

Fair Work Ombudsman  
Regulator Performance Framework Report 2018-19

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## Executive summary

This report sets out the Fair Work Ombudsman's (FWO) self-assessment against the Regulator Performance Framework (the Framework) for the period 1 July 2018 to 30 June 2019. Our assessment relies on both quantitative performance data and case studies to measure the FWO's performance against the six outcome-based key performance indicators (KPIs) contained in the Framework.

In 2018-19, the FWO enhanced resources and assistance available to regulated entities in a number of ways. A number of interactive tools and resources were developed and released, including the Interactive Template Tool. The Interactive Template Tool consolidates many of the FWO's existing static templates into engaging and interactive web based forms. The Interactive Template Tool asks simple questions and uses the answers to tailor a letter or agreement that the user can save and edit covering common employment interactions such as requesting leave, requesting flexibility, seeking copies of employment records and providing appropriate notice when resigning. The FWO's commitment to providing useful, timely and reliable information also saw the agency develop a number of educative resources as a part of the Fast Food Restaurant and Cafes (FRAC) strategy. This was in response to evidence and intelligence of widespread non-compliance in this industry. The purpose of the educative resources was to make it easier for regulated entities to understand their obligations regarding workplace laws and to comply with them. All existing services such as the Fair Work Infoline and Small Business Helpline, email subscription services and communications activities continued to provide easily accessible information, education and assistance for workers and businesses.

Throughout 2018-19, the FWO invested significantly in stakeholder engagement, in line with the FWO's Stakeholder Engagement Strategy. The FWO engaged with key industry groups and stakeholders in the development of our FRAC and Horticulture strategies. This enabled a coordinated and transparent approach to stakeholder engagement to ensure the FWO can better understand the needs of regulated entities and peak bodies to inform the design and execution of our work.

The FWO continues to focus its compliance and enforcement efforts proportionately based on the seriousness of a matter. The FWO aims to resolve workplace disputes efficiently and effectively without unnecessarily impeding the efficient operation of regulated entities, particularly small to medium businesses. In 2018-19, workplace disputes were finalised in an average of 26 days. The vast majority (96%) of workplace disputes were resolved through education and dispute resolution, reserving compliance and enforcement action for where the seriousness of the matter warranted such action.

The FWO continues to share information, intelligence and feedback with other government departments and agencies to inform policy development and improvements to the regulatory framework. The FWO is an active participant in a number of cross agency taskforces and has a number of formal MOUs with other government departments and agencies to establish data exchange and information referral protocols.

## FWO Regulatory Performance Framework summary table

The summary table below provides an indication of the extent to which the FWO is achieving each KPI measure. The measures highlighted in green indicate that the FWO has achieved a suitable level of performance, with amber indicating potential areas for improvement. A red indicator highlights that there is a significant need for improvement.

KPI	Measure	Indicator
<b>KPI 1:</b> Regulators do not unnecessarily impede the efficient operation of regulated entities.	<b>1.1</b> The FWO uses appropriate methods to manage requests for assistance in order to reduce the burden on regulated entities.	●
	<b>1.2</b> The FWO engages with regulated entities and peak bodies to understand and inform the design and execution of our work.	●
<b>KPI 2:</b> Communication with regulated entities is clear, targeted and effective.	<b>2.1</b> The FWO provides information and advice that is timely, useful and reliable to make it easier for regulated entities to comply with their obligations.	●
	<b>2.2</b> The FWO consults with regulated entities prior to implementing key strategies.	●
<b>KPI 3:</b> Actions undertaken by regulators are proportionate to the regulatory risk being managed.	<b>3.1</b> The FWO focuses its compliance and enforcement efforts proportionate to the seriousness of the matter.	●
	<b>3.2</b> The FWO applies a risk-based approach to its compliance and monitoring activities.	●
<b>KPI 4:</b> Compliance and monitoring approaches are streamlined and coordinated.	<b>4.1</b> The FWO takes a coordinated approach to delivering its services.	●
	<b>4.2</b> The FWO works collaboratively with other regulators and industry bodies to minimise the burden of interacting with government bodies.	●
<b>KPI 5:</b> Regulators are open and transparent in their dealings with regulated entities.	<b>5.1</b> The FWO publishes key performance results in a timely manner to ensure accountability and transparency.	●
	<b>5.2</b> The FWO publishes key strategies and acts on feedback regarding the effectiveness of how it operates.	●
<b>KPI 6:</b> Regulators actively contribute to the continuous improvement of regulatory frameworks.	<b>6.1</b> The FWO makes it easy for stakeholders and regulated entities to contribute to the efficient operation of the FWO.	●
	<b>6.2</b> The FWO shares information, intelligence and feedback with policy departments for the improvement of the regulatory framework.	●

## Introduction

The Australian Government developed the Framework, which has applied to Commonwealth regulators since 1 July 2015. The objective of the Framework is to measure the performance of regulators supporting the adoption of consistent, risk-based approaches to administering regulation. Regulators are encouraged to undertake their functions with the minimum burden to business necessary to achieve regulatory objectives.

The Framework establishes a common set of six outcome-based KPIs that will allow for the comprehensive assessment of regulators' performance and their interactions with regulated entities, specifically:

1. Regulators do not unnecessarily impede the efficient operation of regulated entities.
2. Communication with regulated entities is clear, targeted and effective.
3. Actions undertaken by regulators are proportionate to the regulatory risk being managed.
4. Compliance and monitoring approaches are streamlined and coordinated.
5. Regulators are open and transparent in their dealings with regulated entities.
6. Regulators actively contribute to the continuous improvement of regulatory frameworks.

