

ADDRESS TO COSBOA MEMBER AND STAKEHOLDER ROUNDTABLE

9 JULY 2021

Introduction

- Thank you for inviting me to speak to you today.
- Firstly, I would like to congratulate the newly appointed acting COSBOA CEO Alexi Boyd and Chair Matthew Addison. I look forward to building on the positive links between our organisations established under Peter Strong and Mark McKenzie.
- Small business associations play an extremely important role in supporting the sector and the FWO appreciates the opportunity to participate in COSBOA's monthly member and stakeholder roundtable events, as they provide a valuable forum to connect with the small business community.
- As we know, small business is vital to the Australian economy and a major driver of economic activity and employment.
- In the current environment, where we continue to rapidly adapt to the ongoing challenges presented by the COVID-19 pandemic, having conversations directly with the business community is more important than ever.
- I meet regularly with COSBOA, employer organisations, unions and other peak industry bodies, as do my staff.
- Consultation with our stakeholders also plays an important part in setting our priorities, and I'd like to use this forum today to highlight the outcome of that engagement by announcing the FWO's compliance and enforcement priorities for 2021-22.

- The last few years have seen big shifts in the FWO's work. 2019-20 was a record year where more than \$123 million was returned to over 25,000 workers. This was four times the amount recovered in 2017-18 and triple the amount recovered in 2018-19.
- Underlying these results is a shift to a firmer stance against non-compliance, including the more effective and efficient use of the statutory tools available to us, particularly Compliance Notices under s 716 of the Fair Work Act. Compliance Notices are a non-punitive tool commonly used for simple underpayment matters. If they are complied with, there is no penalty or additional cost for business.
- We issued 250 percent more Compliance Notices in 2019-20 than the previous year, and the use of CNs alone led to the recovery of \$7.8 million for workers - and again we've significantly increased the number of Compliance Notices issued in the financial year that just ended.
- We made these changes in response to community expectations and commentary made by the Banking Royal Commission and the Migrant Workers Taskforce report about the role of regulators, and we continue to be responsive to community expectations and business conditions.
- In 2020, in light of COVID we reviewed our Compliance and Enforcement Policy to make clear that the FWO would consider a business' sophistication, financial position and viability as relevant public interest factors when deciding on appropriate enforcement action.
- In appropriate cases during the pandemic, the FWO has been willing to negotiate longer time periods for responding to its enforcement tools, so as not to threaten business viability, whilst still ensuring timely repayment of employee obligations.

Priorities announcement

- It is against the background of the ongoing challenges posed by COVID-19, that the FWO has set its compliance and enforcement priorities for the upcoming year. While there are encouraging signs of economic recovery, the situation remains precarious in many sectors and regions.

- For **2021-22** our main priority remains **supporting workplaces as they recover** from the impacts of COVID-19.
- In addition, we confirm our **enduring commitment to prioritising**:
 - small business employers and employees; and
 - vulnerable workers
- We will also retain the following priorities, where there is still work for us to do, in:
 - Fast food, restaurants and cafes, or FRAC
 - Horticulture
 - Sham contracting
 - Large corporate underpayments
 - Franchise arrangements
- There is one new addition to this list from last year: Contract cleaning.
- Overall, as a regulator, we will continue to focus on matters that:
 - Are of significant public interest
 - Demonstrate a blatant disregard for the law
 - Are of significant scale or impact on workers or the community, or
 - Can provide guidance on the application of the law.
- The FWO's priorities are informed by a multi-faceted, data-driven risk analysis. Each of the priority areas that I just outlined are there because they continue to rate highly in our risk analysis.

- Taking **FRAC** as an example, the FWO has continued to identify high levels of non-compliance and we receive a significant number of complaints and enquiries from industry participants. The high business entry rate, a high proportion of small businesses, and the prevalence of vulnerable workers also contribute to compliance risks in the sector.
- We see the coming year as a good opportunity to re-focus audit and face-to-face engagement activities in FRAC, and provide additional support to business operators as restrictions are lifted and services are re-established.
- Another industry which continues to rate highly in our risk analysis is **horticulture**. The industry's reliance on visa workers and complex supply chains, means that we need to continue prioritising this sector to support growers who are doing the right thing. Horticulture itself is not a high employing industry, however the poor behaviour in this industry, documented in our Harvest Trail Report, the reluctance of vulnerable workers to seek our assistance,¹ and the significance of the sector in terms of putting food on our plates, warrants the continued focus.
- Recently, some of our priority areas received additional funding from the Government, including our focus on **large corporate underpayments**. You would no doubt have seen the recent media coverage of the FWO's legal action against Woolworths, in relation to major underpayments of salaried managers.
- We allege that the company underpaid a sample of 70 salaried managers a total of \$1,172,282 and are seeking court orders for the company to rectify underpayments owed to these 70 staff and all other affected salaried managers—around 19,000 workers in total—including interest and superannuation.

¹ Fair Work Ombudsman, '[Harvest Trail Inquiry— A Report on Workplace Arrangements Along the Harvest Trail](#)', November 2018, p. 33.

