undertaking should include a contrition payment (discussed above). The amount of the contrition payment will be comparable to a penalty, but with significant discounts for early disclosure and cooperation. Like any penalty awarded by a court, the contrition payment will go into Consolidated Revenue for the benefit of the Australian community.

Conduct of proceedings

The FWO will conduct litigation honestly, fairly, consistently and in accordance with the Commonwealth's Obligation to Act as a Model Litigant (Appendix B to the *Legal Services Directions 2017*).

The FWO will make decisions about the conduct of litigation on the basis of the available evidence. If another party asks the FWO to agree to a particular course, or to put a submission to the Court, we may ask them to provide us with evidence to support their request.

Where evidence discloses a number of potential contraventions of Commonwealth workplace laws, the FWO will take care to plead the contraventions which adequately reflect the nature and extent of the relevant behaviour. Where the FWO alleges there have been serious contraventions within the meaning of section 557A of the FW Act, we will specify the relevant serious contraventions. A breach will only be a

serious contravention where a person knowingly contravened the relevant provision, and that breach was part of a systematic pattern of conduct.

After proceedings have been commenced, the FWO participates in discussions to limit any issues in dispute, for example, during Court mediations. As a regulator, the FWO approaches such discussions from a public interest perspective. In circumstances where a party provides new evidence alleging that the contravention(s) did not occur, the FWO will consider the evidence and may:

- proceed with the original contraventions;
- proceed in relation to fewer contraventions than originally identified; and/or
- accept admissions only in relation to some contraventions and not press or seek orders in relation to other contraventions. All admissions must reflect a genuine acceptance of responsibility.

We will discontinue legal proceedings if it is appropriate to do so. It will be rare for us to make this decision, given the detailed assessment we undertake before we commence proceedings.

Admissions or payments made just before or after proceedings are commenced will usually not justify discontinuing the proceedings, but the FWO will take such action into account when seeking orders and making submissions to the Court on appropriate penalties.

Orders and penalties

The FW Act allows eligible Courts to make a wide range of orders if a person is found to have contravened the FW Act. Orders that the FWO may seek in proceedings include orders:

- that underpayments be rectified and interest be paid;
- that compensation be paid to person(s) affected by the contraventions. Such compensation would be paid by person(s) responsible for contraventions and/or other persons who were “involved” in them;
- for a civil penalty to be paid to the Commonwealth³⁶ or, where appropriate, the penalty be redirected to an impacted party;
- that a person pay any civil penalty personally, without seeking or accepting indemnity from a third party;
- for injunctions to stop, prevent or restrain further contraventions from occurring; and/or
- that a person take specific steps, for example by undertaking training or conducting wage audits.

³⁶ As a result of the *Fair Work Amendment (Protecting Vulnerable Workers) Act 2017* (Cth), the maximum penalties for serious contraventions, within the meaning of s.557A of the FW Act, are higher than for other contraventions of the FW Act.

Submissions on penalty

The Courts are responsible for deciding what orders are appropriate in a case and the amount of any civil penalty. Courts may have regard to submissions made by the parties to proceedings in relation to penalty, including as to what facts are relevant.³⁷ The FWO may put evidence before the Court to support our submissions on penalty, including evidence about compliance in particular industries, places or amongst particular groups of workplace participants.

The FWO will seek penalties that:

- are proportionate to the nature of the behaviour;
- will achieve general and specific deterrence; and
- avoid a harsh or oppressive outcome.

In appropriate cases, we may reach agreement with other parties about the amount of penalty we ask the Court to order. The Court may accept the agreed penalty if it is satisfied that the amount is appropriate.³⁸

Discounts on penalty

Courts may reduce the penalty to be ordered if a person admits the contraventions and cooperates with the Court process.³⁹ We will draw the Court's attention to any conduct that justifies a discount on penalty, in particular any admissions made early in the course of an investigation or soon after the commencement of proceedings. If admissions are made close to, or during, the Court hearing, we may submit to the Court that a lesser or no discount on penalty is appropriate.

Costs

Under the FW Act, parties to litigation will normally pay their own costs of the proceeding. However, the Court can order a party to pay someone else's costs in some circumstances, such as when a party has acted unreasonably. In appropriate cases, the FWO may seek orders that a party pay costs.

Referrals

Where the FWO becomes aware of issues that are outside of its statutory functions the FWO will refer the matter, or provide the information obtained, to the relevant bodies.⁴⁰

³⁷ *Commonwealth of Australia v Director, Fair Work Building Industry Inspectorate* [2015] HCA 46 (**Commonwealth v FWBII**) at [46]-[64] (per French CJ, Kiefel, Bell, Nettle and Gordon JJ).

³⁸ *Commonwealth v FWBII* at [48], [57]-[59] (per French CJ, Kiefel, Bell, Nettle and Gordon JJ).

³⁹ *Mornington Inn Pty Ltd v Jordan* [2008] FCAFC 70 at [74]-[76] (per Stone and Buchanan JJ).

⁴⁰ See FW Act s.682(1)(e) and s.718.

Publicising compliance and enforcement

The FWO will publish information regarding its compliance activities and enforcement outcomes.

[Our Media Policy can be found here.](https://www.fairwork.gov.au/ArticleDocuments/725/fwo-media-policy.pdf.aspx)⁴¹

Feedback

We encourage feedback about your experience with us and invite people to contact us at

www.fairwork.gov.au/feedback.

If a person requests a review of our actions and is not satisfied with the result of our review, they can contact the Commonwealth Ombudsman on 1300 362 072, or at www.ombudsman.gov.au.

⁴¹ <https://www.fairwork.gov.au/ArticleDocuments/725/fwo-media-policy.pdf.aspx>



Fair Work
OMBUDSMAN

Compliance and Enforcement Policy

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Purpose

The Fair Work Ombudsman (**FWO**) is an independent statutory agency created by the *Fair Work Act 2009* (Cth) (**FW Act**). The purpose of the Compliance and Enforcement Policy (**Policy**) is to provide simple and clear information about how the FWO performs its statutory compliance and enforcement functions under section 682 of the FW Act. These functions include:

- promoting harmonious, productive and cooperative workplace relations and compliance with the FW Act and fair work instruments¹ including through the provision of education, assistance and advice;
- monitoring compliance with the FW Act and fair work instruments;
- inquiring into and investigating any act or practice that may be contrary to the FW Act, a fair work instrument or a safety net contractual entitlement;²
- commencing proceedings in a Court (or in limited circumstances making an application to the Fair Work Commission) to enforce the FW Act, a fair work instrument or a safety net contractual entitlement; and
- referring matters to other relevant authorities where appropriate.

¹ A "fair work instrument" is defined as a modern award, an enterprise agreement, a workplace determination or a Fair Work Commission order: See FW Act s.12.

² A "safety net contractual entitlement" is defined as an entitlement under a contract between an employee and an employer that relates to any of the subject matters described in s.61(2) (which deals with the National Employment Standards) or s.139(1) (which deals with modern awards): See FW Act s.12.

Assessment

When the FWO becomes aware of allegations of non-compliance with the FW Act and/or a fair work instrument, we assess each matter to decide how we will respond.

Before any investigation or inquiry is commenced, a case assessment process is undertaken first to determine, amongst other things, whether the FWO has jurisdiction, and whether the use of our investigative powers is in the public interest (which involves an assessment of whether any proposed compliance activity would be an efficient, effective and ethical use of public resources).

As part of this process, the FWO considers its strategic priorities. Further information about [Our Priorities can be found here](#).³

Additional public interest factors taken into account as part of the assessment process include:

- whether the matter involves vulnerable workers;
- whether the matter demonstrates a blatant disregard of laws or repeat offending;
- whether the matter is of significant scale or impact on workers or the community;
- whether the employment relationship is ongoing, or how long ago the employment ended;
- whether there is likely to be reliable evidence available to support a finding or view that a contravention has occurred; and
- confidentiality (where the employee does not want us to advise the employer that they have raised allegations of potential non-compliance with the FW Act and/or fair work instruments).

Assistance

In response to requests for assistance involving a workplace dispute, the FWO may provide education, advice and various dispute resolution tools to assist parties resolve instances of potential non-compliance.

Investigation and Inquiries

Where the FWO becomes aware of potential non-compliance with the FW Act, a fair work instrument or a safety net contractual entitlement, a Fair Work Inspector may commence an investigation or an inquiry into the potential non-compliance.

An inquiry may also be commenced where the FWO is seeking to monitor compliance with the FW Act or a fair work instrument. This may occur without the FWO receiving allegations of non-compliance.

³ <https://www.fairwork.gov.au/about-us/our-purpose/our-priorities>

Fair Work Inspectors have access to a number of statutory compliance powers to assist them in their functions.

All investigations and inquiries are impartial. Fair Work Inspectors will seek evidence from parties and other sources and will make decisions based on the available evidence.

Compliance Powers

Fair Work Inspectors are able to use statutory compliance powers for a 'compliance purpose', which includes determining whether a person is complying with the FW Act or a fair work instrument, or, in certain circumstances, whether a safety net contractual entitlement has been contravened.⁴

Where a provision of the *Fair Work Regulations 2009* (Cth) (**FW Regulations**) or another Act confers powers on Fair Work Inspectors, compliance powers can also be used for the purposes of that provision or Act.⁵

Entering Premises

A Fair Work Inspector may enter:

- premises if they reasonably believe that the FW Act or a fair work instrument applies (or applied) to work that is (or was) performed there; or
- business premises if they reasonably believe that records or documents relevant to a compliance purpose are on, or are accessible from, the premises.⁶

Before entering premises, a Fair Work Inspector must show their identity card to the occupier of the premises or their representative. If this isn't possible, the Fair Work Inspector must show their identity card as soon as practicable after entering.⁷

Fair Work Inspectors are not able to enter any area of a workplace that is used for residential purposes unless they reasonably believe that work is being performed in that area.⁸

While on the premises Fair Work Inspectors may:⁹

- inspect any work, process or object;
- conduct interviews;
- require a person to tell them who has, or has access to, a record or document;
- require the person with, or with access to, a record or document to produce the document, either while they are on the premises or by a particular date;

⁴ FW Act s.706(1)(a) & (b) and s.706(2).

⁵ FW Act s.706(1)(c) & (d).

⁶ FW Act s.708(1).

⁷ FW Act s.708(3).

⁸ FW Act s.708(2).

⁹ FW Act s.709.

- make copies of any document kept on the premises or accessible from a computer on the premises; and
- in certain circumstances, take samples of goods or substances.¹⁰

In certain circumstances when entering premises, the Fair Work Inspector may be accompanied by a suitably qualified person to assist them in exercising their compliance powers.¹¹ By way of example, a Fair Work Inspector may be accompanied by an interpreter to assist with translating, or a forensic accountant to assist with copying and interpreting digital records.

Notice to produce records or documents

A Fair Work Inspector may require a person or entity to produce to them any record or document relevant to a compliance purpose by issuing a notice to produce records or documents (**NTP**). An NTP is a formal notice that requires specific documents to be produced to a Fair Work Inspector within a specified timeframe at a specified place.¹² An NTP must on its face, demonstrate that it is issued in accordance with a compliance purpose and must sufficiently identify the nature of the suspected contravention or contraventions.¹³

Unless a person has a reasonable excuse for not complying with the NTP, failure to comply is a contravention of the FW Act, and may result in enforcement action, including litigation. If a person fails to comply with an NTP, a Court may order penalties of up to \$18,780 for an individual, \$93,900 for a body corporate that is a small business employer (with less than 15 employees)¹⁴ or \$469,500 for a body corporate that is not a small business employer (with 15 or more employees).¹⁵

FWO Notices

The FWO has the power under section 712AA of the FW Act to apply to the Administrative Appeals Tribunal (**AAT**) for a FWO Notice. A FWO Notice may require a person to provide information, produce documents or attend and answer questions.

¹⁰ See FW Regulations reg. 5.06 for further information regarding a Fair Work Inspector's power to take a sample of a good or substance.

¹¹ FW Act s.710.

¹² FW Act s.712.

¹³ *Construction, Forestry, Maritime, Mining & Energy Union v Fair Work Inspector Lam* [2018] FCA 1379 at [26] and [30] (per Bromberg J).

¹⁴ Section 23 of the FW Act defines a small business employer as employing fewer than 15 employees.

¹⁵ FW Act s.539: a failure to comply with s.712(3) can result in a maximum penalty equal to 60 penalty units and a body corporate may face a pecuniary penalty of up to five times 60 penalty units (FW Act s.546(2)). Pursuant to section 124 of the FW Act, section 712(3) is a selected civil remedy provision. Pursuant to section 546(2AA) of the FW Act, a body corporate that contravenes a selected civil remedy provision and that is not a small business employer when the application is made faces pecuniary penalties of up to five times the 300 penalty units calculated pursuant to section 546(2), totalling 1500 penalty units. A penalty unit is \$313 (as at 1 July 2023): *Crimes Act 1914* (Cth) (Crimes Act) s.4AA.

Failure to comply with a FWO Notice may result in a Court ordering penalties of up to \$187,800 against an individual.¹⁶

The FWO will only request that the AAT issue a FWO Notice if we reasonably believe a person:

- can give information relevant to an investigation;
- can produce documents relevant to an investigation;
- is capable of answering questions relevant to an investigation;
- all evidence gathering means have been exhausted or are not appropriate.

If a person receives a FWO Notice, it means we consider that person is capable of assisting and providing material relevant to an investigation.

Further information about [FWO Notices can be found here](#).¹⁷

Enforcement Outcomes: Compliance Notices and Enforceable Undertakings

The FW Act provides the FWO with simple enforcement mechanisms to deal with possible contraventions of the FW Act quickly and efficiently.

Compliance Notice¹⁸

Compliance Notices are a non-punitive mechanism for the FWO to address alleged contraventions of the FW Act instead of commencing Court proceedings.¹⁹

If at any stage while undertaking their functions a Fair Work Inspector forms a reasonable belief that a person or other entity has contravened:

- a provision of the National Employment Standards;
- a term of a modern award;
- a term of an enterprise agreement;
- a term of a workplace determination;
- a term of a national minimum wage order; or
- a term of an equal remuneration order,

then, a Fair Work Inspector can issue the person with a Compliance Notice.

¹⁶ FW Act s.539: Failure to comply with s.712B(1) can result in a maximum penalty of equal to 600 penalty units. A penalty unit is \$313 (as at 1 July 2023): Crimes Act s.4AA.

¹⁷ <https://www.fairwork.gov.au/how-we-will-help/templates-and-guides/fact-sheets/about-us/fwo-notices>

¹⁸ FW Act s.716.

¹⁹ *Hindu Society of Victoria (Australia) Inc v FWO* [2016] FCCA 221 (**Hindu Society**) at [30] (per Judge Riethmuller). See also, *FWO v Darna Pty Ltd & Anor* [2015] FCCA 709 at [11] (per Judge Hartnett).

This may occur in parallel with other matters which are investigated and addressed using other enforcement mechanisms.

A Compliance Notice will require that the person take specified action to remedy the direct effects of the identified contraventions and/or require the person to produce reasonable evidence of compliance.²⁰ A person who complies with a Compliance Notice is not taken to have admitted the contraventions or to have been found to have committed the contraventions.²¹

Where a person complies with a Compliance Notice the FWO is unable to commence Court proceedings against that person for the particular contraventions that are the subject of the Compliance Notice.²²

If a person fails to comply with the Compliance Notice and does not have a reasonable excuse,²³ that person has contravened the FW Act and a Court may impose penalties of up to \$18,780 for an individual, \$93,900 for a body corporate that is a small business employer (with less than 15 employees)²⁴ or \$469,500 for a body corporate that is not a small business employer (with 15 or more employees).²⁵ It is open to the FWO to commence litigation for non-compliance with a Compliance Notice, as well as for any other contraventions identified, including the underlying contraventions referred to in the Compliance Notice.

A person may apply to the Court to have a Compliance Notice reviewed if they have not committed a contravention set out in the Compliance Notice, or if the Compliance Notice does not comply with the necessary requirements under the FW Act.²⁶

Enforceable Undertaking²⁷

If at any stage while undertaking their functions, the FWO forms a reasonable belief that a person has contravened the FW Act, the FWO may accept a written undertaking from the person in relation to the contravention. Enforceable Undertakings are a simple mechanism for the FWO to deal with contraventions of the FW Act while “[t]he benefits to the recipients of the preparedness of the FWO to accept an

²⁰ FW Act s.716(2).

²¹ FW Act s.716(4B).

²² FW Act s.716(4A).

²³ FW Act s.716(6).

²⁴ Section 23 of the FW Act defines a small business employer as employing fewer than 15 employees.

²⁵ FW Act s.539: a failure to comply with s.716(5) can result in a maximum penalty equal to 60 penalty units and a body corporate may face a pecuniary penalty of up to five times 60 penalty units (FW Act s.546(2)). Pursuant to section 124 of the FW Act, section 716(5) is a selected civil remedy provision. Pursuant to section 546(2AA) of the FW Act, a body corporate that contravenes a selected civil remedy provision and that is not a small business employer when the application is made faces pecuniary penalties of up to five times the 300 penalty units calculated pursuant to section 546(2), totalling 1500 penalty units. A penalty unit is \$313 (as at 1 July 2023): Crimes Act s.4AA.

²⁶ FW Act s.717.

²⁷ FW Act s.715.

*undertaking is the avoidance of the considerable costs involved in court proceedings and the avoidance of the payment of a penalty”.*²⁸

Where the FWO has accepted an undertaking from a person the FWO cannot commence proceedings against the person in respect of the particular contraventions the undertaking has been given in relation to.²⁹

If a person fails to comply with the undertaking (i.e. the steps agreed to in the Enforceable Undertaking), the FWO may commence proceedings in Court to seek orders directing the person to comply, for compensation, or any other appropriate order.³⁰

The FWO will generally only accept Enforceable Undertakings in limited circumstances. These may include matters involving self-disclosure and where a person has demonstrated a willingness to rectify underpayments, address any other impact of their contraventions and fully cooperate with the FWO.

In some matters, the FWO may determine it will only accept an Enforceable Undertaking where an appropriate contrition payment is offered. Decisions about the amount of such payments are made on a case-by-case basis. FWO considers a number of factors, including:

- the nature and extent of the contraventions;
- rectification of underpayments and other remedial steps taken; and
- proportionality to any penalties that a court may impose if the matter were litigated.

Enforcement Outcomes: Outcomes of Investigations or Inquiries

There are a range of outcomes that may occur as a result of an investigation or inquiry by a Fair Work Inspector. While this may include a Compliance Notice or an Enforceable Undertaking, the FWO may also determine a different enforcement outcome is appropriate. The enforcement action taken will depend upon the assessment made.

Assessment Letter - notification at the end of an investigation or inquiry

Where a Fair Work Inspector has completed an investigation or inquiry, the FWO will notify a party of the outcome of that assessment. The notification may state that no contraventions were identified in relation to the specific investigation or inquiry. In some instances, the notification may state that the Fair Work Inspector determined that there was insufficient evidence to sustain the finding that a contravention occurred, but may caution or recommend a party take steps in order to ensure that they are compliant; for

²⁸ *Hindu Society* at [18] (per Judge Riethmuller).

²⁹ FW Act s.715(4).

³⁰ FW Act s.715(6)&(7).

example, seeking independent legal advice. Where specified contraventions are identified, a Contravention Letter may be issued (as set out below).

Contravention Letter – notification of failure to observe requirements³¹

If a Fair Work Inspector is satisfied that a person has failed to observe a requirement imposed by the FW Act, the FW Regulations or a fair work instrument, the Fair Work Inspector may issue a person with a written notification which:

- informs the person of the failure;
- requires the person to take specified action, within a specified period, to rectify the failure;
- requires the person to notify the Fair Work Inspector of any action taken to comply with the notice; and
- advises the person of the actions the Fair Work Inspector may take if the person fails to comply with the notice.

Depending on the nature of the contraventions and the person's response to the Contravention Letter, the FWO may decide to pursue one of the other available enforcement mechanisms.

Infringement Notice

If a Fair Work Inspector reasonably believes there has been one or more contraventions of particular provisions of the FW Act or the FW Regulations in relation to record keeping, pay slip or job advertisement obligations, the Fair Work Inspector may issue an Infringement Notice.³² An Infringement Notice requires the person to pay a penalty for committing the contravention. The maximum penalties that a person can be required to pay under an Infringement Notice are:

- \$1,878 for an individual or \$9,390 for a body corporate for contraventions of the FW Act; and
- \$626 for an individual or \$3,130 for a body corporate for contraventions of the FW Regulations.³³

An Infringement Notice can be issued up to 12 months after the contravention occurred.³⁴

A person who complies with an Infringement Notice is not taken to have admitted the contravention.³⁵

Where a person complies with an Infringement Notice the FWO is unable to commence Court proceedings against that person for the particular contravention(s) that are the subject of the Infringement Notice.³⁶

³¹ FW Regulations reg. 5.05.

³² FW Regulations reg. 4.03 & 4.04.

³³ FW Act s.558(2).

³⁴ FW Regulations reg. 4.04(2).

³⁵ FW Regulations reg. 4.09.

³⁶ FW Regulations reg. 4.09.

Litigation

Commencing legal proceedings, which we refer to as “litigation”, is another enforcement mechanism available to the FWO and is generally reserved for more serious cases of non-compliance. Litigation is an essential enforcement mechanism for three reasons:

- enforcing the law and obtaining Court orders sends a powerful public message to others not to engage in similar conduct (general deterrence);
- stopping and deterring people from engaging in unlawful behaviour now and in the future makes the need to comply with Commonwealth workplace laws real for individuals (specific deterrence); and
- clarifying the law helps the community understand the various obligations and rights arising from Commonwealth workplace laws.

The FWO is more likely to litigate in cases involving:

- deliberate and/or repeated non-compliance with Commonwealth workplace laws;
- exploitation of vulnerable workers;
- failure to cooperate with us and fix contraventions after being given the opportunity to do so; and/or
- parties who have a prior history of contraventions who have not taken adequate steps to ensure compliance despite being advised of the consequences in the past.

Even in circumstances where contraventions have been rectified, it may still be appropriate for the FWO to commence legal proceedings (e.g. to obtain a penalty in respect of a contravention to achieve specific or general deterrence).

In addition to the FWO commencing its own proceedings,³⁷ section 682(1)(f) of the FW Act provides that the FWO may represent employees or outworkers who are, or may become, a party to proceedings in a court or the FWC, if the FWO considers that the representation will promote compliance with the FW Act or fair work instrument.

Who we litigate against

Liability for contraventions of Commonwealth workplace laws may lie with more than just one person or body. Sections 550 and 557A(5A) of the FW Act describe how a person can be “involved in” a contravention, and says that such persons are treated as having committed a contravention themselves.

We may commence legal proceedings and seek orders against any person who contravenes their obligations under Commonwealth workplace laws, as well as those who are “involved” in such

³⁷ FW Act s.682(1)(d).

contraventions. This might include:

- employers;
- registered organisations;
- company directors or company secretaries;
- officials of organisations;
- human resources managers or other managers;
- external agents or advisors, such as accountants, bookkeepers or external human resources consultants;
- companies and people involved in supply chains involving the procurement of labour;
- a holding company of a subsidiary employing entity or its directors; and/or
- a franchisor.

When does the FWO commence litigation?

The FWO will only commence proceedings if it considers that there is sufficient evidence to do so and it would be in the public interest.

In deciding whether to institute any appeal, the FWO will consider whether there are reasonable prospects of success and whether the appeal is in the public interest.

