



Australian Government

# Fair Work

## OMBUDSMAN

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31 July 2018

Ms Leanne Linard MP  
Chair  
Education, Employment and Small Business Committee  
Parliament House  
George Street  
Brisbane QLD 4000

By email: [eesbc@parliament.qld.gov.au](mailto:eesbc@parliament.qld.gov.au)

Dear Chair

Thank you for your correspondence of 14 June 2018 to the former Fair Work Ombudsman, Ms Natalie James, in relation to the Education, Employment and Small Business Committee's (**the Committee's**) ongoing Inquiry into Wage Theft in Queensland (**the Inquiry**).

### *Overview of the role of the Fair Work Ombudsman*

The Fair Work Ombudsman (**the FWO**) was established by the *Fair Work Act 2009* (**the FW Act**) on 1 July 2009. The FWO's role is to provide education, assistance and advice about the Commonwealth workplace relations system and to impartially enforce compliance with workplace laws. The FWO works closely with employees, employers and the community to implement its vision for compliant, productive and inclusive workplaces.

The FWO's operating model is designed to respond effectively and efficiently to the full spectrum of compliance with workplace laws, ranging from the provision of information and advice, to education and dispute resolution services, through to compliance and enforcement activities. For a comprehensive overview of the FWO's work and priorities, you may wish to review the FWO's 2016-17 Annual Report, which is publicly available at [www.fairwork.gov.au](http://www.fairwork.gov.au).<sup>1</sup>

In the 2016-17 financial year, the FWO completed 26,917 requests for assistance involving a workplace dispute, and recovered more than \$30.6 million. When determining the best way to help people who seek assistance, the FWO considers their circumstances as well as the particular workplace issues raised. The FWO always responds to and seeks to resolve all requests for assistance it receives. The way in which matters are resolved depends on a range of factual circumstances and is decided based on the application of our Compliance and Enforcement Policy, which is publicly available on our website.<sup>2</sup>

<sup>1</sup> Available at <https://www.fairwork.gov.au/ArticleDocuments/1177/fwo-annual-report-2016-17-final.pdf.aspx>.

<sup>2</sup> See <https://www.fairwork.gov.au/about-us/our-policies>.



In most cases, the FWO offers tailored education and assisted dispute resolution services, including early intervention and mediation, to quickly resolve workplace issues (generally within seven days), preserve employment relationships, return monies owing to employees, and ensure that employees and employers understand their workplace rights and obligations going forward.

The FWO recognises that, in some circumstances, employees may not wish to identify themselves when raising concerns about workplace issues. The FWO's online anonymous report tool enables employees, as well as members of the broader community, to provide information to the FWO anonymously, in 16 languages other than English. In the 2016-17 financial year, the FWO received 10,535 anonymous reports, which provide valuable intelligence used to inform the FWO's proactive compliance activities.

The FWO focuses its compliance and enforcement activities, including formal investigations and Court action, on serious non-compliance, to address exploitative conduct, create a level playing field, and send a strong message of deterrence. In 2016-17, the FWO commenced 55 Court cases, and obtained a number of significant litigation outcomes, including our highest ever penalty decision (\$660,020),<sup>3</sup> our first contempt of Court finding,<sup>4</sup> our first racial discrimination finding,<sup>5</sup> and our first finding against an employer for failing to transfer paid parental leave entitlements to an employee.<sup>6</sup>

On 14 September 2017, the FWO welcomed the Royal Assent of the *Fair Work Amendment (Protecting Vulnerable Workers) Act 2017* (Cth), which introduced new investigative powers for the FWO, higher penalties for non-compliance with workplace laws and a reverse onus of proof with respect to record keeping. The FWO welcomes these new provisions, which will further assist the agency to promote and enforce compliance with workplace laws.

#### *The Fair Work Ombudsman's work in Queensland*

The FWO maintains a strong network of Fair Work Inspectors and other local staff in Queensland, with offices in Brisbane, Rockhampton, Cairns, Toowoomba and the Gold Coast. FWO's Queensland staff include members of the Agency's Young Workers, Regional Services, and Overseas Workers teams. Having a range of experienced staff located in Queensland ensures the FWO is well-placed to support compliant, productive and inclusive workplaces across the state.

Of the almost 27,000 workplace disputes completed by the FWO in 2016-17, 5,427 related to employees working in Queensland. Over one third of these disputes related to underpayment or non-payment of wages, with 18% of employees alleging underpayment of their hourly rate and 17% alleging non-payment for time worked. The resolution of these disputes contributed to the recovery of \$5.4 million in unpaid wages and entitlements for employees in Queensland in 2016-17. More recently, the FWO has continued to recover significant unpaid wages and entitlements for Queensland employees.<sup>7</sup>

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<sup>3</sup> See <https://www.fairwork.gov.au/about-us/news-and-media-releases/2017-media-releases/august-2017/2017-08-02-mhoney-penalty-release>.

