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**Quarterly report by the Commonwealth
Ombudsman under s 712F(6) of the
*Fair Work Act 2009***

FOR THE PERIOD 1 OCTOBER TO 31 DECEMBER 2023

Quarterly report by the Commonwealth Ombudsman, Iain Anderson, under
Part 5-2 of Chapter 5 of the Fair Work Act 2009

November 2024

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Executive summary

This is the second Quarterly Report for 2023–2024 of the Commonwealth Ombudsman (Ombudsman) under s 712F(6) of the Fair Work Act (the Act).

Under s 712F(3) of the Act the Ombudsman must review the exercise of certain powers by the Fair Work Ombudsman (FWO) and Fair Work Inspectors.

Under s 712AA of the Act, the FWO may apply to a nominated Administrative Appeals Tribunal (AAT) presidential member for a FWO Notice if they reasonably believe a person has information or documents that will assist an investigation into certain suspected contraventions, and the person is capable of giving evidence. The FWO Notice may require its recipient to:

- give information to the FWO or a specified staff member of the FWO
- produce documents to the FWO or a specified staff member of the FWO, or
- attend before the FWO, or a specified staff member of the FWO who is a Senior Executive Service (SES) employee or an acting SES employee, and answer questions relevant to the investigation (examination powers).

Fair Work Inspectors are government officials appointed by the FWO under the Act who can investigate possible contraventions of workplace laws. Under section 711 they have the power to require a person to tell them their name and address if the inspector reasonably believes they have contravened a civil remedy provision. During the course of an investigation, section 712 also enables a Fair Work Inspector to issue a Notice to Produce, which compels a person to provide records or documents at a specified place and within a specified time.



Scope and methodology

The Ombudsman provides independent oversight of the FWO's compliance with the Act and procedural fairness for people subject to the FWO's examination powers.

When conducting our review of the FWO's use of examination powers, we assess its performance against the requirements of the Act, the *Fair Work Regulations 2009* (the Regulations), relevant best practice, FWO's internal guidelines and training material. We also focus on whether examinees are treated fairly and reasonable.

As required under s 8(5) of the *Ombudsman Act 1976*, we provide the FWO and opportunity to review and respond to our findings before finalising this report.

Under s 712F(6) of the Act, as soon as practicable after the end of each quarter of the financial year, the Ombudsman must prepare and present to the Parliament a report about examinations conducted under s 712AA during the quarter.

We did not review the FWO's use of powers under ss 711 and 712 of the Act during this inspection.

My Office acknowledges that this report has not been tabled in a timely manner. In my fourth quarterly report for 2022-23 I noted that my Office unintentionally excluded a review of powers under s 711 and s 712 of the Act. During the 2023-24 financial year, we clarified the extent of our inspection and reporting obligations with respect to these powers. This contributed to a delay in tabling the report for the 2023-2024 financial year. We will commence applying a risk-based approach to our inspections of the FWO in the 2024-25 financial year which will fulfil our reporting obligations.

Review criteria

We assess FWO Notices and examinations against the following criteria:

1. Was the application for a FWO Notice made in accordance with the requirements of the Act (s 712AA)?
2. Did the FWO Notice comply with the requirements of the Act and the Regulations (ss 712AA, 712AB and 712AC)?
3. Was the FWO Notice served in accordance with the requirements of the Act (s 712AD)?
4. Was the examination conducted in accordance with the requirements of the Act (ss 712AA, 712AE and 712C), the Regulations, relevant best practice and the FWO's



internal guidelines?

Our findings

There were no FWO Notices issued in the period for review under s 712AA of the Act. We made no findings in relation to the FWO's use of these powers.

In September 2024, the FWO were provided with a draft copy of this report for review.