As a regulator utilising public funds, the FWO will consider the impact on its resources and costs before making a decision to commence first instance proceedings or an appeal.

The public interest factors the FWO considers in determining to commence, or not commence, litigation varies depending on the particular circumstances of each case. The following table sets out some of the matters the FWO typically considers.

Public interest factors	Examples of matters the FWO considers
Nature, seriousness and circumstances of the alleged contraventions	<ul style="list-style-type: none"> ■ The seriousness of the alleged contraventions ■ Prevalence in the community of the type of behaviour ■ Any mitigating or aggravating circumstances ■ Whether the person(s) alleged to have committed the contraventions sought and relied on relevant professional advice ■ Evidence of deliberate or reckless conduct including omitting to take steps to ensure compliance ■ Whether contraventions have been admitted and/or fixed

Public interest factors	Examples of matters the FWO considers
Characteristics of person(s) alleged to have committed the contraventions	<ul style="list-style-type: none"> ■ Compliance history ■ Sophistication and financial position (including the impact on business viability, service delivery and employees if excessive costs and sanction imposed) ■ Whether the person has actively assisted the FWO's inquiries and whether they genuinely accept their non-compliance ■ What steps they have taken to prevent further contraventions
Characteristics of person(s) affected by the alleged contraventions	<ul style="list-style-type: none"> ■ Any special vulnerability, such as whether the person has a disability, is a young or mature worker, is present in Australia on a visa or is from a culturally and linguistically diverse background ■ Whether the person has the ability and resources to commence their own proceedings
Impact of the alleged contraventions	<ul style="list-style-type: none"> ■ Direct and indirect impact on the people who have been affected by the alleged contraventions ■ Impact on any other person(s), including other businesses/competitors ■ The impact of the alleged contraventions and their size, such as the number of people affected or the quantum of any underpayments
Impact of litigation on general and specific deterrence	<ul style="list-style-type: none"> ■ Whether litigation will reduce the likelihood that others will engage in similar behaviour (general deterrence) ■ Whether litigation will reduce the likelihood of further contraventions of workplace laws by the person(s) involved in the proceedings (specific deterrence)
Effect of litigation	<ul style="list-style-type: none"> ■ Suitability and efficacy of other enforcement mechanisms as an alternative to litigation ■ Likely outcome in the event the contraventions are found to have occurred (e.g. penalties, compensation or other orders) ■ Whether the likely outcome would be unduly harsh or oppressive
Administration of justice	<ul style="list-style-type: none"> ■ Passage of time since the alleged contraventions ■ Likely length and cost of litigation ■ Whether proceedings are necessary to maintain public confidence in the administration of workplace laws

The FWO's decision to commence or not commence proceedings must be made impartially, and must not be influenced by any inappropriate consideration of race, religion, sex, national origin or political association. The decision must not be influenced by any political advantage or disadvantage to the Government, any political group or party or any union, industrial or employer group or association.

Approach to self-reported non-compliance

The FWO takes a practical and proportionate approach to self-reported non-compliance. Isolated payroll errors resulting in underpayments over a short period of time (up to 12 months) do not need to be actively reported to the FWO, as long as:

- employees are appropriately informed of the underpayment;
- employees are back paid in full as soon as practicable; and
- changes are implemented to ensure the error does not happen again.

For broader and/or potential systemic non-compliance, it is best to notify the FWO as soon as possible. Reports should be made through the FWO's Corporate Sector team via email – corporateassurance@fwo.gov.au.

Any self-reports should identify the following:

- details of the non-compliance;
- what led to or contributed to it;
- the action taken to assess and rectify it; and
- confirmation of notification to the Australian Tax Office (ATO) (if there will be likely tax and superannuation implications). Notifications to the ATO can be made via email to employerobligationsworkinggroup@ato.gov.au.

Self-reporting, cooperation and remediation can justify the FWO's use of non-litigious and non-punitive compliance tools to resolve the matter, such as contravention letters or compliance notices.

Where more serious contraventions are involved (for example large scale underpayments going back many years), the FWO may accept an Enforceable Undertaking offered by an employer with terms reflecting the scale of the underpayment and the employer's cooperative response. Such undertakings (discussed above) are provided for by section 715 of the FW Act, and provide an opportunity for a cooperative and self-reporting employer to avoid costly litigation. Of course, the FWO will continue to use litigation for the most serious and/or deliberate contraventions as appropriate.

Apart from the statutory requirements that must be satisfied before the FWO can accept an Enforceable Undertaking, the FWO will generally accept such undertakings where it has established:

- the amount of the underpayments owed (or agreed to a process for establishing this), and
- the nature and/or number of the contraventions of the FW Act relating to the underpayments.

Through offering and acceptance of an Enforceable Undertaking, an employer will avoid significant legal costs and civil penalties. Where an employer could expect to receive significant civil penalties for contraventions of the FW Act, the FWO may consider that an Enforceable Undertaking should include a contrition payment (discussed above). The amount of the contrition payment will be comparable to a

penalty, but with significant discounts for early disclosure and cooperation. Like any penalty awarded by a court, the contrition payment will go into Consolidated Revenue for the benefit of the Australian community.

Conduct of proceedings

The FWO will conduct litigation honestly, fairly, consistently and in accordance with the Commonwealth's Obligation to Act as a Model Litigant (Appendix B to the *Legal Services Directions 2017*).

The FWO will make decisions about the conduct of litigation on the basis of the available evidence. If another party asks the FWO to agree to a particular course, or to put a submission to the Court, we may ask them to provide us with evidence to support their request.

Where evidence discloses a number of potential contraventions of Commonwealth workplace laws, the FWO will take care to plead the contraventions which adequately reflect the nature and extent of the relevant behaviour. Where the FWO alleges there have been serious contraventions within the meaning of section 557A of the FW Act, we will specify the relevant serious contraventions. A breach will only be a serious contravention where a person knowingly contravened the relevant provision, and that breach was part of a systematic pattern of conduct.

After proceedings have been commenced, the FWO participates in discussions to limit any issues in dispute, for example, during Court mediations. As a regulator, the FWO approaches such discussions from a public interest perspective. In circumstances where a party provides new evidence alleging that the contravention(s) did not occur, the FWO will consider the evidence and may:

- proceed with the original contraventions;
- proceed in relation to fewer contraventions than originally identified; and/or
- accept admissions only in relation to some contraventions and not press or seek orders in relation to other contraventions. All admissions must reflect a genuine acceptance of responsibility.

We will discontinue legal proceedings if it is appropriate to do so. It will be rare for us to make this decision, given the detailed assessment we undertake before we commence proceedings.

Admissions or payments made just before or after proceedings are commenced will usually not justify discontinuing the proceedings, but the FWO will take such action into account when seeking orders and making submissions to the Court on appropriate penalties.

Orders and penalties

The FW Act allows eligible Courts to make a wide range of orders if a person is found to have contravened the FW Act. Orders that the FWO may seek in proceedings include orders:

- that underpayments be rectified and interest be paid;
- that compensation be paid to person(s) affected by the contraventions. Such compensation would be paid by person(s) responsible for contraventions and/or other persons who were “involved” in them;
- for a civil penalty to be paid to the Commonwealth³⁸ or, where appropriate, the penalty be redirected to an impacted party;
- that a person pay any civil penalty personally, without seeking or accepting indemnity from a third party;
- for injunctions to stop, prevent or restrain further contraventions from occurring; and/or
- that a person take specific steps, for example by undertaking training or conducting wage audits.

Submissions on penalty

The Courts are responsible for deciding what orders are appropriate in a case and the amount of any civil penalty. Courts may have regard to submissions made by the parties to proceedings in relation to penalty, including as to what facts are relevant.³⁹ The FWO may put evidence before the Court to support our submissions on penalty, including evidence about compliance in particular industries, places or amongst particular groups of workplace participants.

The FWO will seek penalties that:

- are proportionate to the nature of the behaviour;
- will achieve general and specific deterrence; and
- avoid a harsh or oppressive outcome.

In appropriate cases, we may reach agreement with other parties about the amount of penalty we ask the Court to order. The Court may accept the agreed penalty if it is satisfied that the amount is appropriate.⁴⁰

Discounts on penalty

Courts may reduce the penalty to be ordered if a person admits the contraventions and cooperates with the Court process.⁴¹ We will draw the Court’s attention to any conduct that justifies a discount on penalty, in particular any admissions made early in the course of an investigation or soon after the commencement of proceedings. If admissions are made close to, or during, the Court hearing, we may submit to the Court

³⁸ As a result of the *Fair Work Amendment (Protecting Vulnerable Workers) Act 2017* (Cth), the maximum penalties for serious contraventions, within the meaning of s.557A of the FW Act, are higher than for other contraventions of the FW Act.

³⁹ *Commonwealth of Australia v Director, Fair Work Building Industry Inspectorate* [2015] HCA 46 (**Commonwealth v FWBII**) at [46]-[64] (per French CJ, Kiefel, Bell, Nettle and Gordon JJ).

⁴⁰ *Commonwealth v FWBII* at [48], [57]-[59] (per French CJ, Kiefel, Bell, Nettle and Gordon JJ).

⁴¹ *Mornington Inn Pty Ltd v Jordan* [2008] FCAFC 70 at [74]-[76] (per Stone and Buchanan JJ).

that a lesser or no discount on penalty is appropriate.

Costs

Under the FW Act, parties to litigation will normally pay their own costs of the proceeding. However, the Court can order a party to pay someone else's costs in some circumstances, such as when a party has acted unreasonably. In appropriate cases, the FWO may seek orders that a party pay costs.

Referrals

Where the FWO becomes aware of issues that are outside of its statutory functions the FWO will refer the matter, or provide the information obtained, to the relevant bodies.⁴²

Publicising compliance and enforcement

The FWO will publish information regarding its compliance activities and enforcement outcomes.

[Our Media Policy can be found here.](#)⁴³

Feedback

We encourage feedback about your experience with us and invite people to contact us at

www.fairwork.gov.au/feedback.

If a person requests a review of our actions and is not satisfied with the result of our review, they can contact the Commonwealth Ombudsman on 1300 362 072, or at www.ombudsman.gov.au.

⁴² See FW Act s.682(1)(e) and s.718.

⁴³ <https://www.fairwork.gov.au/ArticleDocuments/725/fwo-media-policy.pdf.aspx>



Fair Work
OMBUDSMAN

Compliance and Enforcement Policy



Documents released by the Fair Work Ombudsman under the Freedom of Information Act

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Acknowledgement of Country

The Fair Work Ombudsman (FWO) acknowledges the Traditional Custodians of Country throughout Australia and their continuing connection to land, waters, skies, and community. We pay our respects to them, their cultures, and Elders past, present, and future.

About our artwork: Stepping forward

Stepping forward represents taking the next step on the journey towards reconciliation and the potential possible when everyone is included.

Connecting with diverse peoples; meeting, listening and sharing together, can build respect and trust. Working in concert for a common purpose and united in the mission to make meaningful change.

It serves as a reminder of the dynamism and vibrancy of First Nations peoples and the lands from which they come, making the emergence of new ideas and ways of being possible that enables the envisioning of a brighter future.

Artist: Timothy Buckley

Purpose

The Compliance and Enforcement Policy (Policy) provides information about how the Fair Work Ombudsman (FWO) fulfils its statutory compliance and enforcement functions under the *Fair Work Act 2009* (Cth) (FW Act). This Policy sets out the factors we consider when using our compliance and enforcement powers.

The FWO is established under section 681 of the FW Act. The FWO's statutory functions are set out in section 682 of the FW Act. These functions include:

- ▶ promoting harmonious, productive and cooperative workplace relations and compliance with the FW Act and fair work instruments – including through the provision of education, assistance and advice
- ▶ monitoring compliance with the FW Act and fair work instruments
- ▶ inquiring into, and investigating, any conduct or practice that may be contrary to the FW Act, a related offence, a fair work instrument or a safety net contractual entitlement
- ▶ commencing proceedings in a court, or making an application to the Fair Work Commission, to enforce the FW Act, a fair work instrument, or a safety net contractual entitlement
- ▶ publishing this Policy, which includes guidelines on circumstances relevant to enforceable undertakings and cooperation agreements
- ▶ referring matters to other relevant authorities where appropriate
- ▶ representing employees, regulated workers or outworkers in certain circumstances.

Find out more about the Fair Work Ombudsman at [About us](https://www.fairwork.gov.au/about-us).¹

Policy scope

This Policy applies to our compliance and enforcement functions and describes how we fulfil our role as the workplace regulator. This includes how we use information to make decisions based on the following strategic enforcement principles:

- ✔ prioritisation
- ✔ deterrence
- ✔ sustainability
- ✔ system-wide effect.

In exercising our approach to compliance and enforcement, the FWO recognises the importance of working closely with Commonwealth and state regulators, employer groups, unions, and alternative services² to provide education and advice, and to promote multi-stakeholder mechanisms that support compliance.

In consultation with stakeholders, the FWO reviews its priority areas of regulation. Find out more at [Our priorities](https://www.fairwork.gov.au/about-us/our-role-and-purpose/our-priorities).³ These are areas that are at significant risk of, or that demonstrate a history of, systemic non-compliance, where we seek to make sector-wide impacts through increased attention. They include an enduring commitment to prioritising education and assistance for small business employers and employees, and vulnerable or at-risk workers.

Our priorities assist the FWO to make decisions about our resource allocation and are a consideration when responding to requests for assistance involving a workplace dispute.

This Policy does not prescribe how the FWO's functions or powers are operationalised and should be read alongside our published [Corporate Plan](https://www.fairwork.gov.au/about-us/our-role-and-purpose/our-priorities/corporate-plan).⁴

¹ <https://www.fairwork.gov.au/about-us>

² Alternative services include, but are not limited to, community justice centres, legal aid facilities, worker advocates, small claims courts and tribunals

³ <https://www.fairwork.gov.au/about-us/our-role-and-purpose/our-priorities>

⁴ <https://www.fairwork.gov.au/about-us/our-role-and-purpose/our-priorities/corporate-plan>

Governing principles

The following principles inform our approach to compliance and enforcement:

Accessible	<p>We ensure the advice and assistance that we provide is clear, accessible and practical. The tools and resources we provide empower workers and other duty holders⁵ to understand and comply with workplace laws.</p> <p>We receive information through:</p> <ul style="list-style-type: none"> enquiries about wages, entitlements and workplace protections requests for assistance involving a workplace dispute publicly available material anonymous reports stakeholder feedback intelligence investigations.
Accountable	<p>We act impartially and avoid or otherwise manage conflicts of interest when performing our functions.</p> <p>As an Australian Government regulator, we ensure our investigation practice conforms with the Australian Government Investigations Standards.⁶</p> <p>We regularly and publicly communicate our compliance and enforcement outcomes.⁷</p>
Consistent	<p>Our decision-making is guided by our principles and positions, and by precedents and decision-making from courts and tribunals on the application and interpretation of Australia's workplace relations laws.</p> <p>Our compliance and enforcement approach is designed to promote duty holders' understanding of, and compliance with, their legal obligations.</p>
Reasonable	<p>Our determinations and actions are evidence-based, proportionate and honour the principles of natural justice and due process.</p> <p>We will conduct litigation honestly, fairly, consistently and in accordance with the Commonwealth's obligation to act as a model litigant.</p>
Risk-based and data driven	<p>We consistently source information to identify, monitor and address emerging and systemic non-compliance.</p> <p>We monitor our priority areas while staying responsive to emerging issues. Our priorities provide a framework through which we make decisions about our resource allocation.</p> <p>The information we receive is prioritised and risk-assessed to inform an evidence-based approach to compliance and enforcement.</p>
Strategic	<p>In taking compliance and enforcement action, we consider the entire national workplace relations system by seeking to deter non-compliance, change unlawful behaviours and achieve sustainable compliance. Such a strategy is designed to maximise impact by identifying and addressing the drivers of non-compliance.</p>

⁵ For the purposes of this Policy, a duty holder is defined as a person, natural or corporate, that has an obligation under the FW Act to either do or not do a particular action. A duty holder includes (but is not limited to): employing entities, registered organisations, company directors, company secretaries, officials of organisations, managers, accountants, bookkeepers, external human resources consultants, companies and people involved in supply chains involving the procurement of labour, persons involved in industrial action, a holding company of a subsidiary employing entity or its directors, franchisors, and workers

⁶ <https://www.ag.gov.au/integrity/publications/australian-government-investigations-standards>

⁷ Any publication of outcomes, including (but not limited to) the common publishing of media statements for FWO's litigations, is done in accordance with our Privacy Policy, Information Access Policy and Media Policy which are available on our website at www.fairwork.gov.au



Key regulatory approaches

The FWO adopts key regulatory approaches to fulfil our statutory compliance and enforcement functions under the FW Act, as outlined below.

Independent and impartial regulation

The FWO is an independent and impartial regulator committed to promoting harmonious, productive and cooperative workplace relations and ensuring compliant workplaces.

The FWO is not an advocate or representative body. We have several functions, including monitoring workplaces for compliance and inquiring into, investigating or commencing proceedings, or making applications in relation to suspected contraventions and referring matters to relevant authorities where appropriate. We may refer matters to other authorities as appropriate or represent employees, regulated workers or outworkers in certain circumstances.⁸

We apply a graduated approach based on strategic enforcement principles and only use enforcement when other cooperative approaches have failed or are inappropriate.

The FWO is supported by staff who assist with the performance of workplace compliance and advisory functions. Our staff conduct their roles in accordance with the APS Values⁹ and APS Code of Conduct.¹⁰

The FWO appoints Fair Work Inspectors who are empowered to investigate and enforce compliance with Australia's national workplace relations laws. All Fair Work Inspectors are of 'good character' as required by the FW Act.¹¹

Advancing tripartism (working collaboratively with key stakeholders)

In accordance with our Statement of Intent,¹² we believe every part of the workplace relations system has an important role to play in creating a culture of compliance that fosters productive and inclusive workplaces that comply with workplace standards for Australian workers and promote compliance by duty holders.¹³

We can expand our reach when we work constructively with key stakeholders. Our collaborative activities with stakeholders are underpinned by consultation, respectful engagement and careful design to best optimise our approach to compliance and enforcement and ensure our independence and impartiality are not compromised.¹⁴

We collaborate with employer organisations, unions and key stakeholders to assist in ensuring workers and other duty holders understand their obligations and rights and are empowered to act. In regulating Australian workplaces, we appreciate that acting alone limits our reach.

Accordingly, we consider that employer organisations, unions, community justice centres, worker advocates, and small claims courts and tribunals also have important roles in education, deterrence and compliance – as well as providing a direct, (and at times), more appropriate, service for parties to address their workplace disputes.

⁸ Section 682(1)(f) of the FW Act provides for the FWO to consider representing employees, regulated workers, or outworkers if it will promote compliance with the FW Act or a fair work instrument

⁹ <https://www.apsc.gov.au/working-aps/information-aps-employment/aps-values>

¹⁰ <https://www.apsc.gov.au/working-aps/integrity/integrity-resources/code-of-conduct>

¹¹ Section 700(2) of the FW Act

¹² <https://www.fairwork.gov.au/about-us/accountability/reporting-to-parliament/regulator-performance-framework>

¹³ As outlined in the Jobs and Skills Summit's September 2022 outcomes, key stakeholders – including business groups, unions and government – agreed on the need to proactively work together to strengthen tripartism and constructive dialogue in Australian workplace relations to promote safe and secure jobs, and fair and productive workplaces

¹⁴ The Labour Inspection Convention 1947 enshrines the impartiality of labour inspectors, while ensuring regulators make appropriate arrangements to promote effective cooperation across government, and collaboration with employers, workers, and their representative organisations



We are also committed to promoting voluntary industry-led, multi-stakeholder mechanisms that support compliance and allow the FWO to focus its compliance and enforcement activities to identify and address suspected non-compliance more effectively.

The FWO's view is that sustainable change requires more than one-time interventions and the regulator acting alone. Our focus is on collaborating with employer and worker representatives to secure long-term solutions that facilitate sustainable compliance.

As we embed a more collaborative approach into our work, we are committed to acting in accordance with International Labour Organisation Conventions ratified by the Australian Government.

Parallel regulation (working collaboratively with other regulators)

We also acknowledge that another regulator may be better placed to deal with issues that arise in workplace disputes, and therefore we have entered into formal arrangements with Commonwealth and state regulators to assist our mission of promoting compliance. These arrangements involve sharing information and intelligence, joint education and compliance activities, and referring instances of non-compliance for their consideration and action.¹⁵

Where appropriate, we may conduct joint investigations with other regulators in relation to duty holders, syndicates or networks who are suspected of being engaged in unlawful behaviours, which may include, but not be limited to, suspected contraventions of the FW Act.

By maximising our collaborative focus with government and non-government stakeholders, we aim to enhance our impact through a shared and collective responsibility for ensuring compliance with all relevant workplace laws. Where the FWO becomes aware of allegations that are outside its statutory functions, the FWO will refer those allegations – or provide the information obtained – to the relevant bodies as appropriate.¹⁶

¹⁵For disclosure of information by the FWO, see Section 718(2) of the FW Act
¹⁶See FW Act s.682(1)(e) and s.718

Using information to make decisions

In accordance with our governing principles we:

- ▶ carefully assess information to understand if, when, where and why non-compliance is occurring
- ▶ reassess the information, taking into account changes in the circumstances of a case, new information coming to light and evolutions in the broader operating environment
- ▶ determine the most appropriate response to ensure compliance and prevent future non-compliance.

In assessing information and making decisions about the management of a matter (which includes whether to undertake or continue an investigation), we exercise our regulatory discretion by considering and applying factors such as those outlined in the table below.

The allegations	<ul style="list-style-type: none"> ▶ Are the allegations of non-compliance an isolated instance or part of a pattern of behaviour? ▶ Are the allegations reliable/credible? Can evidence be obtained to support the allegations? ▶ How significant are the allegations of non-compliance? ▶ If validated, what is the scale and impact of the alleged non-compliance on: <ul style="list-style-type: none"> » workers and the workplace » other businesses/workplaces » relevant industry sectors » geographic regions? ▶ When did the alleged non-compliance occur and over what period of time? ▶ Is the alleged non-compliance still occurring? ▶ Do the allegations impact current or past employees? ▶ Do the allegations indicate a system-wide non-compliance?
The duty holder	<ul style="list-style-type: none"> ▶ Does the duty holder's conduct indicate a deliberate and/or repeated breach of workplace laws? ▶ What is the duty holder's attitude to cooperating with the FWO? ▶ Has the duty holder meaningfully engaged with the impacted parties, and their representatives, to explain and address allegations of non-compliance? ▶ What is the level of the duty holder's preparedness to rectify any wrongdoing? ▶ Are there outstanding allegations of non-compliance or concerns that the duty holder is non-compliant that have not been addressed? ▶ What is the likelihood of the duty holder remaining non-compliant or repeating the contraventions? ▶ What is the duty holder's ability to understand – and their access to resources that outline – their formal obligations? ▶ Are there indications of a significant power imbalance between the duty holder and workers? ▶ Has the duty holder demonstrated an ongoing willingness to continue engaging with us? ▶ Is the duty holder demonstrating a willingness to ensure any non-compliance is fully rectified, for example by working with an employer organisation or other reputable workplace relations advisor?
The context	<ul style="list-style-type: none"> ▶ Is there a significant impact on a particular cohort of workers or community that warrants the FWO seeking the imposition of financial penalties? ▶ Does the FWO need to ensure a strong deterrence message is conveyed to the public? ▶ Has the impact occurred in one of our priority areas? ▶ Is another regulator, employer organisation, union or other service provider already involved? ▶ Would it be an effective and efficient use of FWO resources to assist those impacted to commence their own proceedings? ▶ Is the proposed approach by the FWO an efficient and effective use of FWO resources? ▶ What would be the impact if the FWO did not act in response to the concern? ▶ What is the likelihood of reliable evidence being available, including witnesses prepared to 'go on the record'?



