

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

FOR THE PERIOD 1 JANUARY TO 31 MARCH 2026

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

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Executive summary

This is the third Quarterly Report for 2025–2026 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 Review Tribunal 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).

A Fair Work Inspector is a government official appointed by the FWO under the Act who can investigate possible contraventions of workplace laws. Under s 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 an investigation, s 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.

In February 2026, we inspected the FWO's use of the powers under s 712 of the Act between 1 October to 31 December 2025 (the relevant period). There were no FWO Notices issued in the period for review under s 712AA of the Act or use of the power to ask for a person's name and address under s 711.



We made **1 recommendation** in relation to **2 findings**. We found:

- Notices to Produce did not sufficiently describe the relationship between the recipient and the compliance purpose, and
- insufficient guidance material to support Fair Work Inspectors when issuing or sending a Notice to Produce by email.

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 the treatment of examinees is fair and reasonable.

As required under s 8(5) of the *Ombudsman Act 1976*, we provide the FWO an 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. Section 712F(7) enables the Ombudsman to present to the Parliament any other reports about the results of reviews conducted under this section, including the use of powers under ss 711 and 712 of the Act.

Review criteria

We assess FWO Notices, examinations and the use of s 711 and s 712 powers 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?
5. Does the FWO have an effective framework to support Fair Work Inspectors exercising powers under s 711 and s 712 of the Act?
6. Are there adequate systems in place to record when a Fair Work Inspector exercises a power under ss 711 and 712 of the Act?
7. Has the FWO appropriately exercised its use of powers under ss 711 and 712 of the Act?

Our findings

FWO Notice (s712AA)

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

Powers to Request Name and Address (s 711) and to Produce Documents (s 712)

Our inspection included:

- a review of FWO's guidance material for Notices to Produce, and
- a review of a small sample of Notice to Produces issued during the relevant period.

Inspection statistics for the period 1 October 2025 to 31 December 2025		
Record type	Number of records made available	Number of records inspected
S 712AA FWO Notice	NIL	NIL
s 711 Power to request name and address	NIL	NIL
s 712 Notice to Produce	170	27

At this time of this inspection, the FWO had not yet received our report on our findings from our Quarter 2 of 2025–26 report.

Finding 1: Notices to Produce did not sufficiently describe the connection between the records being requested and the compliance purpose (repeat finding)

We identified 2 Notices to Produce that did not provide sufficient information to clearly identify the contravention or provision of the Act or Modern Award that was being investigated or assessed.

The first Notice to Produce (Notice 1) provided limited detail for the recipient to clearly understand how the requested records were linked to investigating a contravention of s 405 of the Act (*compliance with orders made by the Fair Work Commission under Part 3-2 of the Act*). The second Notice to Produce (Notice 2) did not list any provisions of the Act or Modern Award that were being assessed by the FWO or alleged to have been contravened by the recipient.

The FWO provided us with additional information which assisted us to understand the relationship between the records and the compliance purpose for Notice 1. The FWO also advised that the compliance purpose for Notice 2 was to identify if the recipient had complied with ss 323 and 45 of the Security Award cl 15.1 and 20.2 of the Act. The FWO acknowledged that this information was not included in the Notice to Produce and was an oversight by the issuing Fair Work Inspector.

These Notices to Produce did not sufficiently demonstrate to the recipient the relationship between the records or documents and the compliance purpose. We acknowledge that at the time of this inspection, the FWO had not yet been offered the opportunity to respond to similar findings made in our Quarter 2 of 2025–26 report

relating to administrative errors in Notices to Produce. However, findings relating to quality assurance have been made in previous inspection reports which the FWO had received.

We have previously made findings regarding errors, inconsistencies or omissions in Notices to Produce, including providing insufficient information to demonstrate the connection between the requested records and contravention of the Act or fair work instrument being assessed in 5 of our previous 10 inspections¹ conducted since 2023–24. We have made suggestions that the FWO implement tailored training for Fair Work Inspectors to improve consistency when preparing Notices to Produce, and that a quality checking process is implemented to minimise the risk of administrative errors occurring². The FWO have acknowledged that administrative errors have occurred and suggested they will consider strategies to assist in reducing and eliminating these errors.

