

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

FOR THE PERIOD 1 OCTOBER TO 31 DECEMBER 2024

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 second Quarterly Report for 2024-2025 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 a Senior Executive Service (SES) employee or an acting SES employee is, and answer questions relevant to the investigation (examination powers).

Fair Work Inspectors (FWIs) are government officials appointed by the FWO under the Act who can investigate possible contraventions of workplace laws. Under s 711 of the Act, 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 of the Act also enables a Fair Work Inspector to issue a Notice to Produce (NTP), which compels a person to provide records or documents at a specified place and within a specified time.

In December 2024, we inspected the FWO's use of the powers under ss 711 and 712 of the Act. There were no FWO Notices issued in the period for review under s 712AA of the Act. We identified a repeat finding involving inconsistencies in the level of detail contained within Notices to Produce. As these records predated the remedial action we suggested to the FWO in our First Quarterly report for 2023-24, no further suggestion has been made in this report. We will assess the effectiveness of the FWO's actions in future reviews.



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 and the 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 ss 711 and 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 (FWI) exercising powers under s 711 and s 712 of the Act?
6. Are there adequate systems in place to record when a FWI 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 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.

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

We focussed our inspection on how FWIs used the powers under ss 711 and 712 of the Act between the 1 July to 30 September 2024 (relevant period). Our inspection included:

- monitoring progress on addressing our previous inspection findings
- a review of FWO's guidance material for NTPs, and
- a review of a small sample of NTPs issued during the relevant period.

Inspection statistics for the period 1 July 2024 to 30 September 2024		
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	148	12

We found that FWIs are supported by comprehensive guidance material which is readily accessible on the FWO internal intranet page. This is complimented by regular FWI training which helps promote a consistent approach to exercising powers under s 712 of the Act.

Finding One: Inconsistency in the level of detail contained within Notices to Produce issued under s 712 (repeat finding)

We found the level of detail contained within the NTPs varied and the template guidance provided to assist FWI's was not always followed. In instances where the template guidance was followed, NTPs were well structured and clear about the connection



between the records or documents requested and the compliance purpose to which the NTP related.¹

We identified one NTP² which provided limited detail for the recipient to clearly understand the matter under investigation and the link between the person listed in the NTP and their connection to the suspected contraventions. For example, the NTP failed to identify which Modern Award was applicable in the circumstances and the provisions of that Award that may have been contravened. The NTP also failed to outline the relevance of the transaction reports requested or how the dates for the request related to the FWO's investigation.

The NTP should list the particular provision of the Award for the recipient to understand the relationship between the matter under investigation and how the requested records or documents relate to furthering this investigation.

Our First Quarterly report for 2023-24 was received by the FWO in September 2024. In that report we suggested that the FWO should implement tailored training for FWIs to improve consistency when preparing and issuing a NTP, and that the training should align with the FWO's guidance material to promote uniformity. The FWO advised our Office in October 2024 that they accepted this suggestion and were considering delivery of this training to FWIs in the 2025 calendar year. The scheduled delivery of this training had not been finalised by the time of our December 2024 inspection.

In response to this report, the FWO advised the self-paced online training is being finalised and scheduled to launch in June 2025. This training will be mandatory for all FWIs and their managers.

The records we reviewed at this inspection predated the FWO's acceptance of our suggestion in the Q1 report for 2023-24 and we make no further suggestions in this report.

Progress since previous inspections

During the inspection, we reviewed the FWO's progress against the previous inspection findings from our First Quarterly report for 2023-24 which was held in August 2023. We were satisfied the FWO has addressed our suggestion to implement a requirement for FWIs to record their use of the s 711 power, as well as our suggestion to update guidance

¹ For example, MAT-31250-P5Y8, MAT-24988-C4M4 and MAT-30919-D9H3

² MAT-25933-S8F4



material to specify the recording of any use of s 711 in the FWO's case management system.

As the FWO's training schedule for 2025 had not been finalised, we will monitor and report on the implementation of our suggestion to deliver tailored training for FWIs to improve consistency in and quality of NTPs at our future inspections.

