



Fair Work
OMBUDSMAN



Australian Government
Registered Organisations Commission

The **Fair Work Ombudsman** and **Registered Organisations** **Commission** Entity

Corporate Plan 2019–20

Financial years 2019-20 to 2022-23
August 2019

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Statement of Preparation

The Office of the Fair Work Ombudsman (FWO) and the Registered Organisations Commission (ROC) are each regulatory bodies that form part of a combined entity for the purposes of the *Public Governance, Performance and Accountability Act 2013* (Cth).

This corporate plan is the key strategic document for the combined Fair Work Ombudsman and Registered Organisations Commission Entity (the Entity) and sets out the strategic direction for both the FWO and the ROC for the years 2019-20 to 2022-23. It guides how we each will deliver on the purpose set out in the enabling legislation for each body.

As the accountable authority of the Entity, I present the Fair Work Ombudsman and Registered Organisations Commission Entity Corporate Plan 2019-20 as required under paragraph 35(1)(b) of the *Public Governance, Performance and Accountability Act 2013* (Cth).



Sandra Parker PSM

Fair Work Ombudsman

August 2019

The Fair Work Ombudsman



Foreword from Sandra Parker PSM, Fair Work Ombudsman

The Office of the Fair Work Ombudsman (FWO) regulates around 12 million workers and 2 million businesses across Australia.

The community expects the FWO, as the national workplace regulator, to uphold Australian workplace standards and protect the most vulnerable workers in our community.

This plan outlines the key strategic priorities and activities for the FWO over the next four years, that will position the FWO as a regulator that is responsive to community expectations and effective in discharging its functions under the *Fair Work Act 2009* (Cth).

Over the reporting period of this plan, we will strengthen our approach to compliance and enforcement. Our revised [Compliance and Enforcement Policy](#) positions us to deliver on this approach.

We will target issues or industries where compliance issues are systemic, using intelligence and data, focussing our activities where we can achieve the greatest impact and deterrence. We will review our compliance and enforcement priorities annually, in consultation with our key stakeholders.

We will continue to invest in educating, advising and assisting employers and employees. We will enhance and promote our platforms for delivering these services, working with key stakeholders to educate and assist the community, encourage reporting of non-compliance and promote compliant workplaces.

FWO staff are highly engaged and committed to their work. Over the period of this plan, we will continue to invest in developing the core capabilities of staff to deliver on our purpose. Together with our frameworks for governance, risk management and financial performance we will remain an efficient, ethical and effective agency delivering value to Australian workplaces.

The Fair Work Ombudsman



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Purpose and Functions

Our purpose

Promote harmonious, productive, cooperative and compliant workplace relations.



The Fair Work Ombudsman, the inspectors and staff constitute a statutory office established by the *Fair Work Act 2009* (Cth) (FW Act).

Our functions



Provide education, assistance, advice and guidance to employers, employees, outworkers, outworker entities and organisations.



Promote and monitor compliance with workplace laws.



Inquire into and investigate breaches of the FW Act.



Take appropriate enforcement action.



Perform our statutory functions efficiently, effectively, economically and ethically.

Environment

Factors in our operating environment that may influence our activities or the way we operate over the four-year outlook of this plan are set out below.

Key issues and sectors

Underpayment of migrant workers is a complex issue as it crosses employment, migration, corporations, taxation and other laws. Migrant worker exploitation not only affects migrant workers, but also other employees as well as those employers who comply with workplace laws.

Our operational intelligence, experience and data show that non-compliance rates remain high in the fast food, restaurants, and cafés sector. Without intervention and the impact of general deterrence, non-compliance rates are unlikely to reduce over the next four years, given the projected rise in employment levels in this sector. Challenges to addressing non-compliance in this sector include high business turnover due to competition and low barriers to entry, a high concentration of young, vulnerable workers, many of whom are on visas, and the transient nature of the workforce.

Our report into the Harvest Trail also observed widespread non-compliance amongst employers we investigated in the horticulture and viticulture industries, as well as a significant reliance on migrant workers and in a number of cases, the misuse of labour hire arrangements to deprive workers of their lawful entitlements.

Our experience tells us there is a correlation between multiple levels of subcontracting and non-compliance. Arrangements such as subcontracting, outsourcing, labour hire or franchising arrangements create challenges for the enforcement of minimum employment standards (which presuppose an employment relationship).

We have seen an increase in self-reporting of underpayments, mainly from large corporate businesses with many stemming from large scale errors in payroll systems. Self-disclosures indicate that our compliance and enforcement activities, along with negative community sentiment about underpayments of workers and a focus on companies' 'social licence', are creating a deterrence effect in corporate Australia. Assessing these large and complex contraventions has an impact on our resources.

