

FAIR WORK OMBUDSMAN

STATEMENT OF EXPECTATIONS

Ministerial Statements of Expectations provide greater clarity about government policies and objectives relevant to the regulator in carrying out its statutory functions. As the responsible Commonwealth Minister for workplace relations matters, my responsibilities include administration of the *Fair Work Act 2009* (the Act). This statement sets out my expectations of the Fair Work Ombudsman and their office, the Office of the Fair Work Ombudsman for the performance of functions under the Act.

I request that this statement of expectations be incorporated into relevant *Public Governance, Performance and Accountability Act 2013* (PGPA Act) processes that apply to the Office of the Fair Work Ombudsman, such as the Annual Report and Corporate Plan, where possible.

Overview

The Fair Work Ombudsman is an independent statutory office holder established by the Act responsible for regulation of the national workplace relations system.

Under the Act, the Fair Work Ombudsman's functions are to:

- promote harmonious, productive and cooperative workplace relations, and compliance with the Act and fair work instruments, including by:
 - providing education, assistance and advice to employees, employers, regulated workers, regulated businesses, persons in a road transport contractual chain, outworkers, outworker entities and organisations
 - producing best practice guides to workplace relations or workplace practices, and
 - having regard to the need for community outreach, guidelines, and other materials to be available in multiple languages
- monitor compliance with the Act and fair work instruments
- inquire into, and investigate, any conduct or practice that may be contrary to the Act, a related offence provision (including an offence of intentional wage theft once commenced), a fair work instrument, or a safety net contractual entitlement
- commence proceedings in a court, or make applications to the Fair Work Commission, to enforce the Act, fair work instruments, and safety net contractual entitlements
- publish a compliance and enforcement policy, including guidelines relating to the circumstances in which the Fair Work Ombudsman will or will not accept or consider accepting an enforceable undertaking, or to enter or consider entering into a cooperation agreement
- refer matters to relevant authorities
- represent employees, regulated workers, or outworkers who are, or may become, a party to court proceedings or to a Fair Work Commission matter under the Act or a fair work instrument, if it considers that the representation will promote compliance with the Act or the fair work instrument, and
- perform any other functions conferred by any Act.

The government recognises and respects the independence of the Fair Work Ombudsman and their responsibility for regulation of the national workplace relations system. I expect the Fair

Work Ombudsman and their office to exercise their functions and powers in good faith and to the best of their ability.

Noting the recent reforms to the Act, I expect the Fair Work Ombudsman to continue working with stakeholders to implement these reforms and to support and enhance tripartism in Australian workplace relations.

I also expect the Fair Work Ombudsman to proactively monitor and promote compliance with the Act in the building and construction sector, and to undertake compliance and enforcement activities when contraventions of the Act are identified.

Principles of regulator best practice

I expect the Fair Work Ombudsman to embed within their office, and act in accordance with, principles of regulator best practice set out in the Resource Management Guide (RMG) 128 *Regulator Performance*, issued by the Commonwealth Department of Finance, as well as to strive for continuous improvement against these principles.

In exercising their functions and powers in accordance with these principles, I expect the Fair Work Ombudsman to have regard to:

1. Continuous improvement and building trust

- Stay informed, aware and responsive to the changing context and operating environment of workplace participants.
- Actively share lessons learned and insights by engaging with other regulators and stakeholders to encourage best practice.
- Build and maintain collaborative relationships with other regulators to minimise regulatory burden and reduce duplication.
- Hold themselves to account through internal accountability processes that foster a culture of continuous improvement and reflection.
- Actively develop staff capability, including ensuring staff have relevant knowledge to address stakeholder needs.

2. Risk-based and data-driven

- Use intelligence and data to inform a risk-based and proportionate approach to compliance and enforcement activities.
- Actively monitor and plan for risks, taking a preventative approach to non-compliance by raising awareness of common misconceptions and through early identification and remediation of compliance issues.
- Consider the risks, cost effectiveness and impact of regulatory action.
- Remain flexible and responsive to changes by adopting reasonable, supportive and transparent processes to build and maintain trust, accountability and integrity within the regulatory system to encourage compliance.