Regulator performance is assessed through validated self-assessments against the Framework. Self-assessment under the Framework enhances accountability and transparency in how the FWO achieves its regulatory objectives, and contributes to the Australian Government's deregulation agenda, which aims to reduce the cost of unnecessary red tape and inefficient regulation imposed on individuals, business and the community.

## Evidence

The FWO has relied on a mix of quantitative performance data and case studies to assess its performance against the measures. This includes:

- Performance data and case studies from key functions and activities.
- Internal project materials.
- Explanatory materials about FWO processes and procedures.
- Published guidance that assists regulated entities to comply with regulation.

This report uses a descriptive approach, which draws links between the evidence and the outcomes achieved in relation to the performance measures.

This year's report also highlights areas for improvement against those measures for which an amber indicator is applied.

## KPI 1 – Regulators do not unnecessarily impede the efficient operation of regulated entities

### Measure 1.1 – The FWO uses appropriate methods to manage requests for assistance to reduce the burden on regulated entities.

2018-19 self-assessment rating	●
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The FWO makes it easier for employees and regulated entities to access our services and interact with us through the provision of advice, educative resources and assistance. The FWO provides tailored telephone advisory services through the Fair Work Infoline and Small Business Helpline and digital advisory services plus online education resources and tools to support businesses.

The FWO ensures regulated entities can access information about their obligations quickly to minimise the risk of non-compliance and the need for formal interventions except where allegations of serious non-compliance arise.

Activity	2018-19 achievement
The FWO provides tailored advice through the Fair Work Infoline and Small Business Helpline.	▪ Over 380 000 Fair Work Infoline calls answered (including over 81 000 Small Business Helpline calls)
The FWO is committed to supporting regulated entities in understanding their compliance obligations. The FWO has a suite of online resources designed to support business.	▪ 4 550 000 pay tool visits ▪ 6 160 000 pay tool calculations ▪ 62 700 online enquiries answered ▪ 38 000 online learning courses commenced ▪ 1 065 000 Find my award searches commenced

Note: Figures in the table above have been rounded.

The FWO also provides early intervention dispute resolution assistance. This service offering provides advice, education and assistance to employees and employers with a view to promoting productive, harmonious, cooperative and compliant workplace relations. Early intervention services aim to resolve workplace disputes efficiently and effectively without unnecessarily impeding the efficient operation of regulated entities, particularly small to medium businesses. The FWO's early intervention activities may include facilitated discussions with a focus on supporting customers to have effective workplace conversations, advising customers of their options and providing advice about online resources.

Our early intervention activities and alternative dispute resolution methods recognise that different issues require different types of assistance, and aim to resolve problems between employers and employees before they escalate into disputes. This approach protects employment relationships and recovers unpaid wages more quickly than enforcement action. In 2018-19, the FWO resolved 27 874 workplace disputes (96% of all disputes) through our early intervention, mediation and small claims assistance services.

### Measure 1.2 – The FWO engages with regulated entities and peak bodies to understand and inform the design and execution of our work.

2018-19 self-assessment rating	●
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The FWO views stakeholder engagement as an integral part of the way it conducts its business and routinely engages with industry, employer and employee organisations, community groups and intermediaries.

Throughout 2018-19, the FWO has continued to seek opportunities to improve the ways in which it engages and consults with stakeholders by following the FWO's [Stakeholder Engagement Strategy](#).

During 2018-19, the FWO engaged and collaborated with regulated entities and peak bodies on a number of initiatives including but not limited to the following key activities:

- Horticulture Industry Reference Group (see **Case Study 3**)
- FRAC Strategy and FRAC Campaigns (see **Case Study 6**)
- Cleaning Accountability Framework (see **Case study 4**).

### Case studies

The following case studies demonstrate how the FWO has achieved this measure (see **Appendix**):

Case study	1	2	3	4	5	6	7
Measure 1.1	✓	✓				✓	
Measure 1.2			✓	✓		✓	✓

## KPI 2 – Communication with regulated entities is clear, targeted and effective

**Measure 2.1 – The FWO provides information and advice that is timely, useful and reliable to make it easier for regulated entities to comply with their obligations.**

2018-19 self-assessment rating	●
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The FWO is committed to ensuring regulated entities have access to timely, useful, and reliable information and advice that supports compliance with workplace laws.

### *Email subscription services*

The FWO offers an email subscription service that allows customers including regulated entities to remain informed of their entitlements and obligations by facilitating opt-in email updates on various topics. As at 30 June 2019, FWO had just over 493 000 active subscribers, an increase of over 100 000 subscribers from the previous financial year.

### *Media and Communications campaigns*

The FWO published 98 media releases in 2018-19 to ensure the public was informed of activities undertaken and outcomes achieved by the FWO that were of significant interest.

The FWO undertook a number of promotional and educational communication campaigns throughout the course of 2018-19, including but not limited to:

- *Annual Wage Review campaign* –This campaign raises awareness of the Annual Wage Review (handed down by the Fair Work Commission in June each year) including changes to minimum wage pay rates and conditions. The campaign encourages subscriptions to email updates, visits to the Pay and Conditions Tool and assists customers through phone and digital enquiries.
- *FRAC industry campaigns* (detailed at **Case Study 6**)
- *Horticulture Communications Campaign* (detailed at **Case Study 3**).