How we prioritise our resources

The FWO receives hundreds of thousands of requests for assistance each year and is responsible for regulating over one million businesses employing workers.

Our compliance and enforcement approach varies depending on specific circumstances and contexts. As part of prioritising matters, we use our discretion to assess the public interest and ensure our compliance and enforcement activities are an effective, ethical, economical and efficient use of public resources.

The FWO treats all information and issues brought to our attention seriously.

The information contained in every allegation, report or request for assistance relating to issues of non-compliance is assessed.

The FWO uses the data and intelligence it receives to inform future compliance and enforcement actions.

In deciding whether to allocate investigative resources, we consider whether allegations of non-compliance are:

- ▶ within or outside our jurisdiction
- ▶ being treated by other agencies, employer organisations, unions, advocates or other alternative services
- ▶ isolated events arising between the parties
- ▶ lacking in credible information, corroboration or other necessary evidence
- ▶ more appropriately resolved directly between the parties (for instance, where an attempt to resolve a dispute at the workplace level has not occurred).

The FWO encourages parties to a workplace dispute to actively engage in its resolution. This includes checking their rights and obligations under the law or talking directly to relevant parties in the workplace.

We also connect parties to alternative services provided by unions, employer organisations, community legal centres and others to assist parties to resolve their dispute.

Where this is not appropriate, or is not successful, we are available to assist parties to resolve their issues via education or dispute-assistance services.

Deterrence, sustainability and system-wide effect

We prioritise our investigative resources to allegations of contraventions that are serious, significant and/or systemic in nature, or where it would otherwise serve the public interest.

We maintain the integrity of our enforcement tools, including by seeking compliance with orders of courts and tribunals. We reaffirm our enduring commitment to support vulnerable workers.

We consider the cause of non-compliance and how we can influence the behaviour of non-compliant parties by:

- ▶ maximising the deterrent effect¹⁷ in industry sectors, geographic regions, supply chains and related businesses with a history of non-compliance
- ▶ clarifying and promoting a broad understanding of workplace laws, especially new provisions of the FW Act, to enhance ongoing compliance
- ▶ disrupting and then addressing system-wide non-compliant behaviours.

We publish information about our compliance activities and enforcement outcomes in accordance with our policies and procedures, supporting our commitment to accountability and transparency.

¹⁷Including the use of legal proceedings, see the Civil Litigation and Criminal underpayment offence sections

Compliance and enforcement approach

The FWO uses the following regulatory model to determine its compliance and enforcement approach to allegations, evidence and suspected instances of non-compliance.

The model comprises the FWO's three main responses to allegations or instances of non-compliance and our commitment to:

1. encouraging voluntary compliance
2. guiding compliance where required
3. enforcing the law when it is in the public interest.



Encouraging voluntary compliance



Voluntary compliance

In response to requests for assistance involving a workplace dispute, we provide information, education and advice to support cooperation between the parties involved.

In the majority of cases, the FWO's response is to encourage voluntary compliance as part of our commitment to promoting productive, cooperative and harmonious workplaces.

Voluntary compliance is an effective, efficient and economical use of public resources, which is empowering and non-intrusive for the parties involved.

Advice and education

An important component of voluntary compliance is the provision of advice and education to assist parties who are involved in a workplace dispute to understand their rights and obligations.

Our advice and education functions help:

- ▶ raise awareness and understanding of the parties' rights and obligations under the FW Act through practical and helpful advice, information and education
- ▶ promote workplace-level engagement that encourages respectful dialogue and behaviour between all workplace parties and representatives
- ▶ build capabilities to sustain compliance.

Dispute assistance: requesting our assistance with a workplace dispute

Where parties request our assistance with a workplace dispute, we will provide them with advice, education, tools and resources to manage their dispute.

In most cases, our dispute-assistance services help parties successfully conclude disputes between themselves, and there is no ongoing need for our involvement.

Our phone-based dispute-assistance service provides tailored and practical advice to the parties in a workplace dispute on how to reach a resolution. Where parties are unable to resolve their dispute, or we believe that the best avenue to achieve a resolution is through a different process, we will provide options on alternative services available to resolve the dispute.

The FWO may commence an investigation into allegations of non-compliance that have been considered by the dispute-assistance service.

A decision to allocate investigative resources will be made at the discretion of the FWO, based on a careful reassessment of the matter.



Guiding compliance where direction is required



Guided compliance

Where warranted, the FWO may decide to take a guided compliance approach.

Such guidance typically follows Fair Work Inspectors having conducted an investigation (either in response to a request for assistance or initiated by information and intelligence the FWO has received), and then determining it is appropriate to formally direct duty holders, requiring them to undertake certain specified actions and demonstrate compliance with workplace laws.

The extent of the guidance provided by a Fair Work Inspector will depend on an assessment of available information and the conduct of duty holders. The most common form of guided compliance involves a Fair Work Inspector issuing a compliance notice. Another form of guidance is a Fair Work Inspector issuing a contravention letter detailing findings made in an investigation and requiring a set of actions to rectify the impact.

As failure to comply with these requirements can lead to court proceedings, the duty holder has the opportunity to respond by contesting the basis of the Fair Work Inspector's determination.

For more information on these and other tools, see the section Enforcement outcomes on page 11.

Enforcing the law



The objective of civil litigation is to advance specific and/or general deterrence, including with respect to specific industry sectors and/or system-wide non-compliance.

There are some forms of conduct and duty holder behaviour that are considered as constituting more significant non-compliance and warranting a stronger enforcement approach.

Where an investigation by the FWO has determined there is sufficient evidence of such wrongdoing, we will consider commencing civil proceedings to seek financial penalties where it is in the public interest to do so. In matters of intentional conduct by duty holders relating to underpayments of employee entitlements, the FWO may also consider referring conduct to the Commonwealth Director of Public Prosecutions (CDPP) or Australian Federal Police (AFP) for potential criminal prosecution. See the section on 'Criminal offence - underpayments' on page 20.

While cases will vary, factors the FWO will take into account when considering whether to take stronger enforcement action, such as civil litigation, include the nature or impact of a duty holder's suspected non-compliant behaviour, or where the duty holder has not cooperated with an investigation. The FWO will also consider commencing civil proceedings where we believe it will help clarify workplace laws, especially new provisions of the FW Act or emerging significant issues, or to ensure the integrity of our enforcement tools.

Under the FW Act, the FWO may agree to accept an enforceable undertaking offered by a duty holder as an alternative to civil litigation or agree to enter into a cooperation agreement as an alternative to referring conduct to the CDPP or AFP. See the section Enforcement outcomes on page 11 and section on cooperation agreements on page 22.



Compliance powers and enforcement outcomes

When the FWO decides to investigate or inquire into allegations of non-compliance, our Fair Work Inspectors can use statutory compliance powers for a 'compliance purpose', which includes determining whether a person is complying with the FW Act or a fair work instrument, or – in certain circumstances – whether a safety net contractual entitlement has been contravened.¹⁸

Where a provision of the *Fair Work Regulations 2009* (Cth) (FW Regulations) or another Act confers powers on Fair Work Inspectors, compliance powers can also be used for the purposes of that provision or Act.¹⁹

More information about our compliance powers is available at **Powers of Fair Work Inspectors**.²⁰

When, after investigating, we determine a breach of workplace laws has occurred, we will act proportionately to the significance of the breach and the impact (or potential impact) to the regulated community.

There are a range of outcomes that may occur because of, during, or in the process of finalising an investigation by a Fair Work Inspector.

Findings letter

Where a Fair Work Inspector has completed an investigation, the FWO will notify relevant parties of the findings and outcome of that assessment. The notification may state that no contraventions were identified in relation to the specific investigation. In some instances, the notification may state that the Fair Work Inspector determined that there was insufficient evidence to sustain the finding that a contravention occurred but may caution or recommend a party take steps to ensure that they are compliant (for example, seeking independent legal or professional workplace advice). Where contraventions are identified, the Fair Work Inspector may issue a contravention letter (as set out below).

Contravention letter – notification of failure to observe requirements²¹

If a Fair Work Inspector is satisfied that a person has failed to observe a requirement imposed by the FW Act, the FW Regulations or a fair work instrument, the Fair Work Inspector may issue a person with a written letter which:

- ▶ informs the person of the failure
- ▶ requires the person to take specified action (within a specified period) to rectify the failure
- ▶ requires the person to notify the Fair Work Inspector of any action taken to comply with the letter
- ▶ advises the person of the actions the Fair Work Inspector may take if the person fails to comply with the letter.

Depending on the nature of the contraventions and the person's response to the contravention letter, the FWO may decide to pursue one of the other available enforcement mechanisms.

¹⁸ FW Act s.706(1)(a) & (b) and s.706(2)

¹⁹ FW Act s.706(1)(c) & (d)

²⁰ <https://www.fairwork.gov.au/tools-and-resources/fact-sheets/about-us/powers-of-fair-work-inspectors>

²¹ FW Regulations reg. 5.05



Compliance notice

Compliance notices are a non-punitive mechanism for the FWO to address alleged contraventions of the FW Act instead of commencing court proceedings.²²

A Fair Work Inspector may issue a person with a compliance notice if the Inspector forms a reasonable belief that the person has contravened certain provisions of the FW Act or terms of instruments including:

- ▶ a provision of the National Employment Standards
- ▶ a term of a modern award
- ▶ a term of an enterprise agreement
- ▶ a term of a workplace determination
- ▶ a term of a national minimum wage order
- ▶ a term of an equal remuneration order
- ▶ an employer's obligations in relation to advertising rates of pay
- ▶ a term of a minimum standards order
- ▶ a term of a road transport contractual chain order.²³

This may occur in parallel with other matters that are investigated and addressed using other enforcement mechanisms.

A compliance notice will require that the person take specified action to remedy the direct effects of the identified contraventions, including calculating and repaying any underpayments where relevant, and/or require the person to produce reasonable evidence of compliance.²⁴

A person who complies with a compliance notice is not taken to have admitted the contraventions, or to have been found to have committed the contraventions.²⁵

Where a person complies with a compliance notice, the FWO is unable to commence court proceedings against that person for the contraventions that are the subject of the compliance notice.²⁶

A person may apply to the court to have a compliance notice reviewed on the basis that they have not committed a contravention set out in the compliance notice, or if the compliance notice does not comply with the necessary requirements under the FW Act.²⁷ The court may stay its operation as appropriate and confirm, cancel or vary the notice after reviewing it.

If a person fails to comply with the compliance notice and does not have a reasonable excuse,²⁸ that person has contravened the FW Act and a court may impose penalties of up to \$19,800 for an individual or \$99,000 for a body corporate that is a small business employer at the time of application to the court, or \$495,000 for a body corporate that is not a small business employer at the time of application.²⁹ It is open to the FWO to commence litigation for non-compliance with a compliance notice, as well as for any other contraventions identified – including the underlying contraventions referred to in the compliance notice.

²²Hindu Society of Victoria (Australia) Inc v FWO [2016] FCCA 221 (Hindu Society) at [30] (per Judge Riethmuller). See also, FWO v Darna Pty Ltd & Anor [2015] FCCA 709 at [11] (per Judge Hartnett)

²³FW Act s.716(1)

²⁴FW Act s.716(2)

²⁵FW Act s.716(4B)

²⁶FW Act s.716(4A)

²⁷FW Act s.717

²⁸FW Act s.716(6)

²⁹FW Act s.539: a failure to comply with s.716(5) can result in a maximum penalty equal to 60 penalty units. Pursuant to s.546 of the FW Act, a body corporate that is a small business employer (within the meaning of s.23 of the FW Act) at the time of application may face a pecuniary penalty of up to 5 times 60 penalty units (300 penalty units). A body corporate that is not a small business employer (within the meaning of s.23 of the FW Act) may face a pecuniary penalty of 5 times 300 penalty units, being 1,500 penalty units. A penalty unit is \$330 (as of 7 November 2024); Crimes Act s.4AA

Infringement notice

If a Fair Work Inspector reasonably believes there has been one or more contraventions of the FW Act or the FW Regulations in relation to record-keeping, pay slip or job advertisement obligations, the Fair Work Inspector may issue an infringement notice.³⁰ The FWO regards record-keeping and pay slip obligations as the bedrock of compliance. Failure to comply with these obligations impedes:

- ▶ an employee's ability to assess whether their employer has complied with their obligations
- ▶ efficient resolution of a dispute between parties
- ▶ an investigation by a Fair Work Inspector.

An infringement notice requires the person to pay a penalty for committing the contravention.

The maximum penalties that a person can be required to pay under an infringement notice are:

- ▶ \$1,980 for an individual or \$9,900 for a body corporate for contraventions of the FW Act
- ▶ \$660 for an individual or \$3,300 for a body corporate for contraventions of the FW Regulations.³¹

An infringement notice can be issued up to 12 months after the contravention occurred.³²

A person who complies with an infringement notice is not taken to have admitted to the contravention.³³

Where a person complies with an infringement notice, the FWO is unable to commence court proceedings against that person for the particular contravention(s) that are the subject of the infringement notice.³⁴

Enforceable undertaking

If the FWO forms a reasonable belief that a person has contravened the FW Act, the FWO may accept a written undertaking from the person in relation to the contravention. While an enforceable undertaking is in place, it offers protection from the FWO commencing civil proceedings.

Enforceable undertakings³⁵ are a simple mechanism for the FWO to deal with contraventions of the FW Act while '[t]he benefits to the recipients of the preparedness of the FWO to accept an undertaking is the avoidance of the considerable costs involved in court proceedings and the avoidance of the payment of a penalty.'³⁶

The FWO is more likely to accept an enforceable undertaking from a person (natural or corporate) where they have:

- ▶ limited or no history of non-compliance with the FW Act
- ▶ admitted contravening the FW Act
- ▶ fully cooperated and engaged with the FWO's investigation
- ▶ meaningfully engaged with the impacted parties, and their representatives, to explain and address allegations of non-compliance
- ▶ rectified the contravention(s), including remedying all underpayments to current and former employees impacted
- ▶ agreed to pay interest on those wage and superannuation entitlements owed
- ▶ apologised to those impacted, or committed to doing so
- ▶ established a hotline for those impacted to discuss their personal situation, or made reasonable attempts proportionate to the size of the business to facilitate a channel where those impacted can discuss their personal circumstances

³⁰ FW Regulations reg. 4.03 & 4.04

³¹ FW Act s.558(2)

³² FW Regulations reg. 4.04(2)

³³ FW Regulations reg. 4.09

³⁴ FW Regulations reg. 4.09

³⁵ FW Act s.715

³⁶ Hindu Society at [18] (per Judge Riethmuller)

- ▶ expressed some form of contrition for wrongdoing and agreed to demonstrate contrition through a payment either to the Consolidated Revenue Fund, or another entity whose objectives are strategically aligned with the FWO's statutory purpose and that is approved by the FWO in the circumstances³⁷
- ▶ offered undertakings that are clear, reasonable, proportionate and enforceable
- ▶ provided letters of assurance of current compliance
- ▶ committed to taking specific steps to ensure future compliance by specific timeframes.

In line with the FWO's commitment to encouraging behavioural change and facilitating a sustainable culture of compliance, the FWO is also more likely to accept an undertaking from a person who is committed to:

- ▶ taking effective steps to better ensure future compliance, and implementing governance, management and accountability measures to support improved compliance
- ▶ investing in the workplace relations capability development of management responsible for relevant compliance
- ▶ implementation of policies and processes that ensure compliance
- ▶ acting on dedicated workplace relations advice from employer organisations, lawyers, or other appropriate workplace relations professionals or advisors
- ▶ ongoing audits. For instance, annual audits conducted either by in-house or independent experts (including the auditor having direct contact with a sample of employees to ensure accuracy of hours worked, validation of duty holder assertions, and other appropriate measures)
- ▶ facilitating worker voice mechanisms through the creation of worker representative forums that socialise and monitor compliance issues
- ▶ the provision of worker-friendly, dispute-resolution mechanisms.

To advance transparency and accountability, the FWO's practice is to publish the executed enforceable undertaking on our website as well as issue an associated media statement to enhance general deterrence.

To embed behavioural change, enforceable undertakings are typically 2 to 3 years in length. The FWO has a dedicated monitoring team that actively works with all persons that have executed an enforceable undertaking by providing a dedicated FWO relationship manager who offers tailored assistance to ensure they meet their undertakings for the duration of the instrument.

The FWO reserves its right to issue media statements at any time during the term of the enforceable undertaking if the FWO considers it reasonable and appropriate, noting the FWO cannot commence civil proceedings against the person for contraventions about which they have given the enforceable undertaking.³⁸ However, if a person fails to comply with any of the terms of the enforceable undertaking, the FWO may commence civil proceedings in court to seek orders directing the person to comply, for compensation, or for any other appropriate order.³⁹

If the FWO accepts an enforceable undertaking, other persons who can bring proceedings under the FW Act in relation to the same conduct may still take civil action. This includes an affected employee or a union.

³⁷Decisions about the necessity for and/or the quantum of a contrition payment, as well as whether another entity may be appropriate to receive the payment instead of the Consolidated Revenue Fund, are made on a case-by-case basis. The FWO considers several factors, including the nature and extent of the contraventions, rectification of underpayments, other remedial steps taken, and proportionality to any penalties that a court may impose if the matter were litigated with admitted contraventions.

³⁸FW Act s.715(4)

³⁹FW Act s.715(6)&(7)



Civil litigation

Commencing civil proceedings, which we refer to as 'litigation,' is another enforcement mechanism available to the FWO. It is generally reserved for those contraventions that are serious, significant and/or systemic in nature, or otherwise in circumstances where litigation would uphold the integrity of our enforcement tools or serve the public interest.

Litigation is an essential enforcement mechanism for 3 reasons:

1. enforcing the law and obtaining court orders sends a powerful public message to others not to engage in similar conduct (general deterrence)
2. stopping and deterring people from engaging in unlawful behaviour (specific deterrence)
3. clarifying the law helps the workplace community understand the various obligations and rights arising from Commonwealth workplace laws.

The FWO is more likely to litigate in cases involving:

- ▶ deliberate and/or repeated non-compliance with Commonwealth workplace laws
- ▶ exploitation of vulnerable workers
- ▶ failure to cooperate with the FWO and fix contraventions after being given the opportunity to do so and without a reasonable excuse
- ▶ parties who have a prior history of contraventions who have not taken adequate steps to ensure compliance despite being advised of the consequences in the past.

Even in circumstances in which contraventions have been rectified, it may still be appropriate for the FWO to commence civil proceedings (for example, to obtain a penalty in respect of a contravention to achieve specific or general deterrence).

In addition to the FWO commencing its own proceedings,⁴⁰ section 682(1)(f) of the FW Act provides that the FWO may represent employees or outworkers who are, or may become, a party to proceedings in a court or the Fair Work Commission (if the FWO considers that the representation will promote compliance with the FW Act or fair work instrument). The FWO may also refer relevant alleged criminal offences to the CDPP or the AFP.

Who we litigate against

Liability for contraventions of Commonwealth workplace laws may lie with more than just one person or body. Sections 550 and 557A(5A) of the FW Act describe how a person can be 'involved in' a contravention, and states that such persons are treated as having committed a contravention themselves.

We may commence civil proceedings and seek orders against any person who contravenes their obligations under Commonwealth workplace laws, as well as those who are 'involved' in such contraventions. This may include:

- ▶ employers
- ▶ registered organisations
- ▶ company directors or company secretaries
- ▶ officials of organisations
- ▶ human resources managers or other managers
- ▶ external agents or advisors, such as accountants, bookkeepers or external human resources consultants
- ▶ companies and people involved in supply chains involving the procurement of labour
- ▶ a holding company of a subsidiary employing entity or its directors
- ▶ a franchisor.

⁴⁰ FW Act s.682(1)(d)

When does the FWO commence civil litigation?

The FWO will only commence civil proceedings if it considers that there is sufficient evidence to do so, and it would be in the public interest.

In deciding whether to institute any appeal, the FWO will consider whether there are reasonable prospects of success and whether the appeal is in the public interest.

As a regulator utilising public funds, the FWO will consider the impact on its resources and costs before making a decision to commence civil proceedings or an appeal.

The public interest factors the FWO considers in determining to commence (or not commence) litigation varies depending on the particular circumstances of each case. The following table sets out some of the matters the FWO typically considers.

Public interest factors	Examples of matters the FWO considers
Nature, seriousness and circumstances of the alleged contraventions	<ul style="list-style-type: none"> seriousness of the alleged contraventions prevalence in the community of the type of behaviour any mitigating or aggravating circumstances whether the person(s) alleged to have committed the contraventions sought and relied on expert or professional advice evidence of deliberate or reckless conduct including omitting to take steps to ensure compliance whether contraventions have been admitted and/or fixed or are being fixed.
Characteristics of person(s) alleged to have committed the contraventions	<ul style="list-style-type: none"> compliance history sophistication and financial position (including the impact on business viability, service delivery and employees if excessive costs and sanction imposed) whether the person has actively assisted with the FWO's inquiries, and whether they genuinely accept their non-compliance steps taken to prevent further contraventions.
Characteristics of person(s) affected by the alleged contraventions	<ul style="list-style-type: none"> any vulnerabilities, such as whether the person has a disability, is a young or mature worker, is present in Australia on a visa, or is from a culturally and linguistically diverse background whether the person has the ability and resources to commence their own proceedings.
Impact of the alleged contraventions	<ul style="list-style-type: none"> direct and indirect impact on the people who have been affected by the alleged contraventions impact on any other person(s), including other businesses/competitors the impact of the alleged contraventions and their size, such as the number of people affected or the quantum of any underpayments.
Impact of litigation on general and specific deterrence	<ul style="list-style-type: none"> whether litigation will reduce the likelihood that others will engage in similar behaviour (general deterrence) whether litigation will reduce the likelihood of further contraventions of workplace laws by the person(s) involved in the proceedings (specific deterrence).
Effect of litigation	<ul style="list-style-type: none"> suitability, efficacy and availability of other enforcement mechanisms as an alternative to litigation likely outcome in the event the contraventions are found to have occurred (for example, penalties, compensation or other orders) whether the likely outcome would be unduly harsh or oppressive.
Administration of justice / integrity of the system	<ul style="list-style-type: none"> passage of time since the alleged contraventions likely length and cost of litigation whether proceedings are necessary to maintain public confidence in the administration of workplace laws, including our enforcement tools.

The FWO's decision to commence or not commence civil proceedings must be made impartially and must not be influenced by any inappropriate consideration including race, religion, age, sex, intersex status, gender identity, sexual orientation, national origin or political association. The decision must not be influenced by any political advantage or disadvantage to the government, any political group or party or any union, industrial or employer group or association.



Conduct of civil proceedings

The FWO will conduct litigation honestly, fairly, consistently and in accordance with the Commonwealth's obligation to act as a model litigant.⁴¹

The FWO will make decisions about the conduct of litigation based on the available evidence. If another party asks the FWO to agree to a particular course, or to put a submission to the court, we may ask them to provide us with evidence to support their request.

Where evidence discloses multiple potential contraventions of Commonwealth workplace laws, the FWO will take care to plead the contraventions that adequately reflect the nature and extent of the relevant behaviour. Where the FWO alleges there have been serious contraventions within the meaning of section 557A of the FW Act, we will specify the relevant serious contraventions.