We are concerned that despite the FWO’s response to these repeat findings, the FWO’s strategies have not sufficiently reduced or eliminated these errors, particularly as they relate to discrepancies in the information provided to recipients of Notices to Produce. The FWO quality checking processes supporting Fair Work Inspectors must assure there is consistency in information being contained in Notices to Produce and should reduce errors in Notices to Produce.

¹ Q1 2023–24 – Finding 2, Q2 2024–25 – Finding 2, Q3 2024–25 – Findings 2 and 3, Q1 2025–26 – Finding 2, Q2 2025–26 – Finding 2

² Quarter 3 2024–25 (Suggestion 2), Quarter 1 2025–26 (Suggestion 2)



Recommendation

Recommendation 1: The FWO implement a robust quality checking process for Notices to Produce to ensure a consistent application of the Fair Work Ombudsman's Notice to Produce Guide, and that the recipient can understand the connection between the requested records and the compliance purpose.

FWO response:

The FWO accepted this recommendation. The Notice to Produce Guide has been programmed for a wider revision in the first quarter of 2027–28 that will incorporate quality assurance elements. This will ensure that the connection between the compliance purpose and documents being sought are clearly explained in the notice. This is a separate revision than the FWO advised in response to Suggestion 1 in the Quarter 2 2025–26 report.

FWO advised the agency will identify opportunities to support Fair Work Inspectors to document their decision-making, which will include ensuring Notices to Produce clearly explain the connection between the records or documents being sought and the compliance purpose of the notice for the benefit of the recipient.

Finding 2: There is no clear guidance for Fair Work Inspectors about serving or sending Notices to Produce via email.

At the time of this report, the FWO had not received the finding from our Quarter 2 of 2025–26 inspection.

At the time of this inspection, we identified a Notice to Produce where it was unclear whether the recipient was provided with sufficient time to respond of at least 14 days. The Notice to Produce was served by email on 16 October 2025, and the date the records were due to be produced was 30 October 2025.

Pursuant to s 712(2)(c) of the Act, the Notice to Produce must specify a time, being at least 14 days, for the person to produce the requested records and documents.



We reviewed the FWO's Notice to Produce Guide to determine if there was a minimum timeframe Fair Work Inspectors should allow recipients to respond when the Notice to Produce is issued by email (similar to what is provided for when serving a Notice to Produce in person, by fax or by registered post- which ranges from 16 days to 19 days minimum). However, we were unable to locate any information or guidance for Fair Work Inspectors to follow when serving or sending a Notice to Produce via email.

After discussions with the FWO, we established the recipient was provided with exactly 14 days to respond. While in this instance the recipient was provided the minimum time to comply, in line with the FWO's Notice to Produce Guide, Fair Work Inspectors should allow a longer period of time to respond. The FWO's Notice to Produce Guide states:

'In this way, Fair Work Inspector can show to the courts where a matter proceeds to litigation that not only has a clear minimum of 14 days been provided, but the consideration has been given to common reasons for delay'³.

Our suggestion (Suggestion 1) from our Quarter 2 of 2025-26 report also applies to this finding, namely to ensure there is no uncertainty about the timeframe provided for response, and to assist Fair Work Inspectors serving or sending Notices to Produce via email, the FWO should consider updating their Notice to Produce guide to: include a strict minimum timeframe for serving or sending Notices to Produce via email; include guidance on how to serve or send a Notice to Produce via email, and; update Appendix A & B to include service by email.

Progress since previous inspection

At the time of this inspection, the FWO had only recently provided their responses to the Quarter 3 and Quarter 4 of 2024-25, and the Quarter 1 of 2025-26 reports. Remedial action taken by the FWO was not assessed at this inspection and will be reviewed at our Quarter 4 of 2025-26 inspection.

³ Section 12 of the Fair Work Ombudsman, Notice to Produce Guide, Version 10 (2025)