### *Speeches and Presentations*

During 2018-19, the FWO presented at a number of forums and conferences to inform the public of compliance and enforcement activities and issues of interest to the regulated community, including:

- *Address to the Annual National Policy-Influence-Reform Conference*
- *Small Business Information Sessions (Parramatta)*
- *Participation in panel sessions at the COSBOA small business summit*
- *Speech at the Local Government Procurement Forum*
- *Presented at the Head of Workers Compensation Authorities forum*
- *Presented at six forums for the Institute of Public Accountants, along with other Federal Government agencies*
- *Presented at 16 small business fairs*



## Measure 2.2 – The FWO consults with regulated entities prior to implementing key strategies.

2018-19 self-assessment rating	
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The FWO recognises the importance of engaging with regulated entities and their representatives prior to implementing key strategies. Evidence presented previously against measure 1.2 demonstrates the FWO's commitment to consultation prior to implementing key strategies.

The FWO's commitment was demonstrated in preparation for the commencement of the *Fair Work Amendment (Family and Domestic Violence Leave) Bill 2018*. The new entitlement allows employees experiencing family and domestic violence to access up to five days of unpaid leave to deal with its impacts. To make sure customers were aware of the change, the FWO:

- updated web pages and online resources on [www.fairwork.gov.au](http://www.fairwork.gov.au), including the Fair Work Information Statement
- posted about the new entitlement through our social media channels
- sent out an email update to subscribers
- developed the Employer guide to Family and Domestic Violence Leave, available on the FWO website.

### Case studies

The following case studies demonstrate how the FWO has achieved this measure (see **Appendix**):

Case study	1	2	3	4	5	6	7
Measure 2.1		✓	✓			✓	
Measure 2.2			✓	✓		✓	

### KPI 3 – Actions undertaken by regulators are proportionate to the regulatory risk being managed

#### Measure 3.1 – The FWO focuses its compliance and enforcement efforts proportionate to the seriousness of the matter.

2018-19 self-assessment rating	●
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Where a business fails to comply with workplace laws, the FWO takes a risk-based and proportionate approach to its compliance and enforcement efforts. The FWO's approach is set out in its Compliance and Enforcement Policy (publicly available at [www.fairwork.gov.au](http://www.fairwork.gov.au)) that examines the seriousness and deliberateness of the behaviour of non-complying businesses. The FWO is responsible for holding non-complying businesses to account, whilst also deterring other businesses from engaging in non-compliant workplace practices (see **Case Study 5**).

Where a business fails to comply with workplace laws and the seriousness of the non-compliance warrants such action, the FWO may use one or more enforcement tools. Such cases may involve blatant disregard for the law, exploitation of vulnerable workers, systemic non-compliance, or the need for deterrence. The Compliance and Enforcement Policy outlines when the FWO will use the statutory enforcement tools provided under the *Fair Work Act*.

In 2018-19, the following enforcement tools were used:

Compliance & enforcement tools	Achievement
Compliance Notices	▪ 274 notices issued
Infringement Notices	▪ 563 notices issued
Enforceable Undertakings	▪ 17 executed
Litigation	▪ 23 litigations commenced

Note: the data in this table includes compliance and enforcement tools used in relation to FWO initiated activities. In addition to these formal tools, the FWO issued a further 644 Letters of Caution.

#### Measure 3.2 – The FWO applies a risk-based approach to its compliance and monitoring activities.

2018-19 self-assessment rating	●
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The FWO applies a risk-based approach to the resolution of workplace disputes and the planning and execution of compliance monitoring activities. The FWO is cognisant of the impact that compliance and enforcement activities can have on businesses and aims to resolve workplace issues early, consistent with promoting productive, harmonious, cooperative and compliant workplace relations.

Formal compliance and enforcement intervention is reserved for matters where the seriousness of the non-compliance warrants such action (see measure 3.1). Through applying this risk based approach to dispute resolution and working with parties to resolve issues in their earlier stages, workplace disputes were finalised in an average of 26 days during the 2018-19 financial year.

In regards to compliance monitoring activities, the FWO relies on evidence and intelligence gathered from stakeholders, internal operational data, public reports of non-compliance (for example media stories) and anonymous reports from the public to determine the industries and regions to target in workplace auditing campaigns. This ensures a risk-based approach. The FWO continues to refine and improve its targeting

methodology to ensure maximum impact and value to the community through the campaign activities it conducts. (See measure 4.1 for further details).

### Case studies

The following case studies demonstrate how the FWO has achieved this measure (see **Appendix**):

Case study	1	2	3	4	5	6	7
Measure 3.1					✓		
Measure 3.2					✓	✓	

## KPI 4 – Compliance and monitoring approaches are streamlined and coordinated

### Measure 4.1 – The FWO takes a coordinated approach to delivering its services.

2018-19 self-assessment rating	●
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The FWO takes an evidence-based approach to prioritising and coordinating its compliance monitoring activities. The FWO uses intelligence gathered from stakeholders, internal operational data, public reports of non-compliance (for example media stories) and the anonymous reports received from the public to identify systemic non-compliance issues impacting vulnerable individuals, specific labour market sectors, industries or regions. Resources can then be coordinated and directed towards activities that deliver the greatest benefit and impact.

In 2018–19, the FWO conducted over 2 850 audits of workplaces through its targeted campaign activities. The FWO's audit work provides the opportunity to assist non-compliant businesses become compliant through targeted education, information and advice delivered in a coordinated manner. For example, the FWO's Food Precincts Campaign targeted high-density 'cheap eat' strips in and around capital cities after receiving evidence and intelligence of increased non-compliance in these areas. The campaign was designed to enable a coordinated approach to educating employers, as well as auditing compliance with workplace laws around common non-compliance issues particularly related to the FRAC industry. Further details are in **Case Study 6**.