3. Collaboration and engagement

Open, transparent and consistent engagement with stakeholders, including industry, unions, government and the broader community is crucial to build tripartism, and to maintain competent and innovative regulatory practices. Consequently, I expect the Fair Work Ombudsman to:

- engage genuinely and regularly with stakeholders, and to encourage, promote and facilitate meaningful engagement
- work cooperatively with stakeholders to encourage voluntary compliance in Australian workplaces
- be receptive to feedback and diverse stakeholder views
- be transparent in their operations, policies and decision-making processes including by publishing key enforcement outcomes and performance results
- provide up-to-date, relevant, clear and easily accessible guidance and information, including materials and outreach in multiple languages
- provide informative and practical tools that help workplace participants to comply with their statutory obligations
- provide tailored and personalised services to workers and employers who make enquiries and seek advice
- work together with the Fair Work Commission to deliver a more integrated service to users in areas of joint responsibility and in public outreach
- work collaboratively with other government agencies to share information where appropriate, ideas and deliver initiatives and programs
- identify opportunities to build relationships with new parties that are now covered by the Act, such as employee-like workers, digital labour platforms and road transport industry participants, and
- identify opportunities for further collaboration with international counterparts, including through the Trans-Tasman Employment Regulators Forum.

The government's policy priorities and objectives

The government has worked to close the gender pay gap, deal with job insecurity, and close loopholes to strengthen the workplace relations framework. The Fair Work Ombudsman, as the national workplace relations regulator, has an integral role in achieving these goals through both education and advice, and compliance and enforcement functions.

Recognising recent reforms to the Act and in addition to the core functions noted above, the government expects the Fair Work Ombudsman to observe and contribute to the government's policy priorities and objectives by:

- supporting workplace participants to understand and comply with changes to workplace rights and obligations
- working to build tripartism with industry, government, and workers, to foster social and economic progress
- preparing for the commencement of the criminal offence for intentional underpayment of entitlements and then monitor and enforce compliance with that criminal offence
- continuing to educate and assist vulnerable workers and those with less power, such as First Nations peoples, migrant workers, and workers with disability, and
- tailoring resources and advice to meet the needs of Australia's diverse communities.

1. Relationship with Minister and portfolio

The Fair Work Ombudsman plays an essential role in ensuring that the government and I, as the Minister for Employment and Workplace Relations, are well placed to respond promptly to issues related to the national workplace relations system. This includes taking proactive steps to ensure workplace participants are compliant with relevant regulations and operate within the law.

The Department of Employment and Workplace Relations also supports and advises me by providing advice on policy development and the performance of the portfolio's regulatory systems. The department takes into account the knowledge, expertise, and experience of the Fair Work Ombudsman when considering changes to policy and legislation that impact on the national workplace relations system.

Accordingly, I expect the Fair Work Ombudsman to work collaboratively with the department on significant issues relating to strengthening compliance with national workplace relations law. As the responsible Minister, I will provide an enabling environment for the Fair Work Ombudsman to consistently implement best practice by ensuring it is well informed of the government's policy direction, as specific initiatives and strategies are being considered.

3. Innovation and regulatory change

I expect the Fair Work Ombudsman to continually monitor their operating environment to ensure regulatory approaches keep pace with changes in technology, industry practices, and community expectations. I also expect it to review and, where necessary, adjust policies, protocols and operating procedures regularly, to ensure prompt and proportionate responses to the changing social, technological and commercial context in which it operates. I expect the Fair Work Ombudsman to make appropriate use of the full range of their enforcement powers and tools, while also seeking to resolve workplace issues using voluntary means where it is appropriate to do so.

December 2024