As part of the review of our [Compliance and Enforcement Policy](#), we announced that companies that self-report to us would, as a minimum, be expected to enter into a court enforceable undertaking requiring, amongst other things, willingness to work with the FWO to repay all monies owed with interest and ongoing independent audits of payroll systems funded by the company and approved by the FWO.

We will also issue more compliance notices to employers where inspectors have a reasonable belief that underpayments of workers have occurred, to ensure an efficient and effective tool to ensure employees receive their minimum workplace entitlements. Where notices are not complied with, we will enforce them through litigation.

We will regularly review our priorities and approach to compliance and enforcement.

Applying new powers and resources to protect vulnerable workers

In recent years, the Parliament has expanded the FWO's compliance and enforcement powers and enhanced legislative provisions to protect vulnerable workers.

Our enforcement activities will include a focus on using our enhanced powers and new provisions following the amendments to the FW Act by the *Fair Work Amendment (Protecting Vulnerable Workers) Act 2017* (Cth). These provisions are targeted at serious non-compliance in areas such as franchising/holding companies, record keeping, unlawful deductions and persons involved in contraventions.

In applying these new provisions, we will continue to take a risk-based and proportionate approach to compliance and enforcement, consistent with our obligations as a Commonwealth regulator.

In the 2019-20 period, the FWO has been funded to:

- establish a dedicated unit to more effectively tackle sham contracting by increasing education, compliance and enforcement activities;
- undertake targeted education, monitoring and compliance activities associated with the Seasonal Worker Programme;
- further improve delivery and accessibility of information for migrant workers and work with industry and community stakeholders to educate employers on the rights and entitlements of migrant workers; and
- enhance compliance capability through additional enforcement resources to increase visibility of our inspectors and our enforcement actions.

Adapting our approach in response to changes in the workplace relations framework

We will adapt our activities and the way we work to achieve our purpose in response to changes in the workplace relations framework over the period of this plan. Factors that may influence the FWO's operating environment, functions and activities include:

- the Government's decisions on the implementation of the Migrant Workers' Taskforce recommendations, including the proposed criminalisation of serious forms of exploitation of workers, development of a National Labour Hire Registration Scheme and further measures to protect vulnerable workers and ensure a level playing field for compliant employers; and
- any further reforms to the Australian workplace relations framework.

In March 2019, the Government responded to the report of the Migrant Workers' Taskforce, accepting in principle all 22 recommendations. A number of the Taskforce's recommendations, if implemented, will introduce new or enhanced statutory protections and powers for which the FWO will have regulatory responsibility.

We have progressed a range of initiatives aimed at addressing migrant worker exploitation, including inquiries and targeted audits, development of an in-language Anonymous Reporting Tool and litigation involving the exploitation of migrant workers, securing \$1.8 million in penalties for decisions involving migrant workers in 2018-19.

We will continue to engage with migrant communities and work across Government and with stakeholders to support the Government's approach to implementing the recommendations of the Taskforce.

Responding to changes in Australian workplaces and the labour market

The FWO is working to reach, engage and influence workplaces in an increasingly diverse and changing environment. Changes to business and labour market conditions, consumer behaviours, the nature of work and workplaces themselves all affect the work that we do. For example, in terms of Australian workplaces:

- staff turnover rates are at a ten-year high of around 18% and higher for young people, with more than half of them leaving their employer each year;¹
- business models involving the use of labour hire arrangements and franchises are established features of our labour market;
- migration is the largest contributor to employment growth², with temporary migration accounting for a significant proportion of overall migration; and
- technology is driving changes to workplaces and the nature of work. The emergence of the on-demand economy has created new flexibilities and challenges in how services are delivered.


There is greater community awareness about the need to uphold standards across the entire labour market. In particular, the community is increasingly aware that underpayment of wages distorts the market for employers, disadvantages vulnerable workers and has the potential to damage Australia's economy and international reputation.

The FWO will continue to monitor changes in the labour market, emerging sectors and models of work and use our operational intelligence, data and research to ensure our methods of detection of non-compliance and intervention strategies are responsive to these factors.