### Measure 4.2 – The FWO works collaboratively with other regulators and industry bodies to minimise the burden of interacting with government bodies.

2018-19 self-assessment rating	●
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The FWO works in a collaborative manner with other regulators, government agencies and industry bodies with the aim of minimising the burden of interacting with government bodies. For instance:

- The FWO participates in a number of inter-agency taskforces. Through these taskforces, the FWO is involved in sharing information and intelligence, referring relevant matters between agencies, and undertaking joint activities.
- The FWO supports the Department of Employment, Skills, Small and Family Business to uphold the integrity of the Seasonal Worker Programme and Pacific Labour Scheme (see **Case Study 1**). This includes monitoring, identifying and addressing non-compliance with workplace laws by employers participating in the Programme and providing advice and enhancement of resources and services.
- The FWO works with other government agencies to share intelligence, carry out joint compliance activities, and improve customers' access to information about workplace rights and obligations (see **Case Study 2**)

### Memoranda of understanding

The FWO has formal MoUs with a range of government and non-government organisations. These allow the FWO to work collaboratively with these organisations to minimise regulatory burden.

### Case studies

The following case studies demonstrate how the FWO has achieved this measure (see **Appendix**):

Case study	1	2	3	4	5	6	7
Measure 4.1			✓			✓	
Measure 4.2	✓	✓					✓

## KPI 5 – Regulators are open and transparent in their dealings with regulated entities

### Measure 5.1 – The FWO publishes key performance results in a timely manner to ensure accountability and transparency.

2018-19 self-assessment rating	
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The FWO continues to meet government requirements for the publication of annual reports and Portfolio Budget Statements on [www.fairwork.gov.au](http://www.fairwork.gov.au). In 2018-19, the FWO also published documents on key activities, including campaign reports, inquiry reports and litigation outcomes. These provide a description of the activity and broadly highlight the outcomes, results and further actions to be undertaken.

Activities	Achievements published
Campaign reports present the results of each campaign activity and where applicable include compliance and non-compliance rates and main contravention types.	<ul style="list-style-type: none"> <li>Seven Campaign reports</li> </ul>
Inquiries are comprehensive compliance monitoring activities examining businesses, industries, regions, supply chains, labour markets or a combination of all these areas. These activities enable the FWO to better identify and understand the drivers of non-compliance in these areas and to recommend responses that address the same. Inquiry reports present our findings, recommendations and actions.	<ul style="list-style-type: none"> <li>One Inquiry report</li> </ul>
Activity reports of findings following compliance activities involving particular businesses may be published where there are allegations of serious non-compliance and it is in the public interest to do so.	<ul style="list-style-type: none"> <li>Three Activity reports</li> </ul>
Litigation outcomes include information on the nature of the proceedings, the decisions handed down and penalties ordered. (Please note: 42 decisions were handed down in 2018-19 but only 36 were published at the time of RPF publication due to the availability of written decisions from the relevant courts)	<ul style="list-style-type: none"> <li>36 litigation outcomes</li> </ul>
Enforceable undertakings are written undertakings enforceable under the <i>Fair Work Act</i> , which may be accepted by the FWO where the FWO reasonably believes that person has contravened the <i>Fair Work Act</i> .	<ul style="list-style-type: none"> <li>17 Enforceable undertakings</li> </ul>
Compliance Partnerships are voluntary agreements between the FWO and large businesses that influence supply chains or service networks and who want to publicly demonstrate their commitment to ensuring sustainable compliance with Australian workplace laws.	<ul style="list-style-type: none"> <li>Seven Compliance Partnerships Reports</li> </ul>
The Fair Work Ombudsman and other senior executives deliver speeches at leading industrial relations conferences and events, keeping stakeholders informed of the role and activities of the FWO.	<ul style="list-style-type: none"> <li>One speech transcript</li> </ul>
Media releases provide summaries of key activities and events, including legislative changes, campaign and inquiry launches and reports, commencement and conclusion of litigation, entering of enforceable undertakings and assisted voluntary recoveries.	<ul style="list-style-type: none"> <li>98 media releases</li> </ul>
The FWO publishes information under its Information Publication Scheme and Freedom of Information disclosure log, together with information on information access requests in its Annual Report.	<ul style="list-style-type: none"> <li>See Access, accountability &amp; reporting section</li> </ul>

**Measure 5.2 – The FWO publishes key strategies and acts on feedback regarding the effectiveness of how it operates.**

<b>2018-19 self-assessment rating</b>	
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The FWO ensures it is a transparent, accountable and effective regulator by continuing to make the following key policies publically available on the FWO’s website. The Feedback and Complaints Management Policy outlines how the FWO responds to feedback, and the Stakeholder Engagement Strategy outlines how the FWO will engage with stakeholders in the course of its activities; both policies go to demonstrating how the FWO acts on feedback regarding its effectiveness.