A breach will only be a serious contravention where a person knowingly contravened the relevant provision or was reckless as to whether the contravention would occur.

After civil proceedings have been commenced, the FWO participates in discussions to limit any issues in dispute, for example, during court mediations. As a regulator, the FWO approaches such discussions from a public interest perspective. In circumstances where a party provides new evidence alleging that the contravention(s) did not occur, the FWO will consider the evidence and may:

- ▶ proceed with the original contraventions
- ▶ proceed in relation to fewer contraventions than originally identified
- ▶ accept admissions only in relation to some contraventions and not press or seek orders in relation to other contraventions. All admissions must reflect a genuine acceptance of responsibility.

We will discontinue civil proceedings if it is appropriate to do so. It is unusual for us to make a decision to discontinue given the detailed assessment we undertake before we commence civil proceedings. However, we may take this

action in appropriate circumstances noting that our case assessment process is ongoing, including throughout the course of civil proceedings.

Admissions or payments made just before or after civil proceedings are commenced will usually not justify discontinuing the proceedings, but the FWO will take such action into account when seeking orders and making submissions to the court on appropriate penalties.

Orders and penalties

The FW Act allows eligible courts to make a wide range of orders if a person is found to have contravened the FW Act. Orders that the FWO may seek in civil proceedings include orders:

- ▶ that underpayments be rectified, and interest be paid
- ▶ that compensation be paid to person(s) affected by the contraventions. Such compensation would be paid by person(s) responsible for contraventions and/or other persons who were 'involved' in them
- ▶ for a civil penalty to be paid to the Commonwealth⁴² or, where appropriate, the penalty be redirected to an impacted party
- ▶ that a person pay any civil penalty personally, without seeking or accepting indemnity from a third party
- ▶ for injunctions to stop, prevent or restrain further contraventions from occurring
- ▶ that a person take specific steps, for example by undertaking training or conducting wage audits.

⁴¹Appendix B to the Legal Services Directions 2017

⁴²The maximum penalties for serious contraventions, within the meaning of s.557A of the FW Act, are higher than for other contraventions of the FW Act



Submissions on penalty

The courts are responsible for deciding what orders are appropriate in a case and the amount of any civil penalty. Courts may have regard to submissions made by the parties to proceedings in relation to penalty, including as to what facts are relevant.⁴³ The FWO may put evidence before the court to support our submissions on penalty, including evidence about non-compliance in particular industries, places or amongst particular groups of workplace participants.

The FWO will seek penalties that:

- ▶ will achieve general and specific deterrence
- ▶ avoid a harsh or oppressive outcome.

In appropriate cases, we may reach agreement with other parties about the amount of penalty we propose to the court. The court may accept the agreed penalty if it is satisfied that the amount is appropriate.⁴⁴

Discounts on penalty

Courts may reduce the penalty to be ordered if a person admits the contraventions and cooperates with the court process.⁴⁵ We will draw the court's attention to any conduct that justifies a discount on penalty, in particular any admissions made early during an investigation or soon after the commencement of civil proceedings. If admissions are made close to – or during – the court hearing, we may submit to the court that a lesser or no discount on penalty is appropriate.

Costs

Under the FW Act, parties to litigation will normally pay their own costs of the proceeding. However, the court can order a party to pay someone else's costs in some circumstances, such as when a party has acted unreasonably.⁴⁶ In appropriate cases, the FWO may seek orders that a party pay costs.

Enforcement of Court orders

Court orders must be complied with by the relevant party on or before the date set out in the order. The FWO will take enforcement action to ensure compliance with Court orders pursuant to our obligations under the *Public Governance, Performance and Accountability Act 2013* (Cth) and *Public Governance, Performance and Accountability Rule 2014* (Cth).

⁴³ *Commonwealth of Australia v Director, Fair Work Building Industry Inspectorate* [2015] HCA 46 (*Commonwealth v FWBII*) at [46]-[64] (per French CJ, Kiefel, Bell, Nettle and Gordon JJ)

⁴⁴ *Commonwealth v FWBII* at [48], [57]-[59] (per French CJ, Kiefel, Bell, Nettle and Gordon JJ)

⁴⁵ *Mornington Inn Pty Ltd v Jordan* [2008] FCAFC 70 at [74]-[76] (per Stone and Buchanan JJ)

⁴⁶ FW Act s 570

Approach to self-reported unintentional non-compliance

The FWO takes a practical and proportionate approach to self-reported non-compliance.

Isolated, unintentional payroll errors resulting in underpayments over a short period of time (up to 12 months) do not need to be actively reported to the FWO, as long as:

- ▶ employees are appropriately informed of the underpayment
- ▶ employees are back paid in full as soon as practicable
- ▶ changes are implemented to ensure the error does not happen again.

For broader and/or historical unintentional non-compliance, it is best to notify the FWO as soon as possible. Reports should be made via email to corporateassurance@fwo.gov.au. For the self-reporting of intentional conduct, see the section on 'Cooperation agreements' on page 22.

Any self-reports should identify the following, to the extent that the information is known at the time of reporting:

- ▶ details of the non-compliance
- ▶ what led to or contributed to it
- ▶ the action taken to assess and rectify it (including back-payments and interest)
- ▶ details of corrective measures being implemented to prevent further non-compliance (including enhancements to governance arrangements, systems or process change and management training)
- ▶ confirmation of notification to the Australian Tax Office (ATO) (if there will be likely tax and superannuation implications). Notifications to the ATO can be made via [Voluntary disclosures in the approved form](#).⁴⁷
- ▶ confirmation of notification to any other third parties such as a union.

Our general approach is to work collaboratively with duty holders who self-report and cooperate with us to ensure the integrity of their remediation. For more complex self-reports, the FWO's Payroll Remediation Program Guide provides a suggested framework for conducting a large-scale worker-centred remediation program. It also outlines the FWO's approach to assessing compliance.

The FWO considers the cost of remedying the contraventions should rest with the duty holder (and not the taxpayer). Accordingly, subject to the nature and scale of the contraventions and the extent of cooperation shown to the FWO, the FWO's approach will typically either be one of voluntary compliance or guided compliance as described above.

Where more significant unintentional contraventions or conduct are involved (for example, large-scale underpayments going back many years, or breaches of undertakings given to the Fair Work Commission in securing an enterprise agreement approval), the FWO may accept an enforceable undertaking offered by a duty holder (at the commencement, during, or at the end of an investigation) with terms reflecting the scale of the underpayment, the employer's cooperative response to rectify harms and commitment to sustainable compliance.

⁴⁷ <https://www.ato.gov.au/forms-and-instructions/voluntary-disclosures-approved-form>

Criminal underpayment offence

From 1 January 2025 it is a criminal offence for an employer to intentionally engage in conduct that results in a failure to pay certain employee entitlements.⁴⁸

An employer will commit an offence under section 327A of the FW Act if they:

- ▶ are required to pay an amount to an employee (such as wages), or an amount on behalf of or for the benefit of an employee (such as superannuation), under the FW Act, a fair work instrument or a transitional instrument (being a 'required amount'), and
- ▶ intentionally engage in conduct (by doing or not doing something) that intentionally results in a failure to pay that required amount in full on or before the day the amount is due for payment.

The criminal underpayment offence does not cover certain types of entitlements for some employees. For more information about these exceptions, see our website.⁴⁹

In addition to employers, other persons (natural or corporate) can also be prosecuted under 'related offence provisions' for their conduct in the following ways:

- ▶ attempting to commit the criminal underpayment offence
- ▶ aiding, abetting, counselling or procuring the commission of the criminal underpayment offence by another person
- ▶ inciting (i.e. urging) the commission of the criminal underpayment offence
- ▶ entering into an agreement with two or more persons to commit the criminal underpayment offence (a 'related offence').⁵⁰

When does the FWO refer conduct for criminal prosecution?

The FWO will be responsible for conducting investigations of the criminal underpayment offence and related offence, but only the CDPP or AFP may commence proceedings.⁵¹ Conduct will only be referred to the CDPP or AFP if we consider that we have gathered sufficient evidence to prove that a criminal underpayment offence or related offence has been committed. Generally, conduct will be referred to the CDPP. Conduct may be referred to the AFP where we consider that the matter requires further investigative assistance.

In determining whether to refer conduct to the CDPP, the FWO will consider the public interest factors referred to above in the section 'When does the FWO commence civil litigation?' on page 16. Referrals will generally be reserved for the most serious conduct, including where there is a greater need for specific or general deterrence than civil litigation. Unlike civil litigation, the FWO will not refer a matter to the CDPP solely for the purpose of clarifying the law (e.g. the interpretation of an entitlement in a fair work instrument).

The FWO recognises that not all conduct potentially amounting to a criminal underpayment offence or a related offence must result in a referral to the CDPP. The FWO will consider entering into a cooperation agreement with a person that has reported conduct to us, has positively engaged with us and agrees to enable the remedying of the effects of their conduct. See the section on 'Cooperation agreements' on page 22.

The FWO may also consider whether a small business employer has complied with the Voluntary Small Business Wage Compliance Code prior to

⁴⁸ See a guide to cooperation agreements for a further explanation of the criminal underpayment offence and related offence, including the employers, employees and entitlements that the offences apply to <https://www.fairwork.gov.au/cooperation-agreements>

⁴⁹ <https://www.fairwork.gov.au/criminal>

⁵⁰ Section 12 (definition of 'related offence provision') of the FW Act. See further section 6 of the *Crimes Act 1914* (Cth) and Part 2.4 of the *Criminal Code 1995* (Cth)

⁵¹ FW Act s.327C



referring conduct to the CDPP. See the section on the 'Voluntary Small Business Wage Compliance Code' on page 23.

Conduct of proceedings

If a matter is referred to the CDPP, the CDPP determines whether the evidence is sufficient to commence criminal proceedings and whether prosecution is in the public interest in accordance with the Prosecution Policy of the Commonwealth.⁵² If criminal proceedings are commenced, the case is then prosecuted by the CDPP.

Penalties

The consequences of a criminal conviction are generally more significant than in civil litigation.

The maximum penalties for committing each criminal underpayment offence or related offence are:

- ▶ for individuals: a term of imprisonment not more than 10 years and/or:
 - if the underpayment amount can be calculated: the greater of 3 times the underpayment amount and \$1.65 million.
- ▶ for corporate or commonwealth entities:
 - if the underpayment amount can be calculated: the greater of 3 times the underpayment amount and \$8.25 million; or
 - if the underpayment amount cannot be calculated: \$8.25 million.

⁵² <https://www.cdpp.gov.au/prosecution-policy>

Cooperation agreements

Cooperation agreements provide a person with the opportunity to access protections from potential criminal prosecution if they have engaged in conduct that amounts to a potential offence or related offence. The FWO will decide whether to enter into a cooperation agreement. When deciding whether to enter into a cooperation agreement, the FWO will consider the following matters:

- ▶ whether in the FWO's view the person has made a voluntary, frank and complete disclosure of the conduct
- ▶ the nature and level of detail of the disclosure in relation to the conduct
- ▶ whether in the FWO's view the person has cooperated with the FWO in relation to the conduct
- ▶ the FWO's assessment of the person's commitment to continued cooperation in relation to the conduct, including by way of providing the FWO with comprehensive information to enable the effectiveness of the person's actions and approach to remedying the effects of the conduct to be assessed
- ▶ the nature and gravity of the conduct
- ▶ the circumstances in which the conduct occurred, and
- ▶ the person's history of compliance with the FW Act.

Where appropriate, the FWO will also consider whether the person has meaningfully engaged with the impacted parties, and their representatives, to explain and address the conduct.

A cooperation agreement is a written agreement between the FWO and a person (i.e., an individual, corporate entity or Commonwealth agency). The agreement covers conduct engaged in by the person that amounts to a potential criminal underpayment offence or related offence, with the conduct specified in the agreement. A cooperation agreement may also include terms that require the person to take positive steps to enable the remedying of the effects of their conduct and ensure future compliance.

Cooperation agreements:

- ▶ promote positive engagement and cooperation with the FWO
- ▶ address intentional underpayments without the need for a criminal prosecution
- ▶ in appropriate circumstances, provide the FWO with information that can be used to investigate other persons who may have committed a criminal underpayment offence or a related offence and who have not cooperated with the FWO to address the conduct.

While a cooperation agreement is in force between the FWO and a person, the FWO cannot refer conduct that is the subject of the agreement to the CDPP or AFP for possible prosecution.⁵³

If a person enters into a cooperation agreement, they may still face civil action by persons who can bring proceedings under the FW Act in relation to the same conduct. This includes the FWO, an affected employee, or a union.

See 'A guide to cooperation agreements'⁵⁴ for further information on:

- ▶ the criminal underpayment offence and related offences
- ▶ what cooperation agreements are and their benefits
- ▶ when and how to engage with the FWO to receive protection from criminal prosecution
- ▶ what the FWO will consider in deciding whether to enter into a cooperation agreement
- ▶ the standard terms of cooperation agreements
- ▶ the potential consequences of failing to comply with a cooperation agreement
- ▶ the role of the CDPP.

⁵³ Section 717A(1) of the FW Act

⁵⁴ <https://www.fairwork.gov.au/cooperation-agreements>



Voluntary Small Business Wage Compliance Code

The Voluntary Small Business Wage Compliance Code (the Code) is a legislative instrument declared by the Minister under the FW Act. Its purpose is to give small business employers (those with less than 15 employees) comfort that the FWO will not refer them for possible criminal prosecution if they did not intentionally underpay their employees. If the FWO is satisfied that the small business employer has complied with the Code, we cannot refer the relevant conduct to the CDPP or AFP for possible prosecution.

Where the FWO makes a decision about whether or not a small business employer has complied with the Code, we will notify the employer of our decision in writing.

Small business employers can refer to the FWO's Guide to paying employees correctly and the Code⁵⁵ for further information on:

- ▶ the criminal underpayment offence
- ▶ understanding the consequences of underpaying employees
- ▶ finding out about the Code and how to access it
- ▶ confirming employees are being paid correctly
- ▶ remaining compliant on wages
- ▶ taking appropriate action to fix issues once they are identified.

⁵⁵ <https://www.fairwork.gov.au/vsbwcc>

Feedback

The FWO is committed to improving our services. We encourage feedback about your experience with us and invite people to contact us via [our website](#).⁵⁶

Feedback and complaints provide valuable information we can use to improve future customer experiences and satisfaction and helps us know what we're doing well and what changes we need to make.

Feedback and complaints about the services offered by the FWO are reviewed and managed by a dedicated team within the FWO. Acting independently, the team reviews the matters raised and determines whether and what type of action is required to respond to service complaints.

If a person requests a review of our actions and is not satisfied with the result of our review, they can contact the Commonwealth Ombudsman on 1300 362 072, or [Commonwealth Ombudsman](#).⁵⁷

⁵⁶ <https://www.fairwork.gov.au/feedback>

⁵⁷ <https://www.ombudsman.gov.au/>





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Compliance and Enforcement Policy



Documents released by the Fair Work Ombudsman under the Freedom of Information Act

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Acknowledgement of Country

The Fair Work Ombudsman (FWO) acknowledges the Traditional Custodians of Country throughout Australia and their continuing connection to land, waters, skies, and community. We pay our respects to them, their cultures, and Elders past, present, and future.

About our artwork: Stepping forward

Stepping forward represents taking the next step on the journey towards reconciliation and the potential possible when everyone is included.

Connecting with diverse peoples; meeting, listening and sharing together, can build respect and trust. Working in concert for a common purpose and united in the mission to make meaningful change.

It serves as a reminder of the dynamism and vibrancy of First Nations peoples and the lands from which they come, making the emergence of new ideas and ways of being possible that enables the envisioning of a brighter future.

Artist: Timothy Buckley

Purpose

The Compliance and Enforcement Policy (Policy) provides information about how the Fair Work Ombudsman (FWO) fulfils its statutory compliance and enforcement functions under the *Fair Work Act 2009* (Cth) (FW Act). This Policy sets out the factors we consider when using our compliance and enforcement powers.

The FWO is established under section 681 of the FW Act. The FWO's statutory functions are set out in section 682 of the FW Act. These functions include:

- ▶ promoting harmonious, productive and cooperative workplace relations and compliance with the FW Act and fair work instruments – including through the provision of education, assistance and advice
- ▶ monitoring compliance with the FW Act and fair work instruments
- ▶ inquiring into, and investigating, any conduct or practice that may be contrary to the FW Act, a related offence, a fair work instrument or a safety net contractual entitlement
- ▶ commencing proceedings in a court, or making an application to the Fair Work Commission, to enforce the FW Act, a fair work instrument, or a safety net contractual entitlement
- ▶ publishing this Policy, which includes guidelines on circumstances relevant to enforceable undertakings and cooperation agreements
- ▶ referring matters to other relevant authorities where appropriate
- ▶ representing employees, regulated workers or outworkers in certain circumstances.

Find out more about the Fair Work Ombudsman at [About us](https://www.fairwork.gov.au/about-us).¹

Policy scope

This Policy applies to our compliance and enforcement functions and describes how we fulfil our role as the workplace regulator. This includes how we use information to make decisions based on the following strategic enforcement principles:

- ✔ prioritisation
- ✔ deterrence
- ✔ sustainability
- ✔ system-wide effect.

In exercising our approach to compliance and enforcement, the FWO recognises the importance of working closely with Commonwealth and state regulators, employer groups, unions, and alternative services² to provide education and advice, and to promote multi-stakeholder mechanisms that support compliance.

In consultation with stakeholders, the FWO reviews its priority areas of regulation. Find out more at [Our priorities](#).³ These are areas that are at significant risk of, or that demonstrate a history of, systemic non-compliance, where we seek to make sector-wide impacts through increased attention. They include an enduring commitment to prioritising education and assistance for small business employers and employees, and vulnerable or at-risk workers.

Our priorities assist the FWO to make decisions about our resource allocation and are a consideration when responding to requests for assistance involving a workplace dispute.

This Policy does not prescribe how the FWO's functions or powers are operationalised and should be read alongside our published [Corporate Plan](#).⁴

¹ <https://www.fairwork.gov.au/about-us>

² Alternative services include, but are not limited to, community justice centres, legal aid facilities, worker advocates, small claims courts and tribunals

³ <https://www.fairwork.gov.au/about-us/our-role-and-purpose/our-priorities>

⁴ <https://www.fairwork.gov.au/about-us/our-role-and-purpose/our-priorities/corporate-plan>

Governing principles

The following principles inform our approach to compliance and enforcement:

Accessible	<p>We ensure the advice and assistance that we provide is clear, accessible and practical. The tools and resources we provide empower workers and other duty holders⁵ to understand and comply with workplace laws.</p> <p>We receive information through:</p> <ul style="list-style-type: none"> enquiries about wages, entitlements and workplace protections requests for assistance involving a workplace dispute publicly available material anonymous reports stakeholder feedback intelligence investigations.
Accountable	<p>We act impartially and avoid or otherwise manage conflicts of interest when performing our functions.</p> <p>As an Australian Government regulator, we ensure our investigation practice conforms with the Australian Government Investigations Standards.⁶</p> <p>We regularly and publicly communicate our compliance and enforcement outcomes.⁷</p>
Consistent	<p>Our decision-making is guided by our principles and positions, and by precedents and decision-making from courts and tribunals on the application and interpretation of Australia's workplace relations laws.</p> <p>Our compliance and enforcement approach is designed to promote duty holders' understanding of, and compliance with, their legal obligations.</p>
Reasonable	<p>Our determinations and actions are evidence-based, proportionate and honour the principles of natural justice and due process.</p> <p>We will conduct litigation honestly, fairly, consistently and in accordance with the Commonwealth's obligation to act as a model litigant.</p>
Risk-based and data driven	<p>We consistently source information to identify, monitor and address emerging and systemic non-compliance.</p> <p>We monitor our priority areas while staying responsive to emerging issues. Our priorities provide a framework through which we make decisions about our resource allocation.</p> <p>The information we receive is prioritised and risk-assessed to inform an evidence-based approach to compliance and enforcement.</p>
Strategic	<p>In taking compliance and enforcement action, we consider the entire national workplace relations system by seeking to deter non-compliance, change unlawful behaviours and achieve sustainable compliance. Such a strategy is designed to maximise impact by identifying and addressing the drivers of non-compliance.</p>

⁵ For the purposes of this Policy, a duty holder is defined as a person, natural or corporate, that has an obligation under the FW Act to either do or not do a particular action. A duty holder includes (but is not limited to): employing entities, registered organisations, company directors, company secretaries, officials of organisations, managers, accountants, bookkeepers, external human resources consultants, companies and people involved in supply chains involving the procurement of labour, persons involved in industrial action, a holding company of a subsidiary employing entity or its directors, franchisors, and workers

⁶ <https://www.ag.gov.au/integrity/publications/australian-government-investigations-standards>

⁷ Any publication of outcomes, including (but not limited to) the common publishing of media statements for FWO's litigations, is done in accordance with our Privacy Policy, Information Access Policy and Media Policy which are available on our website at www.fairwork.gov.au



Key regulatory approaches

The FWO adopts key regulatory approaches to fulfil our statutory compliance and enforcement functions under the FW Act, as outlined below.

Independent and impartial regulation

The FWO is an independent and impartial regulator committed to promoting harmonious, productive and cooperative workplace relations and ensuring compliant workplaces.

The FWO is not an advocate or representative body. We have several functions, including monitoring workplaces for compliance and inquiring into, investigating or commencing proceedings, or making applications in relation to suspected contraventions and referring matters to relevant authorities where appropriate. We may refer matters to other authorities as appropriate or represent employees, regulated workers or outworkers in certain circumstances.⁸

We apply a graduated approach based on strategic enforcement principles and only use enforcement when other cooperative approaches have failed or are inappropriate.

The FWO is supported by staff who assist with the performance of workplace compliance and advisory functions. Our staff conduct their roles in accordance with the APS Values⁹ and APS Code of Conduct.¹⁰

The FWO appoints Fair Work Inspectors who are empowered to investigate and enforce compliance with Australia's national workplace relations laws. All Fair Work Inspectors are of 'good character' as required by the FW Act.¹¹

Advancing tripartism (working collaboratively with key stakeholders)

In accordance with our Statement of Intent,¹² we believe every part of the workplace relations system has an important role to play in creating a culture of compliance that fosters productive and inclusive workplaces that comply with workplace standards for Australian workers and promote compliance by duty holders.¹³

We can expand our reach when we work constructively with key stakeholders. Our collaborative activities with stakeholders are underpinned by consultation, respectful engagement and careful design to best optimise our approach to compliance and enforcement and ensure our independence and impartiality are not compromised.¹⁴

We collaborate with employer organisations, unions and key stakeholders to assist in ensuring workers and other duty holders understand their obligations and rights and are empowered to act. In regulating Australian workplaces, we appreciate that acting alone limits our reach.

Accordingly, we consider that employer organisations, unions, community justice centres, worker advocates, and small claims courts and tribunals also have important roles in education, deterrence and compliance – as well as providing a direct, (and at times), more appropriate, service for parties to address their workplace disputes.