1. See Australian HR Institute, Turnover and Retention Research Report, August 2018

2. See Department of Home Affairs statistics available at <https://www.homeaffairs.gov.au/research-and-stats/files/migration-trends-highlights-2017-18.PDF>

Our priorities




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Compliance & Enforcement Priorities 2019–20


Priority industries and issues




**Fast food, restaurants
and cafés**




Horticulture/ Harvest trail



Supply chain risks



Franchisors




Sham contracting

Characteristics

- Matters that are of significant public interest or concern
- Matters that demonstrate a blatant disregard of laws or repeat offending
- Matters that are of significant scale or impact on workers or the community
- Matters that present as opportunities to test the law or use new parts of the law (eg. Protecting Vulnerable Workers, General Protections and / or Accessorial Liability)

Cohort



**Vulnerable
workers**

While we will focus on these priority areas in 2019–20, we continue to monitor compliance more broadly and take action where needed, including on emerging and unforeseen issues.

Fair Work Ombudsman Compliance & Enforcement Priorities 2019–20

To deliver on our purpose and respond to the challenges in our operating environment, we will focus on our core functions.

We will allocate our resources to prioritise:

- groups within the community that need the most help to understand and apply workplace laws; and
- systemic and serious non-compliance in the areas we have identified as our highest priorities.

The establishment of annual compliance and enforcement priorities enables the FWO to inform the community about what they can expect from us as a regulator and to target our resources to the areas of greatest need.

Data, intelligence, research and our stakeholders will inform the identification of future annual compliance and enforcement priorities for the four-year period of this plan.

The FWO will continue to use all levers available to it to influence stakeholders and bring about behavioural change across our priority areas. We will use levers such as brand reputation, market structures, environmental settings and the role of consumers to change behaviour and workplace culture. We will work with stakeholders to develop strategies to drive cultural change in each of these areas and collaborate with other relevant Government agencies to address broader non-compliance issues and effect cultural change.

The FWO will continue to deliver a range of services and functions to build a culture of compliance with workplace laws and prevent breaches by:

- intervening early and assisting those who want to comply with workplace laws;
- making it easy for small businesses to understand and meet their workplace obligations;
- monitoring compliance more broadly and taking action where needed, including to respond to emerging and unforeseen issues; and
- delivering tools and resources across a number of platforms including fairwork.gov.au, the Fair Work Infoline, the Small Business Helpline, social media and online resources such as Pay and Conditions Tool (PACT), online portal (My Account), Record My Hours App, Anonymous Report tool and free online learning.

Key activities

The key activities we will undertake as part of the performance of our core functions are set out below.

Provide education, assistance, advice and guidance to employers, employees, outworkers, outworker entities and organisations

We will:

- make compliance easier by providing information, resources and advice to employers, employees and other workplace participants, in the time and format they need;
- deliver tailored and in-language information and education solutions to priority industries and vulnerable cohorts that make it easier for workplace participants to understand their workplace rights and obligations and achieve compliance; and
- influence workplace behaviour by using behaviourally informed approaches to encourage compliant workplace practices.

Promote and monitor compliance with workplace laws

We will:

- monitor data, including anonymous reports, and undertake targeted research and analysis to inform our compliance and enforcement efforts and development of resources;
- promote compliance and enforcement outcomes to deliver strong deterrence; and
- engage with relevant stakeholders and communities to identify opportunities to collaborate and promote the role of the FWO to improve compliance in priority areas.

Inquire into, and investigate, breaches of the Fair Work Act and take appropriate enforcement action

We will:

- conduct investigations, audits and inquiries in priority areas;
- issue compliance notices where inspectors have a reasonable belief that underpayments have occurred; and
- take appropriate, risk-based and proportionate enforcement action in accordance with our [Compliance and Enforcement Policy](#).

Perform our statutory functions efficiently, effectively, economically and ethically

We will:

- act in accordance with our [Compliance and Enforcement Policy](#) and the *Legal Services Directions 2017*;
- provide stewardship over Government resources in accordance with the *Public Governance, Performance and Accountability Act 2013* framework;
- ensure our employees understand their rights and obligations under the *Public Service Act 1999* and act in accordance with the Act;
- apply and monitor the Fraud Control Framework and integrity related policies; and
- promote and embed an effective risk culture and leverage governance frameworks to manage risk.

Performance

Our enhanced performance measures

In 2018, we commissioned an independent review of our capability. The majority of the recommendations of the review have been implemented, including developing a new governance framework to determine our compliance and enforcement activities and corporate decision-making.

As part of this program of work, we are developing new performance indicators that:

- provide meaningful, relevant, reliable and complete performance information;
- reflect the revised FWO purpose and compliance and enforcement priorities;
- reflect our compliance and enforcement posture; and
- are responsive to changes in our environment.

This work is ongoing. The new performance indicators will be progressively implemented during the reporting period, after a process of independent assurance. They will apply to the forward outlook and be reportable in the 2020-21 annual performance statement.