Published strategies	Description
FWO Purpose	This document highlights the agency’s purpose and functions.
Corporate Plan	The corporate plan outlines the FWO’s purpose and sets the strategic direction for the FWO to achieve the agency’s priorities
Compliance and Enforcement Priorities	This document lists the compliance and enforcement priorities for the FWO for the coming financial year
Stakeholder Engagement Strategy	Sets out the key principles the FWO will use to inform engagements with stakeholders and aims to ensure that stakeholder interactions with the FWO follow a consistent approach, are meaningful, productive, transparent, and deliver benefits for all involved. It also provides examples of where and how the FWO will engage with stakeholders.
Compliance and Enforcement Policy	Sets out the principles to achieving workplace compliance with the law, and outlines the FWO’s enforcement powers, functions and litigation policies. The policy provides information on how the agency identifies and acts on opportunities to offer assistance in workplace disputes.
Information Access Policy	Outlines how the FWO deals with requests for information in accordance with the <i>Freedom of Information Act 1982</i> .
Privacy Policy	Outlines how the FWO handles and discloses personal information in accordance with the <i>Privacy Act 1988</i> .
Customer Service Charter and Customer Experience Statement	Outlines the FWO’s customer experience statement, our commitment to our customers and sets out our goals, services, what customers can expect from our services, and what to do if a customer is not satisfied with our service.
Media Policy	Outlines how and why the FWO will engage with the media to ensure a consistent approach.
Feedback and Complaints Management Policy	Outlines how the FWO responds to feedback, service complaints and requests for review. The policy provides information on the way requests are prioritised and actioned. The FWO uses feedback to develop strategies to continuously improve and enhance services, and provide opportunities to innovate and improve the agency’s operational effectiveness.

This measure has been highlighted as an area in which improvements could be made. In early 2018-19, the Fair Work Ombudsman commissioned a review to examine the FWO's capability to deliver against current and future objectives. An external consultant was tasked with providing a strategic assessment of the FWO's practices and arrangements and organisational capability in the areas of leadership, strategy and delivery. In October 2018, the Capability Review report was presented to the FWO. The recommendations focused on improvements in decision-making and collaboration, priority setting and service delivery.

As part of this process, some of the recommendations have been accepted and implemented across the FWO. The FWO consulted and announced key compliance and enforcement priorities in April 2019. For each of these, the FWO has committed to regular consultation with key industry groups, including the creation of the external Horticulture industry reference group, comprising key employer and employee organisations, growers, retailers and industry representatives. The FWO is also committed to developing new tools and resources, such as the FRAC Interactive templates, that will aid regulated entities in their compliance with workplace laws. The FWO will also continue to monitor compliance more broadly and take action where needed, including on emerging and unforeseen issues.

Implementation of the remaining recommendations from this review are currently ongoing. As such, improvements can still be made in FWO achieving this measure.

#### Case studies

Case study	1	2	3	4	5	6	7
Measure 5.1			✓			✓	
Measure 5.2			✓			✓	

## KPI 6 – Regulators actively contribute to the continuous improvement of regulatory frameworks

### Measures 6.1 – The FWO makes it easy for stakeholders and regulated entities to contribute to the efficient operation of the FWO.

2018-19 self-assessment rating	●
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The FWO recognises the importance of continuously seeking feedback from stakeholders and regulated entities to contribute to the efficient operation of the FWO. Feedback helps the FWO improve and respond to community needs and expectations.

#### *Feedback and Complaints Management*

The FWO's Feedback and Complaints Management Policy explains how the FWO manages customer feedback and complaints. The Policy is regularly reviewed and updated and remains available via the [Feedback webpage](#). This Policy provides the framework for a Feedback and Complaints Management system that is transparent, easy to understand, consistent and responsive. Throughout 2018-19, the Agency's streamlined and accessible online feedback service (available via FWO's website) has continued to allow regulated entities to easily provide feedback regarding services, make a service complaint, or request a review. The data captured via the streamlined service has enabled the identification of feedback trends; which further allows the FWO to address customer feedback in a coordinated manner.

#### *Stakeholder Engagement Strategy*

The FWO has a [Stakeholder Engagement Strategy](#). The Stakeholder Engagement Strategy clearly sets out the types of engagements that can be expected by our stakeholders for commonly conducted agency initiatives.

### Measure 6.2 - The FWO shares information, intelligence and feedback with policy departments for the improvement of the regulatory framework.

2018-19 self-assessment rating	●
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Where appropriate, the FWO shares information, intelligence and feedback with other government departments and agencies to inform policy development and improvements to the regulatory framework. The FWO is an active participant in a number of cross agency taskforces and has a number of formal MoUs with other government departments and agencies that establish data exchange and information referral protocols.

The FWO continues to work with government and other agencies to identify improvements to the regulatory framework. For example in 2018-19, the FWO:

- Contributed its expertise to address migrant worker exploitation through the Migrant Worker Taskforce, which released its final report in 2018-19 (see **Case Study 7**).
- The FWO worked collaboratively with the Department of Foreign Affairs and Trade to support the implementation of the Pacific Labour Scheme that commenced on 1 July 2018, including providing advice, resources and services to prepare for the implementation of the Scheme (see **Case Study 1**).

#### **Case studies**

The following case studies demonstrate how the FWO has achieved this measure (see **Appendix**):

Case study	1	2	3	4	5	6	7
Measure 6.1		✓	✓			✓	
Measure 6.2	✓			✓			✓



## Overall assessment

The FWO has demonstrated its commitment to reducing regulatory burden associated with compliance. A review of the FWO's performance over the assessment period has highlighted areas in which the agency has delivered on the KPIs as set out in the Framework. These include:

1. Ensuring that regulated entities have access to advisory and educational tools, resources and services that provide them with the necessary support in understanding their compliance obligations and using technology to streamline and improve processes.
2. Ensuring actions undertaken to address requests for assistance involving a workplace dispute are proportionate to the risks identified through assessing each request and applying the most appropriate treatment.
3. Taking an evidence-based approach to prioritising and coordinating compliance monitoring activities. The FWO uses evidence and intelligence to identify systemic non-compliance issues affecting vulnerable individuals, specific labour market sectors, industries or regions in order to target our proactive compliance monitoring campaigns and inquiries.
4. Working collaboratively with key stakeholders, other regulators and industry bodies to minimise the burden of compliance.