⁸ Section 682(1)(f) of the FW Act provides for the FWO to consider representing employees, regulated workers, or outworkers if it will promote compliance with the FW Act or a fair work instrument

⁹ <https://www.apsc.gov.au/working-aps/information-aps-employment/aps-values>

¹⁰ <https://www.apsc.gov.au/working-aps/integrity/integrity-resources/code-of-conduct>

¹¹ Section 700(2) of the FW Act

¹² <https://www.fairwork.gov.au/about-us/accountability/reporting-to-parliament/regulator-performance-framework>

¹³ As outlined in the Jobs and Skills Summit's September 2022 outcomes, key stakeholders – including business groups, unions and government – agreed on the need to proactively work together to strengthen tripartism and constructive dialogue in Australian workplace relations to promote safe and secure jobs, and fair and productive workplaces

¹⁴ The Labour Inspection Convention 1947 enshrines the impartiality of labour inspectors, while ensuring regulators make appropriate arrangements to promote effective cooperation across government, and collaboration with employers, workers, and their representative organisations



We are also committed to promoting voluntary industry-led, multi-stakeholder mechanisms that support compliance and allow the FWO to focus its compliance and enforcement activities to identify and address suspected non-compliance more effectively.

The FWO's view is that sustainable change requires more than one-time interventions and the regulator acting alone. Our focus is on collaborating with employer and worker representatives to secure long-term solutions that facilitate sustainable compliance.

As we embed a more collaborative approach into our work, we are committed to acting in accordance with International Labour Organisation Conventions ratified by the Australian Government.

Parallel regulation (working collaboratively with other regulators)

We also acknowledge that another regulator may be better placed to deal with issues that arise in workplace disputes, and therefore we have entered into formal arrangements with Commonwealth and state regulators to assist our mission of promoting compliance. These arrangements involve sharing information and intelligence, joint education and compliance activities, and referring instances of non-compliance for their consideration and action.¹⁵

Where appropriate, we may conduct joint investigations with other regulators in relation to duty holders, syndicates or networks who are suspected of being engaged in unlawful behaviours, which may include, but not be limited to, suspected contraventions of the FW Act.

By maximising our collaborative focus with government and non-government stakeholders, we aim to enhance our impact through a shared and collective responsibility for ensuring compliance with all relevant workplace laws. Where the FWO becomes aware of allegations that are outside its statutory functions, the FWO will refer those allegations – or provide the information obtained – to the relevant bodies as appropriate.¹⁶

¹⁵For disclosure of information by the FWO, see Section 718(2) of the FW Act
¹⁶See FW Act s.682(1)(e) and s.718

Using information to make decisions

In accordance with our governing principles we:

- ▶ carefully assess information to understand if, when, where and why non-compliance is occurring
- ▶ reassess the information, taking into account changes in the circumstances of a case, new information coming to light and evolutions in the broader operating environment
- ▶ determine the most appropriate response to ensure compliance and prevent future non-compliance.

In assessing information and making decisions about the management of a matter (which includes whether to undertake or continue an investigation), we exercise our regulatory discretion by considering and applying factors such as those outlined in the table below.

The allegations	<ul style="list-style-type: none"> ▶ Are the allegations of non-compliance an isolated instance or part of a pattern of behaviour? ▶ Are the allegations reliable/credible? Can evidence be obtained to support the allegations? ▶ How significant are the allegations of non-compliance? ▶ If validated, what is the scale and impact of the alleged non-compliance on: <ul style="list-style-type: none"> » workers and the workplace » other businesses/workplaces » relevant industry sectors » geographic regions? ▶ When did the alleged non-compliance occur and over what period of time? ▶ Is the alleged non-compliance still occurring? ▶ Do the allegations impact current or past employees? ▶ Do the allegations indicate a system-wide non-compliance?
The duty holder	<ul style="list-style-type: none"> ▶ Does the duty holder's conduct indicate a deliberate and/or repeated breach of workplace laws? ▶ What is the duty holder's attitude to cooperating with the FWO? ▶ Has the duty holder meaningfully engaged with the impacted parties, and their representatives, to explain and address allegations of non-compliance? ▶ What is the level of the duty holder's preparedness to rectify any wrongdoing? ▶ Are there outstanding allegations of non-compliance or concerns that the duty holder is non-compliant that have not been addressed? ▶ What is the likelihood of the duty holder remaining non-compliant or repeating the contraventions? ▶ What is the duty holder's ability to understand – and their access to resources that outline – their formal obligations? ▶ Are there indications of a significant power imbalance between the duty holder and workers? ▶ Has the duty holder demonstrated an ongoing willingness to continue engaging with us? ▶ Is the duty holder demonstrating a willingness to ensure any non-compliance is fully rectified, for example by working with an employer organisation or other reputable workplace relations advisor?
The context	<ul style="list-style-type: none"> ▶ Is there a significant impact on a particular cohort of workers or community that warrants the FWO seeking the imposition of financial penalties? ▶ Does the FWO need to ensure a strong deterrence message is conveyed to the public? ▶ Has the impact occurred in one of our priority areas? ▶ Is another regulator, employer organisation, union or other service provider already involved? ▶ Would it be an effective and efficient use of FWO resources to assist those impacted to commence their own proceedings? ▶ Is the proposed approach by the FWO an efficient and effective use of FWO resources? ▶ What would be the impact if the FWO did not act in response to the concern? ▶ What is the likelihood of reliable evidence being available, including witnesses prepared to 'go on the record'?



How we prioritise our resources

The FWO receives hundreds of thousands of requests for assistance each year and is responsible for regulating over one million businesses employing workers.

Our compliance and enforcement approach varies depending on specific circumstances and contexts. As part of prioritising matters, we use our discretion to assess the public interest and ensure our compliance and enforcement activities are an effective, ethical, economical and efficient use of public resources.

The FWO treats all information and issues brought to our attention seriously.

The information contained in every allegation, report or request for assistance relating to issues of non-compliance is assessed.

The FWO uses the data and intelligence it receives to inform future compliance and enforcement actions.

In deciding whether to allocate investigative resources, we consider whether allegations of non-compliance are:

- ▶ within or outside our jurisdiction
- ▶ being treated by other agencies, employer organisations, unions, advocates or other alternative services
- ▶ isolated events arising between the parties
- ▶ lacking in credible information, corroboration or other necessary evidence
- ▶ more appropriately resolved directly between the parties (for instance, where an attempt to resolve a dispute at the workplace level has not occurred).

The FWO encourages parties to a workplace dispute to actively engage in its resolution. This includes checking their rights and obligations under the law or talking directly to relevant parties in the workplace.

We also connect parties to alternative services provided by unions, employer organisations, community legal centres and others to assist parties to resolve their dispute.

Where this is not appropriate, or is not successful, we are available to assist parties to resolve their issues via education or dispute-assistance services.

Deterrence, sustainability and system-wide effect

We prioritise our investigative resources to allegations of contraventions that are serious, significant and/or systemic in nature, or where it would otherwise serve the public interest.

We maintain the integrity of our enforcement tools, including by seeking compliance with orders of courts and tribunals. We reaffirm our enduring commitment to support vulnerable workers.

We consider the cause of non-compliance and how we can influence the behaviour of non-compliant parties by:

- ▶ maximising the deterrent effect¹⁷ in industry sectors, geographic regions, supply chains and related businesses with a history of non-compliance
- ▶ clarifying and promoting a broad understanding of workplace laws, especially new provisions of the FW Act, to enhance ongoing compliance
- ▶ disrupting and then addressing system-wide non-compliant behaviours.

We publish information about our compliance activities and enforcement outcomes in accordance with our policies and procedures, supporting our commitment to accountability and transparency.

¹⁷Including the use of legal proceedings, see the Civil Litigation and Criminal underpayment offence sections.

Compliance and enforcement approach

The FWO uses the following regulatory model to determine its compliance and enforcement approach to allegations, evidence and suspected instances of non-compliance.

The model comprises the FWO's three main responses to allegations or instances of non-compliance and our commitment to:

1. encouraging voluntary compliance
2. guiding compliance where required
3. enforcing the law when it is in the public interest.



Encouraging voluntary compliance



Voluntary compliance

In response to requests for assistance involving a workplace dispute, we provide information, education and advice to support cooperation between the parties involved.

In the majority of cases, the FWO's response is to encourage voluntary compliance as part of our commitment to promoting productive, cooperative and harmonious workplaces.

Voluntary compliance is an effective, efficient and economical use of public resources, which is empowering and non-intrusive for the parties involved.

Advice and education

An important component of voluntary compliance is the provision of advice and education to assist parties who are involved in a workplace dispute to understand their rights and obligations.

Our advice and education functions help:

- ▶ raise awareness and understanding of the parties' rights and obligations under the FW Act through practical and helpful advice, information and education
- ▶ promote workplace-level engagement that encourages respectful dialogue and behaviour between all workplace parties and representatives
- ▶ build capabilities to sustain compliance.

Dispute assistance: requesting our assistance with a workplace dispute

Where parties request our assistance with a workplace dispute, we will provide them with advice, education, tools and resources to manage their dispute.

In most cases, our dispute-assistance services help parties successfully conclude disputes between themselves, and there is no ongoing need for our involvement.

Our phone-based dispute-assistance service provides tailored and practical advice to the parties in a workplace dispute on how to reach a resolution. Where parties are unable to resolve their dispute, or we believe that the best avenue to achieve a resolution is through a different process, we will provide options on alternative services available to resolve the dispute.

The FWO may commence an investigation into allegations of non-compliance that have been considered by the dispute-assistance service.

A decision to allocate investigative resources will be made at the discretion of the FWO, based on a careful reassessment of the matter.



Guiding compliance where direction is required



Guided compliance

Where warranted, the FWO may decide to take a guided compliance approach.

Such guidance typically follows Fair Work Inspectors having conducted an investigation (either in response to a request for assistance or initiated by information and intelligence the FWO has received), and then determining it is appropriate to formally direct duty holders, requiring them to undertake certain specified actions and demonstrate compliance with workplace laws.

The extent of the guidance provided by a Fair Work Inspector will depend on an assessment of available information and the conduct of duty holders. The most common form of guided compliance involves a Fair Work Inspector issuing a compliance notice. Another form of guidance is a Fair Work Inspector issuing a contravention letter detailing findings made in an investigation and requiring a set of actions to rectify the impact.

As failure to comply with these requirements can lead to court proceedings, the duty holder has the opportunity to respond by contesting the basis of the Fair Work Inspector's determination.

For more information on these and other tools, see the section Enforcement outcomes on page 11.

Enforcing the law



The objective of civil litigation is to advance specific and/or general deterrence, including with respect to specific industry sectors and/or system-wide non-compliance.

There are some forms of conduct and duty holder behaviour that are considered as constituting more significant non-compliance and warranting a stronger enforcement approach.

Where an investigation by the FWO has determined there is sufficient evidence of such wrongdoing, we will consider commencing civil proceedings to seek financial penalties where it is in the public interest to do so. In matters of intentional conduct by duty holders relating to underpayments of employee entitlements, the FWO may also consider referring conduct to the Commonwealth Director of Public Prosecutions (CDPP) or Australian Federal Police (AFP) for potential criminal prosecution. See the section on 'Criminal offence - underpayments' on page 20.

While cases will vary, factors the FWO will take into account when considering whether to take stronger enforcement action, such as civil litigation, include the nature or impact of a duty holder's suspected non-compliant behaviour, or where the duty holder has not cooperated with an investigation. The FWO will also consider commencing civil proceedings where we believe it will help clarify workplace laws, especially new provisions of the FW Act or emerging significant issues, or to ensure the integrity of our enforcement tools.

Under the FW Act, the FWO may agree to accept an enforceable undertaking offered by a duty holder as an alternative to civil litigation or agree to enter into a cooperation agreement as an alternative to referring conduct to the CDPP or AFP. See the section Enforcement outcomes on page 11 and section on cooperation agreements on page 22.



Compliance powers and enforcement outcomes

When the FWO decides to investigate or inquire into allegations of non-compliance, our Fair Work Inspectors can use statutory compliance powers for a 'compliance purpose', which includes determining whether a person is complying with the FW Act or a fair work instrument, or – in certain circumstances – whether a safety net contractual entitlement has been contravened.¹⁸

Where a provision of the *Fair Work Regulations 2009* (Cth) (FW Regulations) or another Act confers powers on Fair Work Inspectors, compliance powers can also be used for the purposes of that provision or Act.¹⁹

More information about our compliance powers is available at **Powers of Fair Work Inspectors**.²⁰

When, after investigating, we determine a breach of workplace laws has occurred, we will act proportionately to the significance of the breach and the impact (or potential impact) to the regulated community.

There are a range of outcomes that may occur because of, during, or in the process of finalising an investigation by a Fair Work Inspector.

Findings letter

Where a Fair Work Inspector has completed an investigation, the FWO will notify relevant parties of the findings and outcome of that assessment. The notification may state that no contraventions were identified in relation to the specific investigation. In some instances, the notification may state that the Fair Work Inspector determined that there was insufficient evidence to sustain the finding that a contravention occurred but may caution or recommend a party take steps to ensure that they are compliant (for example, seeking independent legal or professional workplace advice). Where contraventions are identified, the Fair Work Inspector may issue a contravention letter (as set out below).

Contravention letter – notification of failure to observe requirements²¹

If a Fair Work Inspector is satisfied that a person has failed to observe a requirement imposed by the FW Act, the FW Regulations or a fair work instrument, the Fair Work Inspector may issue a person with a written letter which:

- ▶ informs the person of the failure
- ▶ requires the person to take specified action (within a specified period) to rectify the failure
- ▶ requires the person to notify the Fair Work Inspector of any action taken to comply with the letter
- ▶ advises the person of the actions the Fair Work Inspector may take if the person fails to comply with the letter.

Depending on the nature of the contraventions and the person's response to the contravention letter, the FWO may decide to pursue one of the other available enforcement mechanisms.

¹⁸ FW Act s.706(1)(a) & (b) and s.706(2)

¹⁹ FW Act s.706(1)(c) & (d)

²⁰ <https://www.fairwork.gov.au/tools-and-resources/fact-sheets/about-us/powers-of-fair-work-inspectors>

²¹ FW Regulations reg. 5.05

Compliance notice

Compliance notices are a non-punitive mechanism for the FWO to address alleged contraventions of the FW Act instead of commencing court proceedings.²²

A Fair Work Inspector may issue a person with a compliance notice if the Inspector forms a reasonable belief that the person has contravened certain provisions of the FW Act or terms of instruments including:

- ▶ a provision of the National Employment Standards
- ▶ a term of a modern award
- ▶ a term of an enterprise agreement
- ▶ a term of a workplace determination
- ▶ a term of a national minimum wage order
- ▶ a term of an equal remuneration order
- ▶ an employer's obligations in relation to advertising rates of pay
- ▶ a term of a minimum standards order
- ▶ a term of a road transport contractual chain order.²³

This may occur in parallel with other matters that are investigated and addressed using other enforcement mechanisms.

A compliance notice will require that the person take specified action to remedy the direct effects of the identified contraventions, including calculating and repaying any underpayments where relevant, and/or require the person to produce reasonable evidence of compliance.²⁴

A person who complies with a compliance notice is not taken to have admitted the contraventions, or to have been found to have committed the contraventions.²⁵

Where a person complies with a compliance notice, the FWO is unable to commence court proceedings against that person for the contraventions that are the subject of the compliance notice.²⁶

A person may apply to the court to have a compliance notice reviewed on the basis that they have not committed a contravention set out in the compliance notice, or if the compliance notice does not comply with the necessary requirements under the FW Act.²⁷ The court may stay its operation as appropriate and confirm, cancel or vary the notice after reviewing it.

If a person fails to comply with the compliance notice and does not have a reasonable excuse,²⁸ that person has contravened the FW Act and a court may impose penalties of up to \$19,800 for an individual or \$99,000 for a body corporate that is a small business employer at the time of application to the court, or \$495,000 for a body corporate that is not a small business employer at the time of application.²⁹ It is open to the FWO to commence litigation for non-compliance with a compliance notice, as well as for any other contraventions identified – including the underlying contraventions referred to in the compliance notice.

²²Hindu Society of Victoria (Australia) Inc v FWO [2016] FCCA 221 (Hindu Society) at [30] (per Judge Riethmuller). See also, FWO v Darna Pty Ltd & Anor [2015] FCCA 709 at [11] (per Judge Hartnett)

²³FW Act s.716(1)

²⁴FW Act s.716(2)

²⁵FW Act s.716(4B)

²⁶FW Act s.716(4A)

²⁷FW Act s.717

²⁸FW Act s.716(6)

²⁹FW Act s.539: a failure to comply with s.716(5) can result in a maximum penalty equal to 60 penalty units. Pursuant to s.546 of the FW Act, a body corporate that is a small business employer (within the meaning of s.23 of the FW Act) at the time of application may face a pecuniary penalty of up to 5 times 60 penalty units (300 penalty units). A body corporate that is not a small business employer (within the meaning of s.23 of the FW Act) may face a pecuniary penalty of 5 times 300 penalty units, being 1,500 penalty units. A penalty unit is \$330 (as of 7 November 2024); Crimes Act s.4AA



Infringement notice

If a Fair Work Inspector reasonably believes there has been one or more contraventions of the FW Act or the FW Regulations in relation to record-keeping, pay slip or job advertisement obligations, the Fair Work Inspector may issue an infringement notice.³⁰ The FWO regards record-keeping and pay slip obligations as the bedrock of compliance. Failure to comply with these obligations impedes:

- ▶ an employee's ability to assess whether their employer has complied with their obligations
- ▶ efficient resolution of a dispute between parties
- ▶ an investigation by a Fair Work Inspector.

An infringement notice requires the person to pay a penalty for committing the contravention.

The maximum penalties that a person can be required to pay under an infringement notice are:

- ▶ \$1,980 for an individual or \$9,900 for a body corporate for contraventions of the FW Act
- ▶ \$660 for an individual or \$3,300 for a body corporate for contraventions of the FW Regulations.³¹

An infringement notice can be issued up to 12 months after the contravention occurred.³²

A person who complies with an infringement notice is not taken to have admitted to the contravention.³³

Where a person complies with an infringement notice, the FWO is unable to commence court proceedings against that person for the particular contravention(s) that are the subject of the infringement notice.³⁴

Enforceable undertaking

If the FWO forms a reasonable belief that a person has contravened the FW Act, the FWO may accept a written undertaking from the person in relation to the contravention. While an enforceable undertaking is in place, it offers protection from the FWO commencing civil proceedings.

Enforceable undertakings³⁵ are a simple mechanism for the FWO to deal with contraventions of the FW Act while '[t]he benefits to the recipients of the preparedness of the FWO to accept an undertaking is the avoidance of the considerable costs involved in court proceedings and the avoidance of the payment of a penalty.'³⁶

The FWO is more likely to accept an enforceable undertaking from a person (natural or corporate) where they have:

- ▶ limited or no history of non-compliance with the FW Act
- ▶ admitted contravening the FW Act
- ▶ fully cooperated and engaged with the FWO's investigation
- ▶ meaningfully engaged with the impacted parties, and their representatives, to explain and address allegations of non-compliance
- ▶ rectified the contravention(s), including remedying all underpayments to current and former employees impacted
- ▶ agreed to pay interest on those wage and superannuation entitlements owed
- ▶ apologised to those impacted, or committed to doing so
- ▶ established a hotline for those impacted to discuss their personal situation, or made reasonable attempts proportionate to the size of the business to facilitate a channel where those impacted can discuss their personal circumstances

³⁰ FW Regulations reg. 4.03 & 4.04

³¹ FW Act s.558(2)

³² FW Regulations reg. 4.04(2)

³³ FW Regulations reg. 4.09

³⁴ FW Regulations reg. 4.09

³⁵ FW Act s.715

³⁶ Hindu Society at [18] (per Judge Riethmuller)

- ▶ expressed some form of contrition for wrongdoing and agreed to demonstrate contrition through a payment either to the Consolidated Revenue Fund, or another entity whose objectives are strategically aligned with the FWO's statutory purpose and that is approved by the FWO in the circumstances³⁷
- ▶ offered undertakings that are clear, reasonable, proportionate and enforceable
- ▶ provided letters of assurance of current compliance
- ▶ committed to taking specific steps to ensure future compliance by specific timeframes.

In line with the FWO's commitment to encouraging behavioural change and facilitating a sustainable culture of compliance, the FWO is also more likely to accept an undertaking from a person who is committed to:

- ▶ taking effective steps to better ensure future compliance, and implementing governance, management and accountability measures to support improved compliance
- ▶ investing in the workplace relations capability development of management responsible for relevant compliance
- ▶ implementation of policies and processes that ensure compliance
- ▶ acting on dedicated workplace relations advice from employer organisations, lawyers, or other appropriate workplace relations professionals or advisors
- ▶ ongoing audits. For instance, annual audits conducted either by in-house or independent experts (including the auditor having direct contact with a sample of employees to ensure accuracy of hours worked, validation of duty holder assertions, and other appropriate measures)
- ▶ facilitating worker voice mechanisms through the creation of worker representative forums that socialise and monitor compliance issues
- ▶ the provision of worker-friendly, dispute-resolution mechanisms.

To advance transparency and accountability, the FWO's practice is to publish the executed enforceable undertaking on our website as well as issue an associated media statement to enhance general deterrence.

To embed behavioural change, enforceable undertakings are typically 2 to 3 years in length. The FWO has a dedicated monitoring team that actively works with all persons that have executed an enforceable undertaking by providing a dedicated FWO relationship manager who offers tailored assistance to ensure they meet their undertakings for the duration of the instrument.

The FWO reserves its right to issue media statements at any time during the term of the enforceable undertaking if the FWO considers it reasonable and appropriate, noting the FWO cannot commence civil proceedings against the person for contraventions about which they have given the enforceable undertaking.³⁸ However, if a person fails to comply with any of the terms of the enforceable undertaking, the FWO may commence civil proceedings in court to seek orders directing the person to comply, for compensation, or for any other appropriate order.³⁹

If the FWO accepts an enforceable undertaking, other persons who can bring proceedings under the FW Act in relation to the same conduct may still take civil action. This includes an affected employee or a union.

³⁷Decisions about the necessity for and/or the quantum of a contrition payment, as well as whether another entity may be appropriate to receive the payment instead of the Consolidated Revenue Fund, are made on a case-by-case basis. The FWO considers several factors, including the nature and extent of the contraventions, rectification of underpayments, other remedial steps taken, and proportionality to any penalties that a court may impose if the matter were litigated with admitted contraventions.

³⁸FW Act s.715(4)

³⁹FW Act s.715(6)&(7)



Civil litigation

Commencing civil proceedings, which we refer to as 'litigation,' is another enforcement mechanism available to the FWO. It is generally reserved for those contraventions that are serious, significant and/or systemic in nature, or otherwise in circumstances where litigation would uphold the integrity of our enforcement tools or serve the public interest.

Litigation is an essential enforcement mechanism for 3 reasons:

1. enforcing the law and obtaining court orders sends a powerful public message to others not to engage in similar conduct (general deterrence)
2. stopping and deterring people from engaging in unlawful behaviour (specific deterrence)
3. clarifying the law helps the workplace community understand the various obligations and rights arising from Commonwealth workplace laws.

The FWO is more likely to litigate in cases involving:

- ▶ deliberate and/or repeated non-compliance with Commonwealth workplace laws
- ▶ exploitation of vulnerable workers
- ▶ failure to cooperate with the FWO and fix contraventions after being given the opportunity to do so and without a reasonable excuse
- ▶ parties who have a prior history of contraventions who have not taken adequate steps to ensure compliance despite being advised of the consequences in the past.

Even in circumstances in which contraventions have been rectified, it may still be appropriate for the FWO to commence civil proceedings (for example, to obtain a penalty in respect of a contravention to achieve specific or general deterrence).

In addition to the FWO commencing its own proceedings,⁴⁰ section 682(1)(f) of the FW Act provides that the FWO may represent employees or outworkers who are, or may become, a party to proceedings in a court or the Fair Work Commission (if the FWO considers that the representation will promote compliance with the FW Act or fair work instrument). The FWO may also refer relevant alleged criminal offences to the CDPP or the AFP.

