

DUTIES OF THE FAIR WORK OMBUDSMAN (FWO)

Workplaces in Australia are governed by the *Fair Work Act 2009* (Cth) ("the Act") which is designed to protect the basic rights of the majority of people working in Australia. The government bodies administering this legislation are the:

- > Fair Work Ombudsman (FWO);
- > Fair Work Commission (FWC); and
- > Fair Work Divisions of the Federal Court and the Federal Magistrates' Court.

The FWO See *Fair Work Act* s. 679

The FWO was created as an independent statutory agency under the FW Act. The agency replaced the Workplace Ombudsman and the general advisory function of the Workplace Authority.

The FWO has Fair Work Inspectors that monitor the workplace compliance and advisory functions set out under the Act.

The Purpose of the FWO See *Fair Work Act* s. 682

The FWO is in place to monitor, inquire into, investigate and enforce compliance with relevant Commonwealth workplace laws. A stated purpose of the FWO is to promote harmonious workplaces.

The FWO's functions include:

- > providing education, assistance and advice on relevant Commonwealth workplace laws
- > promoting and monitoring compliance with relevant Commonwealth workplace laws
- > inquiring into and investigating any act or practice that may be contrary to relevant Commonwealth workplace laws
- > commencing proceedings or making applications to enforce relevant Commonwealth workplace laws and, where appropriate, seeking a penalty for contraventions of relevant Commonwealth workplace laws.

The Powers of a Fair Work Inspector See *Fair Work Act* s. 700

The Fair Work Inspectors are appointed by the FWO and are empowered to investigate and enforce compliance with relevant Commonwealth workplace laws and industrial instruments, including provisions of the FW Act, such as:

- > terms and conditions of employment
- > general protections, including workplace rights, freedom of association, discrimination, sham arrangements, coercion and undue influence
- > employee records and pay slip obligations
- > provisions of the Independent Contractors Act 2006, including prohibited conduct in relation to reform opt-in agreements
- > the National Employment Standards (NES)
- > orders of the FWC.

The National Employment Standards:

A Guide to Casual and Permanent Employee Entitlements and to the Powers of the Fair Work Ombudsman			
Entitlement under the NES	Does the Fair Work Ombudsman have enforcement powers?	Does this apply to permanent employees?	Does this apply to casual employees?
Maximum weekly hours	Yes	Yes	Yes
Fair Work Information Statement	Yes	All new employees engaged on or after 1 January 2010 must be given a Fair Work Information Statement. An employer is only required to provide an information statement once where an employee commences employment more than once in a twelve month period (i.e. for a casual employee).	
Requests for flexible working hours	No – this is to be resolved at the workplace level. Please note: employees with caring responsibilities do have access to state and federal anti-discrimination jurisdiction.	Yes – subject to a period of twelve months’ continuous service being provided.	Yes – subject to a period of twelve months’ continuous service being provided. Also, the employee must have been engaged on a regular and systematic basis and have a reasonable expectation of continuing to be engaged in that manner.
Parental leave	Yes, with regards to compliance with provisions of the NES.		
Community service leave			
Long service leave	Yes, where an entitlement is preserved as part of the NES.	Yes, provided the minimum period of service and other relevant requirements are satisfied.	This may apply to casual employees but will depend on the provision of the relevant industrial instrument.
Public Holidays	Yes, with regards to compliance with provisions of the NES. Where an industrial instrument requires penalty rates to be paid, this compliance may also be enforced.	Yes	Casual employees are not entitled to payment for an absence on a Public Holiday.

Notice of termination and redundancy pay	Yes, with regards to compliance with provisions of the NES.	<p>Notice of termination is an entitlement of all permanent employees.</p> <p>A modern award or enterprise agreement may require an employee to give notice.</p> <p>Redundancy pay will apply where the minimum period of service and other relevant requirements are satisfied.</p>	Notice of termination and redundancy pay does not apply to casual employees.
Annual leave	<p>Yes, with regards to compliance with provisions of the NES.</p> <p>The FWO may also enforce relevant modern award or enterprise agreement entitlements such as leave loading.</p>	<p>Paid annual leave is an entitlement of all permanent employees; annual leave is taken by agreement between employer and employee.</p> <p>Provisions vary between employees covered by a modern award or enterprise agreement, and those not covered.</p>	Casual employees are not entitled to paid annual leave.
Personal/carer's leave and compassionate leave	Yes, with regards to compliance with provisions of the NES.	<p>Yes, permanent employees are entitled to paid personal/carer's leave (10 days per year, or pro rata) and compassionate leave (two days per occasion).</p> <p>Permanent employees may access unpaid personal/carer's leave where their accrued personal/carer's leave is exhausted.</p>	Casual employees may access unpaid personal/carer's leave and compassionate leave.

Frequently Asked Questions

Who can bring a claim to the FWO?

This can either be via an employee or a union. The FWO may also conduct checks on particular workplaces or industry groups.

What do I do if a Fair Work Inspector visits my workplace?

Ask them to provide their ID card and ask the reason for their visit. The FW Act (s706) lists the areas that a Fair Work Inspector can inspect where a suspected contravention has occurred.

What type of information am I required to provide the Fair Work Inspector?

The inspector has extensive power including, but not limited to:

- authority to inspect any work, process or object;
- interview any person.

A notice will be provided in writing should the Fair Work Inspector require an employer to produce documents or records.

How long do I have to provide information requested by the Fair Work Inspector?

Up to 14 days.

Contacting the Victorian Chamber of Commerce and Industry

The Victorian Chamber's team of experienced workplace relations advisors can assist members with a range of employment, human resources and industrial relations issues.

Our experienced workplace relations consultants can also provide assistance to both members and non-members on a range of more complex matters for a fee-for-service. The consultants can, among other things, provide training to employees, conduct investigations and provide representation at proceedings at the Fair Work Commission.

For assistance or more information, please contact the Workplace Relations Advice Line on **(03) 8662 5222**.

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