## Appendix – Regulator performance case studies

### Case study 1 – Seasonal Worker Programme and Pacific Labour Scheme

The Seasonal Worker Programme (SWP) assists employers in Agriculture, Horticulture and Tourism industries to source seasonal labour where they cannot meet labour needs. The SWP is administered by the Department of Employment, Skills, Small and Family Business (DoESSFB) and has been in operation since 2012. The Pacific Labour Scheme (PLS) commenced on 1 July 2018 following a pilot in Northern Australia, and to complement and build on the success of the SWP. The administration of the scheme rests with the Department of Foreign Affairs and Trade (DFAT) with the support of a Pacific Labour Facility contracted by DFAT to administer the PLS.

Both programmes aim to contribute to the economic development of Fiji, Kiribati, Nauru, Tuvalu, Papua New Guinea, Samoa, Solomon Islands, Timor-Leste, Tonga and Vanuatu providing unskilled to semi-skilled work opportunities in Australia.

The FWO's Strategic Engagement and Stakeholder Relations branch (SESR) works with DFAT and DoESSFB to support both the SWP and the PLS. Assistance includes:

- providing employer compliance history information to both organisations to assist them in approving employers to either the PLS or SWP
- providing workplace relations advice
- assessing allegations of non-compliance with workplace laws
- undertaking proactive compliance activities, and
- providing educative resources.

One example of the way in which the FWO works collaboratively with other regulators and industry bodies were workshops FWO designed and delivered for DFAT, the Pacific Labour Facility and DoESSFB. These workshops delivered workplace relations information for Pacific Workers in Australia under the SWP and PLS. The workshops covered the following topics:

- the role of the FWO
- workplace basics including types of employment, awards and agreements
- common awards used by approved employers involved in the programs, including Horticulture, the Wine Industry, Aquaculture and the Meat Industry, and
- typical compliance issues in these industries including deductions, overtime, piecework and annualised salaries.

By facilitating these workshops, the FWO is committed to ensuring the FWO messaging in relation to workplace laws is clear and consistent for all workplace participants. The workshops also presented an opportunity for DFAT, DoESSFB and the FWO to build on already strong networks, ensuring that representatives across the agencies work together to co-ordinate efforts and minimise regulatory burden.

## Case study 2 – Behavioural Economics Team of the Australian Government (BETA) project

The FWO's Behavioural Economics and Education (BEE) team entered into a partnership with the Behavioural Economics Team of the Australian Government (BETA) to run a project aimed at:

- testing the ongoing impact of the FWO's communication methods used for proactive compliance audits on approximately 2,000 small businesses
- examining if applying behavioural insights (BI) to the audit communication processes could lead to even better outcomes for workers, businesses and the community.

BETA is the Australian Government's first central unit that applies behavioural economics to improve public policy, programs and processes. The FWO partnered with BETA to combine the expertise of both teams in behavioural change approaches and workplace regulation and education.

The project incorporated BI techniques into the FWO's East Coast Retail Hair and Beauty Campaign. Some examples of techniques used included:

- simplifying the language used in audit correspondence
- providing progress graphics to understand the audit process
- actively encouraging employers to sign up to other FWO service offerings e.g. MyAccount
- sending email/SMS reminders to advise businesses of the annual wage increase.

An evaluation was then run to measure the effectiveness of the behaviourally informed audit communications. Results of the project have been detailed in the report prepared by BETA in consultation with the FWO; [Building Persistent Compliance with Labour Law: Evidence from a Randomised Control Trial](#). In summary, the project found:

- The FWO's standard audits improve ongoing rates of compliance, the behaviourally informed changes that were made to the audit communications and processes, reduced non-compliance with monetary entitlements by a further 24 per cent.
- The BI audits were faster for employers to complete and to supply records (15 days compared with 23 days for the standard audit).
- Businesses found BI audits significantly more helpful and informative; as well as less confronting, complex and confusing, compared to the standard audit.

The BI techniques designed for the project are cost effective and scalable across the FWO's communication activities and other services. The project evidenced that by simplifying audit communications and making it easier to comply, businesses are more likely to be compliant in future.

### Case study 3 – Harvest Trail Inquiry and the Horticulture Strategy

In response to concerns regarding alleged exploitation of employees within the Horticulture industry, the FWO commenced an Inquiry into workplace arrangements on the Harvest Trail in August 2013. The FWO conducted 1,295 discrete education and compliance interactions with Harvest Trail participants, and completed 836 investigations into alleged breaches of workplace laws. The 836 investigations involved 638 employers. In more than half (465 or 56%) of these investigations, the FWO determined that there had been a failure to comply with Australian workplace laws.

The FWO published the final Harvest Trail report in November 2018. Following the release of the report, the FWO has developed a Horticulture Strategy, built on the themes of engagement, education and enforcement, with the intent of building a culture of compliance with workplace laws in the sector.

As part of this Horticulture Strategy, the FWO created an external Horticulture industry reference group, comprising key employer and employee organisations, growers, retailers and industry representatives, to consider the next steps and assist with the goal of building a culture of compliance in the horticulture sector. The group met twice in the second half of the financial year to discuss key issues and areas of focus.