Who we litigate against

Liability for contraventions of Commonwealth workplace laws may lie with more than just one person or body. Sections 550 and 557A(5A) of the FW Act describe how a person can be 'involved in' a contravention, and states that such persons are treated as having committed a contravention themselves.

We may commence civil proceedings and seek orders against any person who contravenes their obligations under Commonwealth workplace laws, as well as those who are 'involved' in such contraventions. This may include:

- ▶ employers
- ▶ registered organisations
- ▶ company directors or company secretaries
- ▶ officials of organisations
- ▶ human resources managers or other managers
- ▶ external agents or advisors, such as accountants, bookkeepers or external human resources consultants
- ▶ companies and people involved in supply chains involving the procurement of labour
- ▶ a holding company of a subsidiary employing entity or its directors
- ▶ a franchisor.

⁴⁰ FW Act s.682(1)(d)

When does the FWO commence civil litigation?

The FWO will only commence civil proceedings if it considers that there is sufficient evidence to do so, and it would be in the public interest.

In deciding whether to institute any appeal, the FWO will consider whether there are reasonable prospects of success and whether the appeal is in the public interest.

As a regulator utilising public funds, the FWO will consider the impact on its resources and costs before making a decision to commence civil proceedings or an appeal.

The public interest factors the FWO considers in determining to commence (or not commence) litigation varies depending on the particular circumstances of each case. The following table sets out some of the matters the FWO typically considers.

Public interest factors	Examples of matters the FWO considers
Nature, seriousness and circumstances of the alleged contraventions	<ul style="list-style-type: none"> seriousness of the alleged contraventions prevalence in the community of the type of behaviour any mitigating or aggravating circumstances whether the person(s) alleged to have committed the contraventions sought and relied on expert or professional advice evidence of deliberate or reckless conduct including omitting to take steps to ensure compliance whether contraventions have been admitted and/or fixed or are being fixed.
Characteristics of person(s) alleged to have committed the contraventions	<ul style="list-style-type: none"> compliance history sophistication and financial position (including the impact on business viability, service delivery and employees if excessive costs and sanction imposed) whether the person has actively assisted with the FWO's inquiries, and whether they genuinely accept their non-compliance steps taken to prevent further contraventions.
Characteristics of person(s) affected by the alleged contraventions	<ul style="list-style-type: none"> any vulnerabilities, such as whether the person has a disability, is a young or mature worker, is present in Australia on a visa, or is from a culturally and linguistically diverse background whether the person has the ability and resources to commence their own proceedings.
Impact of the alleged contraventions	<ul style="list-style-type: none"> direct and indirect impact on the people who have been affected by the alleged contraventions impact on any other person(s), including other businesses/competitors the impact of the alleged contraventions and their size, such as the number of people affected or the quantum of any underpayments.
Impact of litigation on general and specific deterrence	<ul style="list-style-type: none"> whether litigation will reduce the likelihood that others will engage in similar behaviour (general deterrence) whether litigation will reduce the likelihood of further contraventions of workplace laws by the person(s) involved in the proceedings (specific deterrence).
Effect of litigation	<ul style="list-style-type: none"> suitability, efficacy and availability of other enforcement mechanisms as an alternative to litigation likely outcome in the event the contraventions are found to have occurred (for example, penalties, compensation or other orders) whether the likely outcome would be unduly harsh or oppressive.
Administration of justice / integrity of the system	<ul style="list-style-type: none"> passage of time since the alleged contraventions likely length and cost of litigation whether proceedings are necessary to maintain public confidence in the administration of workplace laws, including our enforcement tools.

The FWO's decision to commence or not commence civil proceedings must be made impartially and must not be influenced by any inappropriate consideration including race, religion, age, sex, intersex status, gender identity, sexual orientation, national origin or political association. The decision must not be influenced by any political advantage or disadvantage to the government, any political group or party or any union, industrial or employer group or association.



Conduct of civil proceedings

The FWO will conduct litigation honestly, fairly, consistently and in accordance with the Commonwealth's obligation to act as a model litigant.⁴¹

The FWO will make decisions about the conduct of litigation based on the available evidence. If another party asks the FWO to agree to a particular course, or to put a submission to the court, we may ask them to provide us with evidence to support their request.

Where evidence discloses multiple potential contraventions of Commonwealth workplace laws, the FWO will take care to plead the contraventions that adequately reflect the nature and extent of the relevant behaviour. Where the FWO alleges there have been serious contraventions within the meaning of section 557A of the FW Act, we will specify the relevant serious contraventions.

A breach will only be a serious contravention where a person knowingly contravened the relevant provision or was reckless as to whether the contravention would occur.

After civil proceedings have been commenced, the FWO participates in discussions to limit any issues in dispute, for example, during court mediations. As a regulator, the FWO approaches such discussions from a public interest perspective. In circumstances where a party provides new evidence alleging that the contravention(s) did not occur, the FWO will consider the evidence and may:

- ▶ proceed with the original contraventions
- ▶ proceed in relation to fewer contraventions than originally identified
- ▶ accept admissions only in relation to some contraventions and not press or seek orders in relation to other contraventions. All admissions must reflect a genuine acceptance of responsibility.

We will discontinue civil proceedings if it is appropriate to do so. It is unusual for us to make a decision to discontinue given the detailed assessment we undertake before we commence civil proceedings. However, we may take this

action in appropriate circumstances noting that our case assessment process is ongoing, including throughout the course of civil proceedings.

Admissions or payments made just before or after civil proceedings are commenced will usually not justify discontinuing the proceedings, but the FWO will take such action into account when seeking orders and making submissions to the court on appropriate penalties.

Orders and penalties

The FW Act allows eligible courts to make a wide range of orders if a person is found to have contravened the FW Act. Orders that the FWO may seek in civil proceedings include orders:

- ▶ that underpayments be rectified, and interest be paid
- ▶ that compensation be paid to person(s) affected by the contraventions. Such compensation would be paid by person(s) responsible for contraventions and/or other persons who were 'involved' in them
- ▶ for a civil penalty to be paid to the Commonwealth⁴² or, where appropriate, the penalty be redirected to an impacted party
- ▶ that a person pay any civil penalty personally, without seeking or accepting indemnity from a third party
- ▶ for injunctions to stop, prevent or restrain further contraventions from occurring
- ▶ that a person take specific steps, for example by undertaking training or conducting wage audits.

⁴¹Appendix B to the Legal Services Directions 2017

⁴²The maximum penalties for serious contraventions, within the meaning of s.557A of the FW Act, are higher than for other contraventions of the FW Act



Submissions on penalty

The courts are responsible for deciding what orders are appropriate in a case and the amount of any civil penalty. Courts may have regard to submissions made by the parties to proceedings in relation to penalty, including as to what facts are relevant.⁴³ The FWO may put evidence before the court to support our submissions on penalty, including evidence about non-compliance in particular industries, places or amongst particular groups of workplace participants.

The FWO will seek penalties that:

- ▶ will achieve general and specific deterrence
- ▶ avoid a harsh or oppressive outcome.

In appropriate cases, we may reach agreement with other parties about the amount of penalty we propose to the court. The court may accept the agreed penalty if it is satisfied that the amount is appropriate.⁴⁴

Discounts on penalty

Courts may reduce the penalty to be ordered if a person admits the contraventions and cooperates with the court process.⁴⁵ We will draw the court's attention to any conduct that justifies a discount on penalty, in particular any admissions made early during an investigation or soon after the commencement of civil proceedings. If admissions are made close to – or during – the court hearing, we may submit to the court that a lesser or no discount on penalty is appropriate.

Costs

Under the FW Act, parties to litigation will normally pay their own costs of the proceeding. However, the court can order a party to pay someone else's costs in some circumstances, such as when a party has acted unreasonably.⁴⁶ In appropriate cases, the FWO may seek orders that a party pay costs.

Enforcement of Court orders

Court orders must be complied with by the relevant party on or before the date set out in the order. The FWO will take enforcement action to ensure compliance with Court orders pursuant to our obligations under the *Public Governance, Performance and Accountability Act 2013* (Cth) and *Public Governance, Performance and Accountability Rule 2014* (Cth).

⁴³ *Commonwealth of Australia v Director, Fair Work Building Industry Inspectorate* [2015] HCA 46 (*Commonwealth v FWBII*) at [46]-[64] (per French CJ, Kiefel, Bell, Nettle and Gordon JJ)

⁴⁴ *Commonwealth v FWBII* at [48], [57]-[59] (per French CJ, Kiefel, Bell, Nettle and Gordon JJ)

⁴⁵ *Mornington Inn Pty Ltd v Jordan* [2008] FCAFC 70 at [74]-[76] (per Stone and Buchanan JJ)

⁴⁶ FW Act s 570

Approach to self-reported unintentional non-compliance

The FWO takes a practical and proportionate approach to self-reported non-compliance.

Isolated, unintentional payroll errors resulting in underpayments over a short period of time (up to 12 months) do not need to be actively reported to the FWO, as long as:

- ▶ employees are appropriately informed of the underpayment
- ▶ employees are back paid in full as soon as practicable
- ▶ changes are implemented to ensure the error does not happen again.

For broader and/or historical unintentional non-compliance, it is best to notify the FWO as soon as possible. Reports should be made via email to corporateassurance@fwo.gov.au. For the self-reporting of intentional conduct, see the section on 'Cooperation agreements' on page 22.

Any self-reports should identify the following, to the extent that the information is known at the time of reporting:

- ▶ details of the non-compliance
- ▶ what led to or contributed to it
- ▶ the action taken to assess and rectify it (including back-payments and interest)
- ▶ details of corrective measures being implemented to prevent further non-compliance (including enhancements to governance arrangements, systems or process change and management training)
- ▶ confirmation of notification to the Australian Tax Office (ATO) (if there will be likely tax and superannuation implications). Notifications to the ATO can be made via [Voluntary disclosures in the approved form](#).⁴⁷
- ▶ confirmation of notification to any other third parties such as a union.

Our general approach is to work collaboratively with duty holders who self-report and cooperate with us to ensure the integrity of their remediation. For more complex self-reports, the FWO's Payroll Remediation Program Guide provides a suggested framework for conducting a large-scale worker-centred remediation program. It also outlines the FWO's approach to assessing compliance.

The FWO considers the cost of remedying the contraventions should rest with the duty holder (and not the taxpayer). Accordingly, subject to the nature and scale of the contraventions and the extent of cooperation shown to the FWO, the FWO's approach will typically either be one of voluntary compliance or guided compliance as described above.

Where more significant unintentional contraventions or conduct are involved (for example, large-scale underpayments going back many years, or breaches of undertakings given to the Fair Work Commission in securing an enterprise agreement approval), the FWO may accept an enforceable undertaking offered by a duty holder (at the commencement, during, or at the end of an investigation) with terms reflecting the scale of the underpayment, the employer's cooperative response to rectify harms and commitment to sustainable compliance.

⁴⁷ <https://www.ato.gov.au/forms-and-instructions/voluntary-disclosures-approved-form>

Criminal underpayment offence

From 1 January 2025 it is a criminal offence for an employer to intentionally engage in conduct that results in a failure to pay certain employee entitlements.⁴⁸

An employer will commit an offence under section 327A of the FW Act if they:

- ▶ are required to pay an amount to an employee (such as wages), or an amount on behalf of or for the benefit of an employee (such as superannuation), under the FW Act, a fair work instrument or a transitional instrument (being a 'required amount'), and
- ▶ intentionally engage in conduct (by doing or not doing something) that intentionally results in a failure to pay that required amount in full on or before the day the amount is due for payment.

The criminal underpayment offence does not cover certain types of entitlements for some employees. For more information about these exceptions, see our website.⁴⁹

In addition to employers, other persons (natural or corporate) can also be prosecuted under 'related offence provisions' for their conduct in the following ways:

- ▶ attempting to commit the criminal underpayment offence
- ▶ aiding, abetting, counselling or procuring the commission of the criminal underpayment offence by another person
- ▶ inciting (i.e. urging) the commission of the criminal underpayment offence
- ▶ entering into an agreement with two or more persons to commit the criminal underpayment offence (a 'related offence').⁵⁰

When does the FWO refer conduct for criminal prosecution?

The FWO will be responsible for conducting investigations of the criminal underpayment offence and related offence, but only the CDPP or AFP may commence proceedings.⁵¹ Conduct will only be referred to the CDPP or AFP if we consider that we have gathered sufficient evidence to prove that a criminal underpayment offence or related offence has been committed. Generally, conduct will be referred to the CDPP. Conduct may be referred to the AFP where we consider that the matter requires further investigative assistance.

In determining whether to refer conduct to the CDPP, the FWO will consider the public interest factors referred to above in the section 'When does the FWO commence civil litigation?' on page 16. Referrals will generally be reserved for the most serious conduct, including where there is a greater need for specific or general deterrence than civil litigation. Unlike civil litigation, the FWO will not refer a matter to the CDPP solely for the purpose of clarifying the law (e.g. the interpretation of an entitlement in a fair work instrument).

The FWO recognises that not all conduct potentially amounting to a criminal underpayment offence or a related offence must result in a referral to the CDPP. The FWO will consider entering into a cooperation agreement with a person that has reported conduct to us, has positively engaged with us and agrees to enable the remedying of the effects of their conduct. See the section on 'Cooperation agreements' on page 22.

The FWO may also consider whether a small business employer has complied with the Voluntary Small Business Wage Compliance Code prior to

⁴⁸ See a guide to cooperation agreements for a further explanation of the criminal underpayment offence and related offence, including the employers, employees and entitlements that the offences apply to <https://www.fairwork.gov.au/cooperation-agreements>

⁴⁹ <https://www.fairwork.gov.au/criminal>

⁵⁰ Section 12 (definition of 'related offence provision') of the FW Act. See further section 6 of the *Crimes Act 1914* (Cth) and Part 2.4 of the *Criminal Code 1995* (Cth)

⁵¹ FW Act s.327C



referring conduct to the CDPP. See the section on the 'Voluntary Small Business Wage Compliance Code' on page 23.

Conduct of proceedings

If a matter is referred to the CDPP, the CDPP determines whether the evidence is sufficient to commence criminal proceedings and whether prosecution is in the public interest in accordance with the Prosecution Policy of the Commonwealth.⁵² If criminal proceedings are commenced, the case is then prosecuted by the CDPP.

Penalties

The consequences of a criminal conviction are generally more significant than in civil litigation.

The maximum penalties for committing each criminal underpayment offence or related offence are:

- ▶ for individuals: a term of imprisonment not more than 10 years and/or:
 - if the underpayment amount can be calculated: the greater of 3 times the underpayment amount and \$1.65 million.
- ▶ for corporate or commonwealth entities:
 - if the underpayment amount can be calculated: the greater of 3 times the underpayment amount and \$8.25 million; or
 - if the underpayment amount cannot be calculated: \$8.25 million.

⁵² <https://www.cdpp.gov.au/prosecution-policy>

Cooperation agreements

Cooperation agreements provide a person with the opportunity to access protections from potential criminal prosecution if they have engaged in conduct that amounts to a potential offence or related offence. The FWO will decide whether to enter into a cooperation agreement. When deciding whether to enter into a cooperation agreement, the FWO will consider the following matters:

- ▶ whether in the FWO's view the person has made a voluntary, frank and complete disclosure of the conduct
- ▶ the nature and level of detail of the disclosure in relation to the conduct
- ▶ whether in the FWO's view the person has cooperated with the FWO in relation to the conduct
- ▶ the FWO's assessment of the person's commitment to continued cooperation in relation to the conduct, including by way of providing the FWO with comprehensive information to enable the effectiveness of the person's actions and approach to remedying the effects of the conduct to be assessed
- ▶ the nature and gravity of the conduct
- ▶ the circumstances in which the conduct occurred, and
- ▶ the person's history of compliance with the FW Act.

Where appropriate, the FWO will also consider whether the person has meaningfully engaged with the impacted parties, and their representatives, to explain and address the conduct.

A cooperation agreement is a written agreement between the FWO and a person (i.e., an individual, corporate entity or Commonwealth agency). The agreement covers conduct engaged in by the person that amounts to a potential criminal underpayment offence or related offence, with the conduct specified in the agreement. A cooperation agreement may also include terms that require the person to take positive steps to enable the remedying of the effects of their conduct and ensure future compliance.

Cooperation agreements:

- ▶ promote positive engagement and cooperation with the FWO
- ▶ address intentional underpayments without the need for a criminal prosecution
- ▶ in appropriate circumstances, provide the FWO with information that can be used to investigate other persons who may have committed a criminal underpayment offence or a related offence and who have not cooperated with the FWO to address the conduct.

While a cooperation agreement is in force between the FWO and a person, the FWO cannot refer conduct that is the subject of the agreement to the CDPP or AFP for possible prosecution.⁵³

If a person enters into a cooperation agreement, they may still face civil action by persons who can bring proceedings under the FW Act in relation to the same conduct. This includes the FWO, an affected employee, or a union.

See 'A guide to cooperation agreements'⁵⁴ for further information on:

- ▶ the criminal underpayment offence and related offences
- ▶ what cooperation agreements are and their benefits
- ▶ when and how to engage with the FWO to receive protection from criminal prosecution
- ▶ what the FWO will consider in deciding whether to enter into a cooperation agreement
- ▶ the standard terms of cooperation agreements
- ▶ the potential consequences of failing to comply with a cooperation agreement
- ▶ the role of the CDPP.

⁵³ Section 717A(1) of the FW Act

⁵⁴ <https://www.fairwork.gov.au/cooperation-agreements>



Voluntary Small Business Wage Compliance Code

The Voluntary Small Business Wage Compliance Code (the Code) is a legislative instrument declared by the Minister under the FW Act. Its purpose is to give small business employers (those with less than 15 employees) comfort that the FWO will not refer them for possible criminal prosecution if they did not intentionally underpay their employees. If the FWO is satisfied that the small business employer has complied with the Code, we cannot refer the relevant conduct to the CDPP or AFP for possible prosecution.

Where the FWO makes a decision about whether or not a small business employer has complied with the Code, we will notify the employer of our decision in writing.

Small business employers can refer to the FWO's Guide to paying employees correctly and the Code⁵⁵ for further information on:

- ▶ the criminal underpayment offence
- ▶ understanding the consequences of underpaying employees
- ▶ finding out about the Code and how to access it
- ▶ confirming employees are being paid correctly
- ▶ remaining compliant on wages
- ▶ taking appropriate action to fix issues once they are identified.

⁵⁵ <https://www.fairwork.gov.au/vsbwcc>

Feedback

The FWO is committed to improving our services. We encourage feedback about your experience with us and invite people to contact us via [our website](#).⁵⁶

Feedback and complaints provide valuable information we can use to improve future customer experiences and satisfaction and helps us know what we're doing well and what changes we need to make.

Feedback and complaints about the services offered by the FWO are reviewed and managed by a dedicated team within the FWO. Acting independently, the team reviews the matters raised and determines whether and what type of action is required to respond to service complaints.

If a person requests a review of our actions and is not satisfied with the result of our review, they can contact the Commonwealth Ombudsman on 1300 362 072, or [Commonwealth Ombudsman](#).⁵⁷

⁵⁶ <https://www.fairwork.gov.au/feedback>

⁵⁷ <https://www.ombudsman.gov.au/>





Australian Government

Fair Work
OMBUDSMAN

fairwork.gov.au

Calendar year – Ministerials received

- 09/07/15 – 31/12/15 – 88 Records
- 2016 – 196 Records
- 2017 – 152 Records
- 2018 – 98 Records
- 2019 – 163 Records
- 2020 – 211 Records
- 2021 – 209 Records
- 2022 – 80 Records
- 2023 – 122 Records
- 2024 – 170 Records
- 01/01/25 – 09/07/25 – 82 Records

Documents released by the Fair Work Ombudsman under the Freedom of Information Act

Google maps FWO reviews

[Fair Work Ombudsman](#)

[414 La Trobe Street, Melbourne Victoria 3000](#)



[Daniel Espinosa](#)

6 days ago

The user didn't write a review, and has left just a rating.

[Fair Work Ombudsman](#)

[414 La Trobe Street, Melbourne Victoria 3000](#)



[Michael B](#)

3 weeks ago

Complete and total waste of tax payer dollars. And here I was thinking workers had a body with actual authority in their corner. We DONT, we're on our own! The most the Ombudsman will do is offer to call the offending employer on your behalf to "negotiate" the desired outcome. When the employer refuses to honour their legal obligations, the Ombudsman does NOTHING. You'll simply receive a call back advising you on how you can take your claim to court. Couldn't be more disappointed in this gutless, pointless, waste of taxes. Shameful!

[Fair Work Ombudsman](#)

[414 La Trobe Street, Melbourne Victoria 3000](#)



[Anon](#)

4 weeks ago

Fair Work is powerless. Employers ignore them and nothing happens. They don't protect workers, they don't enforce anything. They're a complete waste of space. Why do they even exist?

[Fair Work Ombudsman](#)

[13/175 Liverpool Street, Sydney NSW 2000](#)



[Aud FU](#)

6 weeks ago

The user didn't write a review, and has left just a rating.

[Fair Work Ombudsman](#)

[25/400 George Street, Brisbane City QLD 4000](#)



[Matthew B](#)

7 weeks ago

The user didn't write a review, and has left just a rating.

[Fair Work Ombudsman](#)

[25/400 George Street, Brisbane City QLD 4000](#)



[Nicolas P](#)

8 weeks ago

Amazing experience

[Fair Work Ombudsman](#)

[414 La Trobe Street, Melbourne Victoria 3000](#)



[Kayla Grech](#)

11 weeks ago

Very disappointed these are meant to be people helping you and they couldn't answer any of my questions or even guide me in the right direction and that's after being on hold for 50 minutes
Complete waste of time

[Fair Work Ombudsman](#)

[414 La Trobe Street, Melbourne Victoria 3000](#)



[Benny Crooks](#)

11 weeks ago

On hold for 30 minutes, the lady couldn't create an account for me, says she needs to restart her "system"... Hangs up on me and never calls back... Now I'm waiting another 30 minutes, will I get hung up on again? Let's see... Hopeless this is the only option we have to go through.

[Fair Work Ombudsman](#)[414 La Trobe Street, Melbourne Victoria 3000](#)[steve shepherdly](#)

15 weeks ago

My first experience today with the Fair Work Ombudsmen and if only I could award less than 1 star because they aren't worth any more. Long winded, convoluted layer after layer of options and endless talk. They really just want you to go away and don't bother them and keep your situation to yourself. I was expecting the worst and got it! But should I be surprised? Of course not, it's a government department. That is the way they work.

[Fair Work Ombudsman](#)[414 La Trobe Street, Melbourne Victoria 3000](#)[Mohammad Hussain](#)

15 weeks ago

The user didn't write a review, and has left just a rating.

[Fair Work Ombudsman](#)[25/400 George Street, Brisbane City QLD 4000](#)[Philip Antrobus](#)

16 weeks ago

Fair Work Ombudsman looks like it is an organisation that will help you enforce your contractual employment rights, with your employer, but when I tried to use them for that purpose, the response was "we only deal with cases that involve minimum wages and minimum entitlements", which makes them a very narrowly focussed organisation of barely any use to anyone. This one star review is driven predominantly by my experience that it is not at all clear of how limited use the Fair Work Ombudsman is, until you apply to them, and then they decline to do anything with your case. (Enquiry 3501794 for FWO to tie this back to a real case and confirm my description of my experience is accurate.)