Performance measures for 2019-20

To demonstrate our performance against *Outcome 1 - Compliance with workplace relations legislation by employees and employers through advice, education and, where necessary enforcement*, the FWO will use performance measures focussed around the key areas below:

Manage requests for assistance in a timely manner and provide information and advice that is accessible, timely and reliable

The FWO will provide the following services to the community:

- 99% availability of online resources;
- 99% availability of the contact centre during advertised hours; and
- requests for assistance involving a workplace disputes finalised in an average of 30 days.

Take a risk-based and proportionate approach to our compliance and enforcement activities

The FWO will use a combination of quantitative data and case studies to demonstrate that we:

- focus our compliance and enforcement efforts proportionate to the seriousness of the matter;
- apply a risk-based approach to our compliance and monitoring activities;
- have streamlined and coordinated compliance and monitoring approaches; and
- publish key strategies and act on feedback regarding the effectiveness of our operations.

Have a positive impact on sectors/regions and issues of importance to the community

The FWO will use a combination of case studies, research and analysis and stakeholder consultation processes to:

- seek to gain a more comprehensive understanding of the reasons for non-compliance with workplace laws; and
- engage with key stakeholders to understand and inform the design and execution of our work.

Planning framework

The corporate plan is prepared each year at the beginning of the reporting cycle and has a four-year outlook. Each year the FWO reports on our activities and performance in an annual performance statement set out in the annual report.

Branch business plans that provide a link between the corporate plan, strategic goals and individual performance plans underpin this corporate plan. We update our plans to reflect changes in priorities and our Corporate Board and senior management monitor performance against plans.

Capability

We will continue to implement recommendations from an independent review of our capability, designed to enhance our organisational capability, including by improving our approach to compliance and enforcement, refining our evaluation practices and leveraging international partners through an International Engagement Strategy.

Our people are our greatest asset. Our APS Employee Census results show we have a highly engaged, professional and purpose-driven workforce with committed and capable leaders.

One of our key leadership priorities is to continue building and maintain management capability and confidence. To achieve this, we have established a Manager Academy to assess current management capability, communicate expectations, provide support and mentoring to managers and implement tailored training to develop management capability.

We will also continue to:

- implement our Diversity and Inclusion Strategy and our Health and Wellbeing Framework to support an inclusive workplace that prioritises the wellbeing of our people; and
- prepare our workforce by delivering ongoing and targeted capability development for all our people.

Our governance framework supports us to meet the challenges in our operating environment by providing stewardship, oversight, transparency and accountability.

We are reviewing and developing our information technology capacity, to ensure our systems are secure and continue to support our staff and our customers. During the reporting period, we will implement a revised IT Strategy.

Risk oversight and management

Our risk management framework is consistent with the Commonwealth Risk Management Policy and includes our risk management policy and guidelines, accompanied by a range of resources including risk assessment tools, risk registers and treatment plans.

We support all staff to engage deliberately and positively with risk to deliver maximum benefits from opportunities and challenges, and to minimise any negative consequences.

A governance framework to determine the FWO's appetite for risk and to monitor, report on and assess risks supports the Fair Work Ombudsman. Consideration of risk is a feature of decision making by all our governance bodies. Our Audit and Risk Committee provides oversight of our framework.

We will continue to review and enhance our risk management framework, ensuring it is fit for purpose and embedded into our business practices. Activities in the reporting period include:

- actively identifying risks that we share with other Commonwealth entities and engaging with external stakeholders to document and manage them effectively;
- ensuring the risk framework remains relevant to our operating environment and activities through regular engagement and reporting on strategic risks to the accountable authority, Audit and Risk Committee and governance bodies;
- continuing to ensure a risk-based and proportionate approach is taken to the use of our compliance and enforcement powers and tools; and
- continuing to build and enhance our business continuity management capabilities.

Registered Organisations Commission



Foreword from Mark Bielecki, Registered Organisations Commissioner

The Registered Organisations Commission (ROC) is the independent regulator of 106 federally registered employer and employee organisations. Our functions include promoting the efficient management of organisations, and high standards of accountability of organisations and their office holders to their members.

There are 61 employer associations and 45 unions which, including those entities, are comprised of 354 reporting units across Australia. They report to the ROC that in the 2018-19 financial year, cumulatively they have more than two million members, control almost \$3.2 billion in assets and collect annual revenue in the order of \$1.7 billion.

The ROC seeks to encourage behaviours in registered organisations that see them consistently focussed on acting in the best interests of their members, ensuring members' money is spent in a way that is transparent, properly authorised and which complies with their obligations under the *Fair Work (Registered Organisations) Act 2009*, and their rules.

The ROC is in its third year and remains focussed on fulfilling its functions. It is committed to adding value to organisations and fostering good governance and financial transparency, as well as compliance with the RO Act.