A key next step outlined in the Harvest Trail report was to enhance education and awareness initiatives for workplace participants. The FWO's communication objectives include:

- ensuring employers are aware of their employment responsibilities and are compliant with workplace laws
- informing and empowering employees working in the horticulture and viticulture industries to understand their rights and responsibilities, particularly workers on visas
- creating higher visibility of the role of the FWO and how we can assist workers and employers working in the horticulture and viticulture industries
- promoting the FWO's industry-specific information, tools and resources
- ensuring information is easily accessible.

During the financial year, information on the FWO's website was refined and two communications campaigns were undertaken, designed to focus on workers and employers/growers in the horticulture industry using a variety of channels. Key elements of the campaigns included:

- promoting the FWO's industry-specific information, tools and resources which provide clear and simple information for workers and employers who engage overseas workers
- joining-up and connecting with key stakeholders to deploy key information/resources to target audiences
- announcements of the FWO's return to visit non-compliant businesses identified through the Harvest Trail report, as well as other businesses identified through intelligence sources
- promoting the importance of getting workplace relations obligations right with messaging that wages are not a negotiable element of operating a business.

## Case study 4 – Cleaning Accountability Framework

Since 2014, the FWO has been working with key cleaning industry stakeholders on the [Cleaning Accountability Framework](#) (CAF) to develop an industry-led national supply chain certification scheme for the cleaning industry. As a key member of the CAF Steering Committee, the FWO assisted in piloting this certification scheme at 17 commercial office and retail sites across Sydney, Melbourne and Brisbane from 2017 to 2019.

The certification scheme was officially launched in March 2019. The CAF is an independent, multi-stakeholder initiative that seeks to improve labour standards and cleaning quality in Australia.

The CAF promotes:

- the rights of cleaners
- transparent and accountable cleaning supply chains
- sustainable business models
- responsible contracting practices.

This certification scheme is designed to ensure transparency and accountability for the entirety of a cleaning supply chain. Through engaging the property owners, facility managers, tenants, cleaning contractors and the cleaners themselves, parties can ensure that they are not inadvertently supporting unlawful or unethical labour practices in their supply chains. The CAF's objective is to identify and recognise best practice tendering and compliance approaches in the cleaning industry that support quality-focused cleaning services, fair wages and decent labour standards.

A property can become CAF certified once all participants in the cleaning services supply chain meet certain requirements around:

- labour standards
- taxation and superannuation
- record-keeping
- workplace health and safety.

An independent auditor assesses and verifies that each requirement is met – giving credibility to the certification. Workers are also involved through a 'social audit' giving direct feedback on their work conditions. This creates a level of transparency throughout the cleaning services supply chain, meaning businesses can proactively manage their responsibilities.

The FWO continues to be actively involved in the operations of the CAF. The FWO offices in Sydney, Brisbane and Adelaide have successfully been certified and the agency is working to have all offices CAF certified over the medium to longer term.

## Case study 5 – First Legal Action under the Serious Contravention Provisions

In 2018-19, the FWO commenced its first legal action under the serious contravention provisions of the Protecting Vulnerable Workers laws (the serious contraventions provisions were introduced under the *Fair Work Amendment (Protecting Vulnerable Workers) Act 2017*). Maximum penalties for serious contraventions are ten times those stipulated for traditional contraventions, namely \$630,000 for a company and \$126,000 for an individual respectively (per contravention).

In this action, the FWO alleges that serious contraventions were committed by Uncle Toys (IE Enterprises Pty Ltd), a retail company that sold toys and novelty products in 'pop up stores' across Melbourne shopping centres over the Christmas season. This matter involved eight former employees who were employed by the company. The employees were hired to work for Uncle Toys during the 2017 Christmas season. All the employees were vulnerable workers – six were under 26 years old, and all of them were on temporary visas.

The allegations against the company include that it:

- paid employees low flat rates of pay, which were below the minimum wages required by the applicable award
- did not pay the employees at all for certain periods of work
- did not keep employee records
- knowingly provided false pay slips to three employees
- otherwise failed to issue pay slips to the employees
- failed to pay penalty rates and casual loadings
- made an unlawful deduction from employee's wages.

In total, it is alleged that the eight former employees were owed more than \$21,700 in underpayments, none of which had been rectified.

The FWO has taken this matter very seriously due to Uncle Toys and its sole director having repeatedly failed to correct their non-compliance. The FWO has received numerous complaints from former employees of Uncle Toys since 2013. The FWO has engaged with Uncle Toys and its director extensively since then, providing the business with:

- education materials and resources
- pay guides
- multiple notices to produce
- a letter of caution.

Despite the extensive engagement, the FWO continued to receive complaints that the company remained non-compliant.

IE Enterprises Pty Ltd and its owner face maximum penalties of up to \$630,000 and \$126,000 per contravention, respectively, for the five alleged serious contraventions relating to minimum wages, failing to issue pay slips, failing to keep records, failing to pay employees in full and making an unlawful deduction.

The FWO is also seeking a Court order requiring the director and his company to back-pay the eight employees in full. The matter was recently transferred from the Federal Circuit Court to the Federal Court in Melbourne.

## Case study 6 – FRAC Strategy and FRAC Campaigns

In 2018, the FWO launched the FRAC strategy. The strategy is focussed on improving compliance with workplace laws within the FRAC sector and is a key priority for the agency. The strategy aims to improve the compliance levels of the sector through:

- addressing the drivers of non-compliance in the FRAC sector
- enhancing deterrence at the sector level
- influencing positive behavioural change by engaging with key players
- influencing social norms around workplace relations compliance in the FRAC.