[Fair Work Ombudsman](#)[13/175 Liverpool Street, Sydney NSW 2000](#)[Tahir Shahdin](#)

🌟🌟🌟🌟🌟 17 weeks ago

I have an issue of unpaid wages. FWO staff, Ms. Sandrella Mattar has been very much helpful towards my application. The reply, help and guidance has been very quick and professional. I thank you to the mentioned staff and the team members of FWO, in helping towards my application.

[Fair Work Ombudsman](#)

[25/400 George Street, Brisbane City QLD 4000](#)



[Shelley Starling](#)

🌟🌟🌟🌟🌟 17 weeks ago

Even when they admit a company may be involved in wage theft, they still won't get involved and referred me to Fair Work commission

[Fair Work Ombudsman](#)

[13/175 Liverpool Street, Sydney NSW 2000](#)



[sam hackett](#)

🌟🌟🌟🌟🌟 20 weeks ago

FWO gave me prompt and clear advice to a complicated back-pay issue. Fantastic service from this important institution.

[Fair Work Ombudsman](#)

[13/175 Liverpool Street, Sydney NSW 2000](#)



[Al Capone](#)

🌟🌟🌟🌟🌟 21 weeks ago

I would give 0 stars if i could. I never dealt with a pathetic organisation in my life. What a waste of taxpayers money funding this rubbish tip. Had I known I was dealing with incompetent people I wouldn't not have wasted my time. There are provisions in the Fair Work Act that give powers to the FWO. I cited these provisions to the thing that was dealing with my matter and she stated we can't appoint inspectors for every case. I must give her credit for her honesty in that hey're incompetent. My advice, go straight to court and avoid this rubbish tip

[Fair Work Ombudsman](#)

[13/175 Liverpool Street, Sydney NSW 2000](#)



[Richard Wilson](#)

23 weeks ago

Awful.

[Fair Work Ombudsman](#)

[13/175 Liverpool Street, Sydney NSW 2000](#)



[Gabbi Terracini](#)

23 weeks ago

Almost 3 hours on hold and then the call terminated. Utter joke of a department!! The website is full of useless and perplexing info. As bad as Centrelink, which is saying something. SHAME!!

[Fair Work Ombudsman](#)

[25/400 George Street, Brisbane City QLD 4000](#)



[Mukesh Thapa](#)

29 weeks ago

not supportive as they have mentioned for the workfair

[Fair Work Ombudsman](#)

[414 La Trobe Street, Melbourne Victoria 3000](#)



[Helen](#)

29 weeks ago

Sided with the employer, strongly encouraging me to accept less than I was legally entitled to, so they could close the case.

[Fair Work Ombudsman](#)

[25/400 George Street, Brisbane City QLD 4000](#)



[Sin Ting Chui](#)

31 weeks ago

Unhelpful. 20/02/2025 Christine the senior advisor was unhelpful and unprofessional saying "there's nothing they can do about employers paying late". I wonder what fair work is for if they

can't even protect workers rights. Was told that the difference in pay was so little so they cannot escalate/dispute this. Disgusting. So we allow sham employers to scam employees? Wrote a letter of demand as advised by an advisor, then when I called back they said there was nothing they can do about it. Enquiry number: 483970233

[Fair Work Ombudsman](#)

[414 La Trobe Street, Melbourne Victoria 3000](#)



[violector](#)

31 weeks ago

More useless then Human Rights Commission

[Fair Work Ombudsman](#)

[414 La Trobe Street, Melbourne Victoria 3000](#)



[Neil Smith](#)

32 weeks ago

About as useful as a stop sign in a cow paddock , get rid of the bureaucrats who are paid too much . The fair work ombudsman is useless for employers who steal employees wages and superannuation.

[Fair Work Ombudsman](#)

[414 La Trobe Street, Melbourne Victoria 3000](#)



[E Duke](#)

34 weeks ago

I find it hard to believe they know Australian law under the Fair Work Act. They all had Indian accents. BUT the problem is not their accents - the problem is they just want to get rid of you. They give no encouragement or assistance. They put up road blocks. They answer questions you did not ask. For example: I was ringing in relation to an apprenticeship where the employer did not organise the training/qualifications. The FW ombudsman officer went on hold for ten minutes and came back to tell me the rate was \$13.02 per hour. I mean, what the hell? I could find that out myself online. That was not the question and I knew it. It was like I knew way more about the FWA than they did. They didn't ask for evidence and kept saying they are 'neutral', that they don't work for me (or my son), that they work for the employer too. WEIRD. Does the rich employer who is engaged in Corporate shenanigans and restructuring making \$30k per week need protection from a poor 18 year old apprentice? Well good to know the Fair Work Ombudsman is out there for them! Not like the 80's when I rang and gave evidence of my timetables and they marched into the workplace demanding financial records, timetables and payslips and got EVERYONE backpay, not just me! Now those were the days! Now they tell you,

basically, to piss off. They try and get you to stop calling and do this by trying to say enough discouraging words (as if the 60 mins on hold is not discouraging enough). They say don't 'work for you' - they enforce the law. But they don't, Blanche. They don't enforce the law. Their purpose appears to be: get rid of you, and do it quickly within the Key Indicator Benchmark of two minutes so that they can say they met the KPI statistical benchmark. Job done! What I'm saying is: They have gone down the tube. It would be better to disband them. I don't want my tax dollars going to these charlatans who are doing nothing to help the workers - but are happy with their cushy public service job in Canberra aren't they? They're happy getting the Federal AWARD aren't they? With their annual leave and sick pay?! And all their protections! They offer false hope. It is better to have no hope because at least then you know YOU HAVE TO HANDLE THE SITUATION. You can't rely on these uppity, privileged Canberra elites who went to the ANU and are living in the richest city in Australia, or had rich parents who could pay for their Australian residency in Australia (by going to the ANU) and now they're living it up in the public service living the dream by fielding queries to the ombudsman that they try and get rid of ASAP... Good JOB (NOT) . They have no idea what it is like living in the hood trying to earn a living from a dodgy employer that is NOT the Federal Public Service - and my advice to you is: get all your evidence and go to court yourself (Magistrates' Court Industrial Division) or see a local community lawyer for help because going to the FW Ombudsman is a fools game that will waste precious time you could have spent elsewhere. They end up costing YOU through wasted time and are not worth the hours. I'm talking to the Ombudsman now: SHAME SHAME SHAME. I'm talking to the Government now: Disband them. They're a disgrace and are not fit for purpose. They are wasted \$\$\$\$\$. Stop throwing good money after bad. Get rid of them. What is the point of them? Provide these dodgy workers a job with great conditions so they can spend their time answering phone calls and getting rid of people who have been ripped off by unscrupulous businesses. In plain words: They are below average, not good, lowest score and the worst part is - it is the disadvantaged people who are paying for it - while the ombudsman employees are living large baby.

[Fair Work Ombudsman](#)

[13/175 Liverpool Street, Sydney NSW 2000](#)



[Serdar Güzel](#)

36 weeks ago

I work in employment industry and this organisation is a shame for this country. I referred my client to FairWork Ombudsman due to some workplace conflicts and other issues. They're useless and can't provide right assistance for the people. I'll come for you guys sooner or later.

[Fair Work Ombudsman](#)

[13/175 Liverpool Street, Sydney NSW 2000](#)



[Darrel Beattie](#)

37 weeks ago

They are useless organisation my son has had a issue with his employer were they were not paying the right awards rate for a whole year thought we would do the right thing and go to fair

works after telling the whole story he tells us all I can do is ask them to do the right thing if they refuse then it's upto my 16 year old son to take them to court or chase the money himself and they wonder why we have a shortage of apprentices wouldn't even waste my time with them

[Fair Work Ombudsman](#)

[414 La Trobe Street, Melbourne Victoria 3000](#)



[Tacita Shaw](#)

38 weeks ago

Don't let them bully you out of your claim. They will try EVERY trick in the book to get you to drop your legitimate claim. From ridiculous online forms to unrealistic deadlines to constant remarks deterring you from continuing. They are rude and will not take you seriously. But don't let them intimidate you. Keep going. Do your own research DO NOT rely on them to know the facts as I was misinformed multiple times. But I knew my stuff and I kept moving forward. Unfortunately even when it was determined that we were owed thousands they still were bias to the employer and just wanted to close the case. Definitely NOT for the workers. More KPI driven to close cases.

[Fair Work Ombudsman](#)

[414 La Trobe Street, Melbourne Victoria 3000](#)



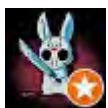
[Maaz Ahmed](#)

41 weeks ago

Useless idea to approach fwo. Fool with ourselves.

[Fair Work Ombudsman](#)

[13/175 Liverpool Street, Sydney NSW 2000](#)



[Evil_bunny_666](#)

42 weeks ago

You submit questions in writing because that's the process, but they won't respond in writing? What a pack of overpaid government skills!!!!

[Fair Work Ombudsman](#)

[13/175 Liverpool Street, Sydney NSW 2000](#)



[Sydney Rooster](#)

44 weeks ago

My hard earned tax money could not go to a worse organisation. The 45 min hold was expected, but then the operator wanted to know my full name, phone number and a bunch of other personal information, completely irrelevant to my general question. She kept asking irrelevant questions and not providing any generic information whatsoever. She could also have given answers based on either situation she was desperately trying to uncover but couldn't think to do that. I basically found everything I needed off the internet after 2 minutes and was only calling to confirm my thinking. She was unaware of any of the facts I mentioned. Complete and utter airhead. Shame on the training team for their pathetic training or management for putting someone on the phones who clearly isn't up to it.

[Fair Work Ombudsman](#)

[13/175 Liverpool Street, Sydney NSW 2000](#)



[Feverever](#)

45 weeks ago

I can't believe our tax dollars are funding the FWO, an agency that has failed to act on behalf of disadvantaged and underpaid employees. Their level of incompetence and unprofessionalism is staggering. Some cannot even read properly.

[Fair Work Ombudsman](#)

[13/175 Liverpool Street, Sydney NSW 2000](#)



[3DInspection Sydney](#)

46 weeks ago

so difficult to deal with. always after money

[Fair Work Ombudsman](#)

[25/400 George Street, Brisbane City QLD 4000](#)



[KitKat](#)

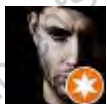
52 weeks ago

The FWO removed my scathing review. A useless organisation and most of the staff are incompetent, hence they shouldn't be in those roles including the head who runs a mediation business, just like the previous head who was apparently put in their by the Liberals (I was told this by someone well connected with the union movement). The government needs to head hunt very good industrial relations lawyers for this role. I can think of 2 very good industrial relations lawyers who would be much better suited to this role. They are essentially getting money fraudulently if they cannot do their jobs properly and haven't asked for assistance via

email to get better training. They wouldn't help me get back thousands of dollars from one employer who ripped me off over \$5000 over a 7 month period (a so called Christian organisation) and I also had issues with a 2nd employer underpaying. The investigators couldn't comprehend the clauses of the EBA and in the 2nd case an Award and wouldn't take into consideration everything I wrote. And deliberately didn't prioritise my 2nd case, so it would drag out beyond the statutory period of 6 years so they could use that as an excuse for not helping. In the first case, the silly investigator didn't even calculate my wages correctly, so I spent days calculating it the way the investigator showed me only to find out once I had done up my adavavat that the company was disputing my calculations and unfortunately they were right, but I didn't have enough time to do a 2nd lot of calculations as the courts expect you to completely break down your wages differently to the way it is on your pay slip so the court system too makes it harder for you to get back all your pay. Also the FWO emboldened employers not to pay us, by the investigators not doing their jobs properly and prematurely sending out letters siding with the 2 businesses. And the FWO refused to ask for necessary information from the employers. I was rotated around approx. 20 FWO staff members who covered one another's backs when I appealed their decisions, while I was trying to get my back pay from both jobs. An industrial relations lawyer said to me, the FWO use to better run before the first head mentioned above was put in. These 2 heads of the FWO are either not properly qualified for the role or don't seem to have employees best interest at heart (that is truly my opinion after what I have been through). Wish I didn't have to put any stars at all. Suggest people write to Anthony Albanese, the head of the Greens, Pauline Hanson and Advance Australia as well as the Head at JobWatch. If we cannot get our back pay then the government misses out on our taxes which is needed for hospitals, schools etc. Today too I rang simply to find out the Award that I was under and I spoke to 2 people. I got transferred through to the assurance team who then said he was going to refer me onto someone else and I said don't bother, because they just want to emotionally drain people into apathy. They refused to give me the name of the Award again. They've typed a response to me, but now I cannot get into the account because I've changed phone numbers and I don't have the time to wait on the phone for another 30 to 40 minutes. I just know from previous experience when they sent me a message via this means, the staff member lied and basically inferred they had resolved my concerns over the phone when in actual fact, I was left frustrated talking to them so I hung up. I've contacted someone outside of the government that I think may be able to do an expose, and told them all the hassles I've had with the FWO and the other govt departments that are supposedly set up to help us get our back pay that haven't helped at all, they've just wasted my time. Note I still have evidence in regards to both the jobs where I was ripped off and the multiple emails that I sent to the FWO and there responses.

[Fair Work Ombudsman](#)

[13/175 Liverpool Street, Sydney NSW 2000](#)



[One star no tips](#)

Aug 16, 2024

Can't help much with my case

[Fair Work Ombudsman](#)

[414 La Trobe Street, Melbourne Victoria 3000](#)



[Janice Haynes](#)

☆☆☆☆☆ Aug 5, 2024

(Translated by Google) Where can I give less stars for this service? (Original) Donde puedo colocar menos estrellas para éste servicio?

[Fair Work Ombudsman](#)

[13/175 Liverpool Street, Sydney NSW 2000](#)



[Romeo Armone](#)

☆☆☆☆☆ Aug 2, 2024

Disgusting we are paying these people to do nothing!

[Fair Work Ombudsman](#)

[414 La Trobe Street, Melbourne Victoria 3000](#)



[星空](#)

☆☆☆☆☆ Jul 22, 2024

0 stars Actually

[Fair Work Ombudsman](#)

[414 La Trobe Street, Melbourne Victoria 3000](#)



[Mfisher](#)

☆☆☆☆☆ Jul 15, 2024

No email, their bot won't let you speak to a real person, so you have to call them to which you'll go through about 3-5 minutes of messages about their website even though there isn't a way to contact them. Then you call them and after selecting the options, waiting through a pile of patronizing information from the prerecorded voice, the phone line hangs up on you automatically.

[Fair Work Ombudsman](#)

[25/400 George Street, Brisbane City QLD 4000](#)



[Matthew Bradley](#)

~~~~~ May 9, 2024

Absolutely useless. Owed 5+ weeks off pay and they won't investigate because he won't pick up the phone

[Fair Work Ombudsman](#)

[13/175 Liverpool Street, Sydney NSW 2000](#)



[MD Alimur Reza](#)

~~~~~ Apr 13, 2024

I was dealing with this team from last month, first of all they don't want to register the case after they register they don't want to do proper help and investigate about this issue. Specially I want to mention name of the person Matthew, he is not very helpful and also explain issues properly, he decided that not to proceed with the case. I feel that why we pay them from our tax. If they are not helpful. I believe we should go to media about this and also addressing to the government. There is no point have this kind of unprofessional team and organisations. Just waste of time and money. They also don't have respect when we lodge this case. I believe some one from higher authority should see and get some concern.

[Fair Work Ombudsman](#)

[414 La Trobe Street, Melbourne Victoria 3000](#)



[Balad Camsil](#)

~~~~~ Apr 3, 2024

This is useless. My partner ask for help for he was abused, harrassed and bullied and not paid correctly With substantial evidences but still not get any help. CCTV, timesheet, staff statement, recording, etc. isn't enough. I don't think this body of government is really to help Employees. So, so USELESS!!!!

[Fair Work Ombudsman](#)

[13/175 Liverpool Street, Sydney NSW 2000](#)



[Zan Gray](#)

~~~~~ Feb 15, 2024

on hold for 30m then got hung up on 3 times now.

[Fair Work Ombudsman](#)

[414 La Trobe Street, Melbourne Victoria 3000](#)



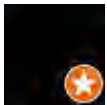
[Luke](#)

Jan 25, 2024

If I could give zero star, I would. This so-called gov place only aims to close the case you submit. They do not care about what's right. Employer could lie in their documents, and FW wouldn't even care. This leaves mistreated employees with no other options.

[Fair Work Ombudsman](#)

[13/175 Liverpool Street, Sydney NSW 2000](#)



[A G](#)

Jan 5, 2024

NEGATIVE 5 STARS - this place is the worst, absolute useless sack if sh!tbags why are so many government run departments so totally farking hopeless

[Fair Work Ombudsman](#)

[414 La Trobe Street, Melbourne Victoria 3000](#)



[Esma D](#)

Dec 22, 2023

The user didn't write a review, and has left just a rating.

[Fair Work Ombudsman](#)

[13/175 Liverpool Street, Sydney NSW 2000](#)



[Jack Won](#)

Dec 18, 2023

I do not know why they are existing if they are not going to help me about unfair situation. It's unfair. Why do institutions exist if they can't help here? Why do we pay taxes if government agencies are living on taxes and can't help? And if they can't be solved by law, they should be able to give individuals compulsory enforcement rights. That way, the scammers will pay the money properly. Helping those who have been victimized by bad people will make society more desirable, and furthermore, there will be opportunities for good people to help and lead others. Keep in mind, if you don't help, good people won't help you in times of need either.

[Fair Work Ombudsman](#)

[13/175 Liverpool Street, Sydney NSW 2000](#)



[Sajad K Thapa](#)

Nov 13, 2023

this is the worst place and i will advised everyone to save their time. They will not investigate your matter

[Fair Work Ombudsman](#)

[414 La Trobe Street, Melbourne Victoria 3000](#)



[natsuree posri](#)

Oct 31, 2023

The user didn't write a review, and has left just a rating.

[Fair Work Ombudsman](#)

[13/175 Liverpool Street, Sydney NSW 2000](#)



[Gussy McRae](#)

Oct 23, 2023

Why isn't this in the HSC Business Studies Syllabus??? Very disappointed 🙄🙄🙄

[Fair Work Ombudsman](#)

[50 Appel St, Surfers Paradise QLD 4217](#)



[R.C](#)

Oct 13, 2023

Getting money back for employees after dodgy employers ripped me off badly!

[Fair Work Ombudsman](#)

[13/175 Liverpool Street, Sydney NSW 2000](#)



[David Connor](#)

Sep 21, 2023

Woeful

[Fair Work Ombudsman](#)[25/400 George Street, Brisbane City QLD 4000](#)[Tristan Podger](#)~~XXXXXXXXXX~~ Aug 30, 2023

Useless clearly underpaid redundancy and entitlements and took no action.

[Fair Work Ombudsman](#)[13/175 Liverpool Street, Sydney NSW 2000](#)[Olivia Farag](#)~~XXXXXXXXXX~~ Aug 24, 2023

FWO can be very hit and miss so here is my honest review: You have to be incredibly patient to deal with them. The wait time on the phone is around 30 minutes. You also need to have every bit of info handy (employer ABN, etc) The first person who I spoke to sounded like she was working from home. It was a bad line and it dropped out. I then got an email a few days later saying the enquiry "had been actioned". I responded to that enquiry online to explain it HAD NOT been resolved. Through the enquiry form I was able to provide additional information re my workplace dispute. A few days after that I had a missed call from FWO. They will call you out of the blue with a 1 minute heads up via text message, so if you miss it, bad luck. They tried again 2 days later and I missed that too. I had to call them back and was put on hold AGAIN for 25 minutes. You do not get to nominate when is a good time FOR YOU. The person I spoke to sounded much, much more engaged. FWO put the onus (responsibility) on you to follow up with your employer, but the good news is, once you have their backing, you can use this to persuade your employer to do the right thing. For example, on another occasion, my ex-employer refused to pay for my induction training, which is illegal. They were not returning my calls at all. Once I had written them a letter of demand (which FWO helped me with) they finally responded and paid me. You do need to take a lot of initiative when dealing with FWO. They are not an "enforcement" body like say, ACCC. They cannot "act" on your behalf. However, they can give you sound advice on whether you are within your rights to pursue a dispute with an employer. They can help you with the proper wording to write a letter of demand. The wait time and call back system is very inefficient, and it does mean that, unfortunately, a lot of cases are not dealt with and employers get away with dodgy behaviour. However, if you are patient, calm and prepared, you can achieve a much better outcome. Hope this helps.