Support for small business

- Supporting small business will continue to be an enduring priority for the FWO as well. It is widely acknowledged by the government and wider community that the small business sector is vital to Australia's economic recovery.
- As you may be aware, Australian Bureau of Statistics data shows that small businesses account for 93% of all employing entities in Australia, employ 41% of Australia's workforce and generate 32% of Australia's GDP.²
- Prior to the onset of the COVID-19 pandemic the number of employing small businesses had been steadily increasing across the years. The initial economic impact from COVID-19, however, has resulted in a drop in employing small businesses and a reduction of over 12% (around 580,000 workers) in small business payroll jobs. During the COVID-19 period, small businesses were twice as likely to report difficulty meeting future financial commitments and almost half accessed business support measures.³
- With this in mind, over the past 18 months, the FWO has had to consider what adjustments we need to make to ensure we can continue to support small businesses and approach compliance in a fair and balanced way.
- Our experience tells us that when small businesses are non-compliant with workplace laws, this is more likely to be due to technical—or non-monetary--contraventions like record-keeping and pay slip contraventions, when compared to larger businesses.
- This suggest that these businesses may require additional guidance on the more technical aspects of workplace laws; and this is something that we are addressing with our Small

² Australian Bureau of Statistics (July 2018 – June 2019), 'Australian Industry, 2018-19 (released 29 May 2020) (18-19 FY), Table 5 - Business Size by Industry Division', [Australian Industry](#), accessed January 2021.

³ Fair Work Ombudsman, 'Small Business Environment and the FWO – Analysis of the small business environment and the implications for the FWO' Internal research - April 2021, p. 1.

Business Strategy, which promotes the assistance available through the FWO, including our free tools and templates which are tailored to be easy to use for small business operators.

- We also have our Small Business Helpline where callers can get free practical, tailored advice over the phone. In the 2020-21 financial year to 31 May 2021, the FWO has:
 - answered over 62,000 calls through its Small Business Helpline; and
 - had over 162,000 visits to its Small Business webpage and our Small Business showcase.
- Our Small Business Showcase is accessed from the small business webpage. It provides a range of resources for small business in one place to assist small business employers to understand workplace rights and obligations throughout the lifecycle of their business.
- The Small Business Showcase has been updated to include critical information for small businesses on the recent changes to casual employment and our dedicated coronavirus website. We will continue to review and update it to ensure it addresses topics and issues affecting small businesses.
- Our dedicated coronavirus subsite – coronavirus.fairwork.gov.au – is another source of valuable advice for small business and has been accessed millions of times since it was created in February 2020. It is regularly updated and covers topics on a range of issues such as lockdowns, alternative work arrangements, pay, leave and stand downs and health and safety in the workplace.

Employer Advisory Service

- Our small business strategy and dedicated small business resources are now complemented by the recent launch of our Employer Advisory Service or EAS, which provides eligible small businesses with free tailored, written advice about employee entitlements under the National Employment Standards and award provisions.
- Eligible small business employers who contact the FWO may be referred to the EAS by one of our customer service advisers for tailored advice.

- The EAS gives small businesses increased confidence to understand and comply with their obligations under the Fair Work Act. If employers have sought and followed our advice in good faith and that advice turns out to be incorrect, we won't take court action against businesses for relying on that advice. We will work with employers in those circumstances to ensure that they understand and pay any outstanding entitlements.
- Small business employers may be eligible to access the service if they are covered by the Fair Work system, have fewer than 15 employees at the time of enquiry and are happy for an EAS adviser to contact them and discuss their enquiry in more depth. I would definitely encourage small businesses to access this service if they are eligible to do so.

Contract cleaning

- I want to also talk about our new priority, contract cleaning.
- From our intelligence and data, we know the Building Cleaning, Pest Control and Gardening Services industry is comprised of large proportions of migrant workers, low paid and part-time workers, which we know are at higher risk of exploitation. Additionally, in this industry there is also a high business entry rate which can lead to industry volatility.
- Despite some setbacks, the return of normal business practices as the economy opens up has led to increased demand for cleaning services. New rules about COVID-19-safe cleaning practises are expected to drive a quick recovery in the contract cleaning sector.
- The quick recovery forecast for the contract cleaning industry, coupled with the vulnerable nature of workers within it, were the driving factors to select the contract cleaning industry as a priority for the FWO in 2020-21.
- The contract cleaning industry has a significant history of non-compliance. For example, in 2019 Fair Work Inspectors investigated a number of cleaning companies following surprise visits to major sporting stadiums in Sydney, Perth, Adelaide, Brisbane, Melbourne and Canberra. Our Inspectors found high levels of non-compliance and recovered over \$25,000 in

unpaid wages for 270 employees. In fact, in the last five years, the FWO has recovered more than \$4.5 million in total for employees in the cleaning industry.

- Investigations into the contract cleaning industry often find issues with complicated supply chains, multiple layers of sub-contracting and poor governance. The heads of all supply chains should be aware that they can be held responsible if they are found to be involved in any contraventions of workplace laws by their contractors.
- In case it may be of interest, I will note that businesses can apply for certification of their building's supply chain through the industry-led Cleaning Accountability Framework. The FWO also has a number of free resources available on our website to help businesses monitor and manage their supply chains and ensure compliance with workplace laws from the top down.

Conclusion

- In summing up, I would like to again acknowledge the vital importance of small businesses to our economy, and to acknowledge the unique needs of small business employers, particularly during the pandemic. The FWO is committed to continuing to work with the small business community and across government.
- I hope this has been helpful for you to understand the direction we are headed as a regulator, both with regards to small business and more generally.
- Thank you once again for providing me with the opportunity to speak to you today, and I'd be happy to take any questions that you might have.