Overall, the FRAC strategy aims to use all levels of expertise at the agency's disposal to maximise the impact of the FWO's activities and deliver a strong message to the FRAC industry and community.

As a part of the FRAC strategy, the FWO commenced a Food Precincts auditing program that has seen inspectors undertake a number of proactive compliance activities in high-density 'cheap eat' strips in and around capital cities. Throughout 2018-19 the FWO conducted over 200 focused audits within the FRAC industry.

Additionally, the FWO has developed a suite of new interactive graphics and tools focused on helping to educate employers and employees within the FRAC industry on workplace laws. The design and development of these tools were informed by user testing - including internal and external workshops and one-on-one user testing with small business owner/managers. These tools were launched in May 2019 via a communications campaign.

During the financial year, the FWO delivered three communications campaigns targeting this industry. The campaigns promoted general workplace compliance messages as well as specifically promoting the new interactive graphics and template tools to both employers and employees.

### **Interactive Templates Tool**

The interactive templates tool consolidates many of the FWO's existing static letter, request and agreement style templates into engaging and interactive web based forms covering common employment interactions such as requesting leave, requesting flexibility, seeking copies of employment records and providing appropriate notice when resigning.

Most existing static templates include 2-3 covering pages of compliance information and imbedded instructions within the template. To complete the template, users must analyse the information, identify additions and amendments, delete instructions, insert their own text, and save and print the file. Despite their limitations, templates are very popular and downloads continue to trend upwards.

Supplementing static templates with interactive web based forms and decision tree technology enhances the user experience, streamlines the template generation process and ultimately helps ensure our customers are filling out the template correctly with minimum effort. Users are guided through a series of questions, assisted by help text and important information. Templates are pre-populated with their tailored selections, significantly reducing the risk of error, omission and duplication. Users can then edit, save or print their personalised template.

The Interactive Template Tool asks simple questions and uses the answers to tailor a letter or agreement that the user can save and edit. It makes compliance easier for employers by reducing the time needed to prepare a letter or agreement and assisting users to navigate complex employment related decisions with inbuilt support and assistance.

It also guides employees through common employment interactions such as requesting leave, requesting flexibility, seeking copies of employment records and providing appropriate notice when resigning.

### **Interactive Graphics**

The FWO has co-designed with users, two interactive graphics summarising the key entitlements provided in the Fast Food Industry and Restaurant Industry awards, in an easily digestible format that has been tailored to the individual user needs.

The interactive graphics cover pay, hours of work, allowances, leave and termination for the Fast Food Industry and the Restaurant Industry Awards. User testing of a prototype was conducted with employers in the Fast Food and Restaurant industries. A range of technology and techniques were used to measure users' engagement and comprehension of the prototype, including eye-tracking analysis. Testing found that the tool is easy to use, helpful, relevant and is a resource that employers would recommend to other hospitality businesses. The design and graphics also resonated with users.



## Case study 7 – Migrant Workers Taskforce

The FWO contributed to the whole of government approach to combat the exploitation of migrant workers through the Migrant Workers' Taskforce.

The Migrant Workers' Taskforce was established in October 2016 to meet the Government's election commitment under its policy to protect vulnerable workers. The role of the Migrant Workers' Taskforce was to bring a whole of government focus to identifying further proposals for improvements in legislation, law enforcement and investigation, and other practical measures to rectify migrant worker exploitation. Collectively, the Taskforce was also responsible for monitoring existing and new cross portfolio initiatives to combat exploitation in the workplace. Along with the FWO, members of the Taskforce included:

- Department of Employment, Skills, Small and Family Business
- Department of Home Affairs
- Australian Border Force
- Attorney-General's Department
- Department of Education and Training
- Australian Taxation Office
- Australian Competition and Consumer Commission
- Australian Securities and Investments Commission
- Department of Agriculture and Water Resources.

The Terms of Reference required the Taskforce to:

- identify regulatory and compliance weaknesses that create the conditions that allow exploitation of vulnerable migrant workers
- develop strategies and make improvements to stamp out exploitation of vulnerable migrant workers in the workplace
- consider ways agencies can better address any areas of systemic and/or widespread exploitation of vulnerable migrant workers, including considering ways in which agencies can better collaborate to avoid such situations arising or to swiftly rectify them.

Throughout the term of its work, the Taskforce consulted widely with stakeholders. Representatives from community and industry bodies attended various meetings to present on issues relevant to the Taskforce. The Taskforce also held two Stakeholder Roundtables in Melbourne and Sydney in July 2017, where the Taskforce heard directly from legal organisations, community groups, academics, industry and employee representative bodies on policy responses and possible remedies to address exploitation of migrant workers in Australian workplaces. Several participants followed up directly with the Taskforce with further proposals for reform.

As a member of the Taskforce, the FWO shared information, intelligence and feedback about its experiences assisting migrant workers and investigating their employers. This informed several initiatives announced by the Taskforce, and shaped the final recommendations of the Taskforce.

The final Migrant Workers' Taskforce report, published in March 2019, made 22 recommendations aimed at improving workplace protections for vulnerable workers. The recommendations comprised a broad range of actions the Government could take to strengthen the regulatory framework, and the Government has accepted all of these in principle.

The FWO is progressing the Taskforce recommendations within its remit. Through a cross-agency working group, led by the Attorney General's Department, the FWO continues to share information, intelligence and feedback to inform measures to address the broader recommendations of the Taskforce and ensure a whole of government approach to protecting migrant workers.