Registered Organisations Commission

Purpose

The ROC's purpose is to administer the provisions of the *Fair Work (Registered Organisations) Act 2009* (RO Act), which regulates and encourages high standards of accountability of federally registered organisations (and their office holders) to their members.

Environment

The ROC commenced on 1 May 2017 and is headed by the Registered Organisations Commissioner, Mark Bielecki. The Commissioner is supported by a small number of staff employed by the FWO who operate under his direction. We operate as part of the broader industrial relations regulatory framework.

Our functions and activities were previously the responsibility of the Fair Work Commission (FWC). *The Fair Work Amendment (Registered Organisations) Act 2016* transferred these functions to the ROC with effect from 1 May 2017. On 2 May 2017, the ROC was entrusted with broader regulatory powers, including the registration of auditors and stronger powers to gather information.

Our functions and priorities

We aim to be valued by the community for the way we regulate and foster the efficient management and accountability of registered organisations.

Our functions are to:

- educate, assist and regulate federally registered organisations;
- promote effective governance and financial transparency; and
- investigate and take appropriate enforcement action.

We regulate organisations, including assessing their financial reports, annual returns and officer disclosure statements while at the same time making arrangements for the election of more than 11,500 of their office holders. We also register auditors and while we have a corporate service relationship with the FWO, we are independent in the exercise of our discrete statutory powers and functions.

During the period covered by this plan, we expect to continue to deliver on our role, particularly seeking to further develop a culture of voluntary compliance in registered organisations. We take a forensic approach in conducting inquiries and investigations, based on evidence, and the use of enforcement tools proportionately and appropriately.

Activities

We will:

1. Proactively educate registered organisations about financial and other reporting responsibilities by:
 - engaging with, informing and providing practical tools to assist registered organisations to comply with their statutory obligations;
 - increasing awareness of our role; and
 - collaborating with registered auditors as key 'gate-keepers' to enhance compliance.
2. Encourage democratic control and improved financial and disclosure compliance practices by:
 - supporting organisations through arranging elections;
 - administering a comprehensive protected disclosure (whistleblower) scheme;
 - the timely assessment and publication of financial reports, annual returns and other disclosure statements; and
 - promoting participation in approved governance training.
3. Undertake inquiries and investigations into suspected contraventions with:
 - a risk-based approach to what we will investigate;
 - an evidence-based approach to our decision-making;
 - a proportionate response to non-compliant behaviour and practices; and
 - the aim of influencing office holders in registered organisations to act in good faith, with due care and diligence, and in the interests of their members.

Performance

The 2019-20 Portfolio Budget Statements sets out the following outcome for the period covered by this plan:

Outcome 2: Effective governance and financial transparency of registered employee and employer organisations, through regulation, investigation and appropriate enforcement action.

Key Performance Indicators

The performance criteria for the ROC's program to deliver on its outcome are as follows:

- 95% of financial reports required to be lodged under the RO Act are assessed for compliance within 40 working days;
- 95% of annual returns required to be lodged under the RO Act are assessed for compliance within 40 working days;
- upon lodgement of prescribed information for an election, 95% of lodgements are dealt with within 40 working days;
- upon lodgement of an application for registration by an auditor, 95% of applications are dealt with within 40 working days; and
- multiple items of information to educate employee and employer registered organisation and their members are made available.

Capability

Our ability to effectively regulate and deliver successful outcomes for registered organisations, their members and the community is evident in all aspects of our operations. We are further developing our people and their skill-sets, our knowledge-base and our systems infrastructure to enhance the way we support and regulate our key stakeholders.

For the four-year outlook of this plan, we will:

1. Develop our people

We provide an environment where employees are well supported, challenged and inspired to carry out their work in a collaborative manner. We are committed to attracting, retaining and rewarding the highest possible calibre of staff and further developing their skills and knowledge.

2. Build a strong knowledge-base

We will continue to build structures to enable our staff to efficiently access important information so that they can address stakeholder needs, solve problems, gain insights and collaborate with colleagues.

3. Establish robust systems infrastructure

We have invested in new systems for managing our workflow, which we will continue to refine and enhance. In particular, we will work with our stakeholders with the aim of developing a portal for more efficient sharing of information and lodgement of documents.

Risk oversight and management

In the conduct of our work, we encounter a range of risks and challenges. We manage these by:

- applying a consistent approach across our work streams and integrating risk management across all our activities;
- applying a governance model which focuses on leadership and accountability, enabling us to meet our obligations; and
- providing support and encouraging our staff to capitalise on opportunities by actively engaging with risk and challenge.