<sup>4</sup> **Currently subject to appeal** (heard on 16 July 2018, decision reserved); see <https://www.fairwork.gov.au/about-us/news-and-media-releases/2018-media-releases/may-2018/20180513-jorgensen-contempt-penalty-media-release>.

<sup>5</sup> See <https://www.fairwork.gov.au/about-us/news-and-media-releases/2018-media-releases/may-2018/20180528-yenida-penalty>.

<sup>6</sup> See <https://www.fairwork.gov.au/about-us/news-and-media-releases/2018-media-releases/may-2018/20180523-noorpreet-penalty>.

<sup>7</sup> See for example <https://www.fairwork.gov.au/about-us/news-and-media-releases/2017-media-releases/september-2017/20170913-fng-crocodile-farm-mr> and <https://www.fairwork.gov.au/about-us/news-and-media-releases/2017-media-releases/august-2017/20170823-gold-coast-recoveries>.



Of the 10,535 anonymous reports received by the FWO in 2016-17, over 2,200 related to Queensland businesses. Anonymous reports related to workplace issues in Queensland contributed valuable intelligence that informed the FWO's compliance activities, including recent Food Precincts Activities<sup>8</sup> where FWO audited 73 hospitality businesses in Fortitude Valley and recovered nearly \$65,000 for 180 employees.

The FWO also achieved a number of significant recent litigation outcomes in Queensland, such as:

- Securing over \$84,000 in Court-ordered penalties against a labour-hire company for contravening record keeping and pay slips rules;<sup>9</sup>
- Securing over \$115,000 in Court-ordered penalties against a Gold Coast security company owner who admitted to taking unlawful adverse action against a security guard by dismissing him, and who also underpaid three other guards more than \$15,000;<sup>10</sup> and
- Securing a record penalty of \$54,000 for non-compliance with a Fair Work Commission order to pay unfair dismissal compensation.<sup>11</sup>

### *Collaboration with Government agencies*

The FWO welcomes referrals and intelligence from the Queensland Office of Industrial Relations, and works closely with a range of State and Federal Government agencies to achieve whole of Government priorities and outcomes, including responding to the exploitation of vulnerable workers.

For example, in February 2017, the FWO and the Department of Home Affairs (**DoHA**) agreed that a person's temporary visa will not be cancelled if they have an entitlement to work as part of their visa, believe they have been exploited at work, have reported their circumstances to the FWO, and are actively assisting the FWO in an investigation. This arrangement supports and encourages migrant workers to seek our assistance and provide the FWO with evidence or information about exploitation.

The FWO also shares intelligence, data and expertise with other Government agencies as part of its participation in a number of Taskforces. Through Taskforce Cadena, the FWO works with DoHA and the Australian Border Force to disrupt criminals organising visa fraud, illegal work and the exploitation of foreign workers. The FWO is also a member of the Migrant Workers' Taskforce, aimed at developing proposals to respond to and prevent migrant worker exploitation, and the Phoenix Taskforce, aimed at combatting illegal phoenix activity.

In addition, in August 2017 the FWO worked with Queensland Workplace Health and Safety and Queensland Police to lead a multi-agency operation targeting worker exploitation in the Lockyer Valley, as part of the Horticulture Workers Interagency Group.<sup>12</sup>

The FWO also actively engages with key industry stakeholders to find solutions to workplace issues and opportunities to collaborate. In Queensland, the FWO has funded Growcom, an employer

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<sup>8</sup> See <https://www.fairwork.gov.au/about-us/news-and-media-releases/2018-media-releases/july-2018/20180711-food-precincts-mr>.

<sup>9</sup> See <https://www.fairwork.gov.au/about-us/news-and-media-releases/2017-media-releases/july-2017/20170726-hta-farmings-penalty>.

<sup>10</sup> See <https://www.fairwork.gov.au/about-us/news-and-media-releases/2018-media-releases/july-2018/20170724-vip-security-penalty>.

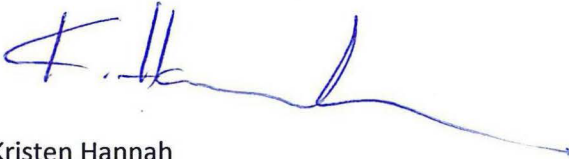
<sup>11</sup> See <https://www.fairwork.gov.au/about-us/news-and-media-releases/2018-media-releases/may-2018/20180516-port-douglas-penalty-media-release>.

<sup>12</sup> See <https://www.fairwork.gov.au/about-us/news-and-media-releases/2017-media-releases/august-2017/20170831-lockyer-valley-activity>.

organisation in the horticulture industry, through the Community Engagement Grants program to educate Queensland growers about issues such as labour procurement and employment law.

We trust this information is of assistance. For further communications between the Committee and the FWO, you are welcome to contact Mr Anthony Fogarty, Executive Director – Policy Analysis and Reporting, on [REDACTED] or via [REDACTED].

Yours sincerely



Kristen Hannah  
**DEPUTY FAIR WORK OMBUDSMAN**  
31 July 2018