[Fair Work Ombudsman](#)[25/400 George Street, Brisbane City QLD 4000](#)[Rotten](#)

~~~~~Jun 30, 2023

These guys just take the word of the employer and don't use evidence from the government that an underpayment has occurred.

[Fair Work Ombudsman](#)

[13/175 Liverpool Street, Sydney NSW 2000](#)



[astin mcdonald](#)

~~~~~Jun 19, 2023

(Translated by Google) Noah, uhh (Original) Nuh uhh

[Fair Work Ombudsman](#)

[13/175 Liverpool Street, Sydney NSW 2000](#)



[Vedrana R](#)

~~~~~May 24, 2023

It takes too long for them to answer and then you get someone who doesn't know the answers and you are constantly put on hold so they can check with someone senior.

[Fair Work Ombudsman](#)

[414 La Trobe Street, Melbourne Victoria 3000](#)



[Debbie Sciberras](#)

~~~~~May 2, 2023

the lady I spoke to was so rude showed no empathy at all waste of my 40 mins on hold that I will never get back! Useless

[Fair Work Ombudsman](#)

[25/400 George Street, Brisbane City QLD 4000](#)



[L Campbell](#)

~~~~~Apr 21, 2023

FWO is dysfunctional! The FWO investigators take the word of the employer over the employee who has been ripped off. I needed and need my money to pay for medical expenses and they were aware of this, and my health is seriously declining. The FWO should be asking employers for proof of what they are saying. They don't even have the nouse to look at the EBA and decide

on what should have been paid and get the right pay rate per hour the first time. Or alternatively they are giving out their opinions in some cases, rather than giving the right legal answer. Staff don't read correspondence and respond appropriately either. Like on the 21/4/21 when I rang they refused to answer my questions, then I was transferred onto a supervisor who would not answer my 2 questions either. Instead she gave me the email address for the FWO feedback because she knew that I was annoyed at them not even attempting to answer my questions, and they are hoping that complaints will stay internal so that staff can cover one another's backs. Instead I suggest people contact Anthony Albanese and his office will forward their message through to the appropriate Minister. There needs to be a big shake up in the FWO. If you give feedback to the FWO all they will do is come up with answers to cover up their ineptness before a Minister contacts them potentially and waste your time. They also ask you to provide a lot of information then they claim that you are not owed any back pay even if you are, then they tell you to go through the Small Claims. I found they did the maximum to frustrate me. They couldn't have cared less that I was owed over \$4000, just so long as they have jobs themselves. They lack empathy with employees that have been ripped off. Then also too, they don't collect evidence when the employer has been dodgy or ask appropriate questions, so then you realise that they have no intention of taking them to court. Why have such a useless organisation that is not effective. The employees of the FWO are declaring wages fraudulently for not doing their jobs properly. If we cannot get back our wages, the government gets less taxes. I will be contacting Jim Chalmers re. this matter. And if that doesn't work The Greens because the Liberal party couldn't care less. I have previously contacted them. If you have an issue with the FWO (because there has already been a Royal Commission into wage theft and nothing much has improved - I am wondering how many suggestions have been legislated) keep the names of the FWO staff who have not been helpful and mention them so they can be weeded out. Keep the evidence - that's really important. Either these employees don't have the right attitude, are highly stressed, don't get adequate training or/and are corrupt or they are trying to meet KPI by cutting people off from getting the help they need. A FWO investigator and another staff member with industrial relations training couldn't even get my correct hourly base rate correct. They hinder employees rather than help hardworking people. They also embolden employers by giving them a false sense of security when they give out wrong information and don't ask for proof from them. Not surprised to see so many negative reviews. Anyone who has a problem with this government department needs to spend a little bit of their time (maybe one evening) to write to Anthony Albanese to get anything done. Make it clear to Anthony Albanese that the Greens have been contacted to, so that he's more inclined to do something positive re. this situation. Give suggestions in the letter too. Keep a copy of the letter and consider going to the media if things haven't improved 6 months down the track. We need to work collectively to get the FWO improved.

[Fair Work Ombudsman](#)

[414 La Trobe Street, Melbourne Victoria 3000](#)



[Fnck Em](#)

Apr 13, 2023

Uber eats is misleading their drivers for false promotions. 155 run in three days that's impossible to do providing you can only driver for 12 hours a day. 3 days x 12 hours that 36 hours which means almost 5 runs an hour. Uber know it's impossible why the false promotions. Fair work Australia needs to investigate this matter !



[Fair Work Ombudsman](#)

[13/175 Liverpool Street, Sydney NSW 2000](#)



[Salti](#)

Apr 12, 2023

Why it not possible to leave less than one star? I have now been waiting 48mins on hold to speak with someone. This is my 3rd attempt this morning as last two goes i got hung up on. Reading the other reviews while waiting its appears I am wasting my time as no help available. I don't understand why there is an alleged phone call service when its obvious they don't want you to call. Just tell the public no phone contact. They want us to go online so they keep us on hold till we loss our minds and hang up. Bad bloody luck if you can't find you answer online.

[Fair Work Ombudsman](#)

[13/175 Liverpool Street, Sydney NSW 2000](#)



[Matthew Fleming](#)

Mar 30, 2023

Terrible experience. Time wasted.

[Fair Work Ombudsman](#)

[13/175 Liverpool Street, Sydney NSW 2000](#)



[sudarshan basyal](#)

Mar 27, 2023

Who do we seek for help now if fairworks not helping us? I think they get payed under the desk to keep their mouth shut If someone is breaching the rules and you still cant take any action.

[Fair Work Ombudsman](#)

[414 La Trobe Street, Melbourne Victoria 3000](#)



[Imogen Lenore Williams](#)

Mar 13, 2023

Based on the many poor reviews, I feel your success in your dealings with Fair Work can be hit and miss. For me, however, it was highly successful! My case worker was incredibly friendly and sympathetic to my situation, and in the end was able to convince my prior employer to pay up the backpay he owed me. Without Fair Work's help I would never have convinced my employer

to pay me what I was still owed. I must agree that it is a long and arduous process: I had many phone calls and emails back and forth with Fair Work and my past employer until the issue was resolved, but it was worth it. If you are being underpaid I highly encourage you to stand up for yourself and demand to receive what you are owed for your work. Be informed about your rights, and have some grit and determination to fight for them.

[Fair Work Ombudsman](#)

[25/400 George Street, Brisbane City QLD 4000](#)



[guixian zheng](#)

🗨️ Feb 28, 2023

Fair Work Ombudsman seems unwilling to help some people who are experiencing a sham contract. I talked with both Job watch and the officer from FWO Assessment Team, even though they know I am in a sham contract, they don't want to help me. And...I was directly been told "this is very common in Cleaning companies..., but, sorry...I cannot help you" ...

[Fair Work Ombudsman](#)

[414 La Trobe Street, Melbourne Victoria 3000](#)



[stp har](#)

🗨️ Feb 27, 2023

Was on the phone for fifteen minutes, usual guff all consultants busy, then got a recording that the website had technical difficulties told me to call back latter and then bumped me off

\*\*\*Great customere service your call is important to us\*\*\*

[Fair Work Ombudsman](#)

[25/400 George Street, Brisbane City QLD 4000](#)



[Virginia Solomon](#)

🗨️ Feb 27, 2023

I tried calling the contact number 131 394 but kept saying it couldn't connected Check the number and try again. I'm so frustrated as I did try so many times.!!

[Fair Work Ombudsman](#)

[25/400 George Street, Brisbane City QLD 4000](#)



[Julie Ry](#)

Feb 7, 2023

USELESS. After 30 minutes of WAITING, I get HUNG UP ON!!! EMPLOY 200+ MORE STAFF TO KEEP UP WITH SO CALLED DEMAND. Not surprised that a government service is NOT THERE FOR PEOPLE IN NEED.

[Fair Work Ombudsman](#)

[25/400 George Street, Brisbane City QLD 4000](#)



[Liam Palmer](#)

Jan 9, 2023

This number for the FWO is apparently not taking calls.. ever. Tried contacting them 3 times in the span of a year for different reasons - Email or call - No response. Ombudsman in Fair Work seems to need KIND, UNDERSTANDING and RESPECTFUL staff. Not the ones currently employed, obviously not helping anyone reaching out.

[Fair Work Ombudsman](#)

[414 La Trobe Street, Melbourne Victoria 3000](#)



[Aston Villa](#)

Dec 20, 2022

Spent a long time giving them evidence etc and send them all the details of the shameful employer who didn't pay me (including pictures of me on the work site!). They tried to call his mobile and he didn't return their calls so they gave up. No letter to them or any effort to find his land line etc. Disappointing.

[Fair Work Ombudsman](#)

[414 La Trobe Street, Melbourne Victoria 3000](#)



[A Selenophile](#)

Dec 7, 2022

*The user didn't write a review, and has left just a rating.*

[Fair Work Ombudsman](#)

[13/175 Liverpool Street, Sydney NSW 2000](#)



クセセセセ

Utterl



クヰクヰクヰクヰ

Shock



クヰヰヰヰ

5 star



N

## Resol

20

me



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Tried a

[Fair Work Ombudsman](#)

[25/400 George Street, Brisbane City QLD 4000](#)



[Elaine Lim](#)

May 11, 2022

Useless department. I didn't even get a penny back after lodging for more than 1 year 3 months and this week emailed me that not proceeding the Compliance Notice towards my X-employer. What a "FAIR WORK" - wasting tax payer money.

[Fair Work Ombudsman](#)

[13/175 Liverpool Street, Sydney NSW 2000](#)



[Anna Chea](#)

Apr 29, 2022

*The user didn't write a review, and has left just a rating.*

[Fair Work Ombudsman](#)

[25/400 George Street, Brisbane City QLD 4000](#)



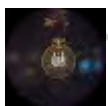
[J](#)

Apr 15, 2022

*The user didn't write a review, and has left just a rating.*

[Fair Work Ombudsman](#)

[414 La Trobe Street, Melbourne Victoria 3000](#)



[panda savings](#)

Apr 4, 2022

These guys don't even want to help.

[Fair Work Ombudsman](#)

[13/175 Liverpool Street, Sydney NSW 2000](#)



[David Robert Marawa](#)

👍👍👍👍👍 Mar 30, 2022

Who do we seek for help now if fairworks not helping us? I think they get payed under the desk to keep their mouth shut aye?

[Fair Work Ombudsman](#)

[414 La Trobe Street, Melbourne Victoria 3000](#)



[singh fateh](#)

👍👍👍👍 Mar 2, 2022

*The user didn't write a review, and has left just a rating.*

[Fair Work Ombudsman](#)

[414 La Trobe Street, Melbourne Victoria 3000](#)



[Jake S](#)

👍👍👍👍 Feb 25, 2022

They do nothing to help. Goodluck for anyone who has to deal with them

[Fair Work Ombudsman](#)

[414 La Trobe Street, Melbourne Victoria 3000](#)



[Anthony](#)

👍👍👍👍 Feb 8, 2022

Agree with all the 1star reviews, absolutely ridiculous service!!! Waited for almost TWO HOURS on hold to be told what to do next in my serious situation and the operator did not help AT ALL. He just kept saying I can give you other phone numbers to call. I said ok and after calling them, they refered me back here! I'm not waiting another 2 hours. Disgusting, will be making a formal complaint. Thanks, Adam.

[Fair Work Ombudsman](#)

[13/175 Liverpool Street, Sydney NSW 2000](#)



[Dmitriy Kosnikov](#)



~~~~~Jan 18, 2022

The user didn't write a review, and has left just a rating.

[Fair Work Ombudsman](#)

[414 La Trobe Street, Melbourne Victoria 3000](#)



[Abdolreza Mohseni](#)

~~~~~Dec 16, 2021

The user didn't write a review, and has left just a rating.

[Fair Work Ombudsman](#)

[414 La Trobe Street, Melbourne Victoria 3000](#)



[Terence Ting](#)

~~~~~Dec 8, 2021

Although the reviews here are terrible, my personal experience was extraordinary.

[Fair Work Ombudsman](#)

[414 La Trobe Street, Melbourne Victoria 3000](#)



[Donald Versace](#)

~~~~~Nov 15, 2021

Don't bother.Waste of taxpayers money. Won't help.

[Fair Work Ombudsman](#)

[13/175 Liverpool Street, Sydney NSW 2000](#)



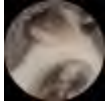
[H](#)

~~~~~Nov 8, 2021

Ridiculous wait times on the phone.

[Fair Work Ombudsman](#)

[25/400 George Street, Brisbane City QLD 4000](#)



J

Nov 4, 2021

Essentially just a call centre that's trained to tell people they can't help you. Like another has said, waste of tax payer money. Doesn't ensure our community is treated fairly at work at all. The reps don't know anything outside of the vague information on their website, so don't bother wasting your time calling/enquiring

[Fair Work Ombudsman](#)

[13/175 Liverpool Street, Sydney NSW 2000](#)



[Healthcare Australia](#)

Nov 3, 2021

Absolutely useless. Over 1 hour wait to talk to someone and when I was finally connected, the customer service representative provided absolutely zero value and couldn't have cared less.

[Fair Work Ombudsman](#)

[414 La Trobe Street, Melbourne Victoria 3000](#)



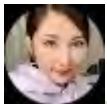
I M

Jun 14, 2021

Disgraceful. They don't want to help and they're very VERY rude. Don't bother, you won't get any help even if you have been painfully wronged by your employer! F fair work.

[Fair Work Ombudsman](#)

[414 La Trobe Street, Melbourne Victoria 3000](#)



Wei WEI

Jun 2, 2021

The user didn't write a review, and has left just a rating.

[Fair Work Ombudsman](#)

[414 La Trobe Street, Melbourne Victoria 3000](#)



[Priya Udalagama](#)

~~~~~ May 11, 2021

I was on hold for 42min to be told that I should call the fair work commission. Luckily they answered the phone relatively fast and was very helpful.

[Fair Work Ombudsman](#)

[13/175 Liverpool Street, Sydney NSW 2000](#)



[ann gu](#)

~~~~~ Mar 24, 2021

Had a phone call regarding my work and seeking compensation. first, I was not listened to properly, and got told to "LISTEN" and raised her voice, when i tried to correct her. thought i would seek some advice but left intimidated.

[Fair Work Ombudsman](#)

[21-29 William Street, Orange New South Wales 2800](#)



[Ben Frank](#)

~~~~~ Feb 13, 2021

*The user didn't write a review, and has left just a rating.*

[Fair Work Ombudsman](#)

[25/400 George Street, Brisbane City QLD 4000](#)



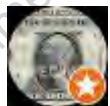
[Edward E](#)

~~~~~ Jan 16, 2021

Try to change my mind when local stores offer minimum wages

[Fair Work Ombudsman](#)

[414 La Trobe Street, Melbourne Victoria 3000](#)



[Mico Cologne Wico](#)

~~~~~ Dec 10, 2020

*The user didn't write a review, and has left just a rating.*

[Fair Work Ombudsman](#)

[25/400 George Street, Brisbane City QLD 4000](#)



[Derek Zhang](#)

77777777 Oct 19, 2020

*The user didn't write a review, and has left just a rating.*

[Fair Work Ombudsman](#)

[25/400 George Street, Brisbane City QLD 4000](#)



[Evan Giles](#)

77777777 Oct 16, 2020

*The user didn't write a review, and has left just a rating.*

[Fair Work Ombudsman](#)

[25/400 George Street, Brisbane City QLD 4000](#)



[George Chicken](#)

77777777 Oct 6, 2020

I dont not like it

[Fair Work Ombudsman](#)

[25/400 George Street, Brisbane City QLD 4000](#)



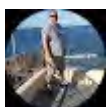
[Andohné Naudé](#)

77777777 Aug 17, 2020

*The user didn't write a review, and has left just a rating.*

[Fair Work Ombudsman](#)

[50 Appel St, Surfers Paradise QLD 4217](#)



[Robert Mittmann](#)

77777777 Jun 28, 2020

*The user didn't write a review, and has left just a rating.*

[Fair Work Ombudsman](#)[414 La Trobe Street, Melbourne Victoria 3000](#)[Giuseppina La](#)

~~~~~  
 Jun 23, 2020

Completely useless. Stay away from commissioner McKinnon End result still waiting on her office to provide a copy of the Respondents last response, which was not provided to me. When a asking for a copy numerous times, you just receive an email advising the case has been shut

[Fair Work Ombudsman](#)[13/175 Liverpool Street, Sydney NSW 2000](#)[Francesco Mucedola](#)

~~~~~  
 Mar 17, 2020

i contacted them in order to receive my last payment and annual leaving from the most dishonest employer i ever worked with, who unfairly fired me without notice, i did not get the money i earned and it seems they have no power at all to help you getting your money back!!! useless is brnging them to court as well... it seemes that all the things you read online about ex employer that can be in troubles if they do not pay you are not true.

[Fair Work Ombudsman](#)[414 La Trobe Street, Melbourne Victoria 3000](#)[Ash Thwaites \(ClipOnMullet\)](#)

~~~~~  
 Mar 17, 2020

Useless. Every question is met by "that's legal advice" including application of the FAIR WORK ACT! The very legislation they are proving advise on. At the end he simply said in a sarcastic tone, maybe call a lawyer, good luck with that. The sarcastic comment evidently was my only real advice. Save your time and don't call them, just call a lawyer. These guys lack the spine to confidently say anything.

[Fair Work Ombudsman](#)[13/175 Liverpool Street, Sydney NSW 2000](#)[이지민 \(Fishjuice\)](#)

~~~~~Feb 17, 2020

*The user didn't write a review, and has left just a rating.*

[Fair Work Ombudsman](#)

[25/400 George Street, Brisbane City QLD 4000](#)



[Liza Lavender](#)

~~~~~Feb 7, 2020

Absolutely terrible. I've called a few times over the past couple of years with different issues. I have found that the customer service people have absolutely no clue as to what is law or what workers rights are. Can't evendors be bothered listening to what your telling them, having to repeat yourself over and over but nothing sinks in. This place is a waste of time and tax payers money.

[Fair Work Ombudsman](#)

[25/400 George Street, Brisbane City QLD 4000](#)



[Ascilla](#)

~~~~~Feb 7, 2020

Excellent assistance. Very grateful to Patrick for guiding me through processes.

[Fair Work Ombudsman](#)

[414 La Trobe Street, Melbourne Victoria 3000](#)



[Griff Davis](#)

~~~~~Oct 21, 2019

A completely useless site when wanting to make a general enquiry online. The site requires ABN numbers etc to tie your enquiry to a business. My enquiry covers numerous small retail outlets where the store is staffed by a single person. My next step is to contact Federal Minister Porter.....

[Fair Work Ombudsman](#)

[25/400 George Street, Brisbane City QLD 4000](#)



[Jose Vargas](#)

~~~~~Sep 4, 2019



*The user didn't write a review, and has left just a rating.*

[Fair Work Ombudsman](#)

[13/175 Liverpool Street, Sydney NSW 2000](#)



[Jason Nguyen](#)

☆☆☆☆ Sep 1, 2019

This organisation did nothing to help me, a worker fr fairwork sent me a email claiming she helped me. But she did not return my calls or emails after I called and email numerous times. This organisation is a waste of tax payers money and a waste of time. They let the employers rob you of wages. Going to court is a waste of time as well

[Fair Work Ombudsman](#)

[50 Appel St, Surfers Paradise QLD 4217](#)



[Dan H](#)

☆☆☆☆ Jun 27, 2019

*The user didn't write a review, and has left just a rating.*

[Fair Work Ombudsman](#)

[50 Appel St, Surfers Paradise QLD 4217](#)



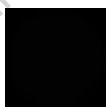
[David Pagey](#)

☆☆☆☆ Jun 6, 2019

I got moved around from different departments and I kept being sent back to people I had already spoken with, and I still didn't get the answers I was looking for. A complete waste of time.

[Fair Work Ombudsman](#)

[414 La Trobe Street, Melbourne Victoria 3000](#)



[tacocat 102](#)

☆☆☆☆ Jun 4, 2019

I was going to the fair work ombudsman with my war veteran grandpa who is in a wheelchair. They said he could not enter as there was no wheelchair access and he might scratch the tiles and carpet. My grandpa who had always been a rebel kept entering. The big african security

guard then said NO! and spear tackled my grandfather down the ramp which broke 4 ribs and left him injured!

[Fair Work Ombudsman](#)

[414 La Trobe Street, Melbourne Victoria 3000](#)



[john cena](#)

~~~~~ Jun 4, 2019

When me and my family were walking into this establishment we were greeted by a security guard. My son, who has Down Syndrome was denied access into the fair work Ombudsman, the security guard pulled out a taser and forced us to leave! On our departure he made a very rude remark to my son, he said "Get out of here you dirty vegetable!" THIS BEHAVIOR IS DISGUSTING!

[Fair Work Ombudsman](#)

[414 La Trobe Street, Melbourne Victoria 3000](#)



'ORTE'

[vortex commentary](#)

~~~~~ Jun 4, 2019

Called over and over again but had no reply. when they finally answered, they prioritized large company's over me, and i got pushed off over and over again. never doing business with them and would advise other people to do the same. the building is also not wheel chair accessible

[Fair Work Ombudsman](#)

[414 La Trobe Street, Melbourne Victoria 3000](#)



[nigel kid](#)

~~~~~ Jun 4, 2019

My disabled kid asked for a lollipop at the reception counter and the rude receptionist denied my child candy. As my child has mental difficulties, my child began to start crying. The receptionist then picked up the lollipop from the bowl and threw it with force at her head. I will further pursue this incident with the owners. UNHAPPY

[Fair Work Ombudsman](#)

[25/400 George Street, Brisbane City QLD 4000](#)



[Ronny Patel](#)

May 2, 2019

The user didn't write a review, and has left just a rating.

[Fair Work Ombudsman](#)

[50 Appel St, Surfers Paradise QLD 4217](#)



[AAkashdeep Sohi](#)

Mar 4, 2019

The user didn't write a review, and has left just a rating.

[Fair Work Ombudsman](#)

[414 La Trobe Street, Melbourne Victoria 3000](#)



[Vafa نیکفر Nikfar](#)

Feb 26, 2019

The user didn't write a review, and has left just a rating.

[Fair Work Ombudsman](#)

[414 La Trobe Street, Melbourne Victoria 3000](#)



[Yash Jassal](#)

Feb 21, 2019

Useless company, called so many times, they dont bother about people's issues.

[Fair Work Ombudsman](#)

[25/400 George Street, Brisbane City QLD 4000](#)



[Bill Sung Chol Beak](#)

Feb 7, 2019

The user didn't write a review, and has left just a rating.

[Fair Work Ombudsman](#)

[414 La Trobe Street, Melbourne Victoria 3000](#)



[SD](#)

👍👍👍👍👍

Jan 29, 2019

really really bad service. :-(

[Fair Work Ombudsman](#)

[414 La Trobe Street, Melbourne Victoria 3000](#)



[Nallib Tala](#)

👍👍👍👍👍

Nov 12, 2018

Don't you bother. just call to the number in the website

[Fair Work Ombudsman](#)

[21-29 William Street, Orange New South Wales 2800](#)



[CC](#)

👍👍👍👍👍

Nov 2, 2018

The user didn't write a review, and has left just a rating.

[Fair Work Ombudsman](#)

[13/175 Liverpool Street, Sydney NSW 2000](#)



[Iwan Hendra Gunawan](#)

👍👍👍👍👍

Oct 2, 2018

The user didn't write a review, and has left just a rating.

[Fair Work Ombudsman](#)

[414 La Trobe Street, Melbourne Victoria 3000](#)



[SV](#)

👍👍👍👍👍

Sep 26, 2018

The user didn't write a review, and has left just a rating.

[Fair Work Ombudsman](#)



E



[洪洪洪](#)

👍👍👍👍👍 Mar 7, 2018

The user didn't write a review, and has left just a rating.

[Fair Work Ombudsman](#)

[414 La Trobe Street, Melbourne Victoria 3000](#)



[leila sadri](#)

👍👍👍👍👍 Dec 28, 2017

The user didn't write a review, and has left just a rating.

[Fair Work Ombudsman](#)

[414 La Trobe Street, Melbourne Victoria 3000](#)



[Kelly Devera](#)

👍👍👍👍👍 Sep 7, 2017

The user didn't write a review, and has left just a rating.

[Fair Work Ombudsman](#)

[414 La Trobe Street, Melbourne Victoria 3000](#)



[Naveed Aftab](#)

👍👍👍👍👍 Jun 6, 2017

The user didn't write a review, and has left just a rating.

[Fair Work Ombudsman](#)

[25/400 George Street, Brisbane City QLD 4000](#)



[g dv](#)

👍👍👍👍👍 Feb 16, 2017

Useless

[Fair Work Ombudsman](#)

[414 La Trobe Street, Melbourne Victoria 3000](#)

[Roberto Vitale](#)

Feb 14, 2017

After leaving a well known real estate agency it happened that they did not want to pay me a commission which was due to me. I won't go into the details and the eventual settlement had to remain confidential, but I will say the FWO were fantastic to deal with and definitely have some clout when dealing with businesses who act unfairly towards employees, especially ones who have already left the company. Although I did not get the full amount I felt I was entitled to, the process was still worth pursuing. Thanks again FWO :))

[Fair Work Ombudsman](#)

[414 La Trobe Street, Melbourne Victoria 3000](#)

[Ganesh Krishnan](#)

Feb 10, 2017

Employer faked my employment letters, subverted pay, asked me to do illegal stuff by uploading bank software online to internet (one of the big four banks), threatened me and refused to attend the ombudsman meeting and the ombudsman is too eager to drop my case and move on and refusing any help because the employer has not attended any calls from either me or the ombudsman. Oh well, I didn't really expect them to rock the boat but at least listen to my grievances

[Fair Work Ombudsman](#)

[414 La Trobe Street, Melbourne Victoria 3000](#)

[Hank Liao](#)

Sep 4, 2016

The user didn't write a review, and has left just a rating.

17. Number of complaints lodged against the FWO**Table A**

| Financial Year | Received | Finalised |
|---|-----------------|------------------|
| 1 July 2015 – 30 June 2016 | 214 | 210 |
| 1 July 2016- 30 June 2017 | 237 | 225 |
| 1 July 2017- 30 June 2018 | 199 | 197 |
| 1 July 2018 – 30 June 2019 | 324 | 316 |
| 1 July 2019- 30 June 2020 | 405 | 398 |
| 1 July 2020- 30 June 2021* | 465 | 459 |
| 1 July 2021- 30 June 2022 | 580 | 573 |
| 1 July 2022- 30 June 2023 | 597 | 585 |
| 1 July 2023- 30 June 2024 | 866 | 851 |
| 1 July 2024- 30 June 2025 | 763 | 747 |
| *Please note a process change to reporting complaints and feedback data has occurred during this reporting period and figures now include all formal requests for review. | | |