

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

FOR THE PERIOD 1 JULY TO 30 SEPTEMBER 2025

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

**April 2026**



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# Executive summary

This is the first Quarterly Report for 2025–2026 of the Commonwealth Ombudsman (Ombudsman) under s 712F (6) of the *Fair Work Act 2009* (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).

Fair Work Inspectors (FWI) 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 FWI 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 August 2025, we inspected the FWO's use of the powers under s 712 of the Act. 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.

From our inspection, we made **3 suggestions** in relation to **4 findings**. We found:

- FWIs issuing an extension of time for the recipient to provide records despite internal guidance prohibiting the practice,



- An NTP did not sufficiently describe the relationship between the recipient and the compliance purpose,
- An NTP contained several deficiencies which would provide the recipient with a reasonable excuse not to comply, and
- The FWO should implement a consistent process when withdrawing an NTP.

Additionally, **suggestions 1** and **2** from our third quarterly inspection report for 2024–25 also apply to 2 of these findings.

## 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 FWIs exercising powers under ss 711 and 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 focused our inspection on how FWIs used the powers under ss 711 and 712 of the Act between the 1 April to 30 June 2025 (the relevant period). Our inspection included:

- monitoring the completion rate of the FWI training implemented in June 2025
- 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 April 2025 to 30 June 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	160	33

We found the quality of the NTPs to be generally of a high standard. Except for the NTPs subject to the findings in this report, most NTPs adequately demonstrated the connection



between the requested records and documents with the compliance purpose for which the NTP was issued.

**Finding One: An extension of time was given to respond to a Notice to Produce instead of issuing a new Notice to Produce (repeat finding)**

We identified an NTP where extra time was requested by the recipient. This NTP was issued on 30 April 2025 with records required to be produced by 20 May 2025. The NTP served document notes provided by the FWO stated “extension of compliance date to 3 June 2025”.

Pursuant to s 712(2)(c) of the Act, the NTP must specify a time, being at least 14 days, for the person to produce the requested records and documents. The FWOs NTP Guide states that:

*“Under no circumstances is it appropriate to grant an extension of time for an NTP, and Fair Work Inspectors should be aware that any attempt to extend the NTP timeframe may invalidate the NTP. Where an extension of time is sought and such extension appears reasonable in the circumstances, the Fair Work Inspector should consider issuing a new NTP (in consultation with their assistant director) and rely upon their discretionary powers not to enforce the original NTP.”*

We requested further information on why the FWO did not follow their internal guidelines. The FWO advised that the recipient had requested an extension due to the volume of documents they had to produce. While the FWO did not explicitly reply to the recipient stating that they were extending their NTP, the FWI advised that they would not pursue non-compliance with the NTP if the documents were provided by 3 June 2025. The FWO advised the use of the term “extension” in the Served Document Activity notes was a mistake and the NTP due date was not extended.

We made this same finding during Quarter 3 inspection in 2024-25. We identified an NTP where the FWI relied on their discretion not to enforce compliance by the due date specified in the NTP to allow the recipient to comply with the NTP. We found that as a new NTP was not issued with this extended response date, there is a risk that the person receiving the NTP did not comply with the notice and may have been in breach of s712(3) of the Act.

The FWO had not received our report from the Quarter 3 inspection and afforded the opportunity to respond to our suggested remedial action prior to this inspection. Our suggestion (**Suggestion 1**) from the Quarter 3 inspection of 2024-25 also applies to this finding.



We note that the extensions provided by FWIs for the affected NTPs identified through the Quarter 3 inspection of 2024–25 and the Quarter 1 inspection of 2025–26 occurred in circumstances where there was a high likelihood that the recipient would cooperate with FWO’s request. In these circumstances, we suggest the FWI may wish to consider contacting the recipient prior to the issue of the NTP to discuss a reasonable timeframe for the recipient to comply with any NTP that would likely be issued.



## Suggestions

**Suggestion 1 from the Q3 2024–25 report applied to this finding, being:** *“FWIs should issue a new NTP whenever the specified date of response in an NTP is extended or when a person served with the NTP is given more time to respond to the notice. Any considerations and decision to extend the response date or not proceed with an NTP should be accurately recorded in the FWO case management system.”*

**Suggestion 1:** To ensure the recipient is provided with sufficient time to comply with an NTP, FWIs should consider contacting the recipient prior to issuing an NTP to discuss the volume of records or documents required and a reasonable timeframe to comply.

### **FWO response:**

FWO considers that whether a new NTP should be issued will depend on the circumstances of the matter, and will consider possible updates and improvements to our guidance materials to better explain when and why a new NTP should be issued. FWO agrees that any decision making should be documented in the case management system.

FWO agrees that FWIs should consider contacting the recipient prior to issuing the NTP, which is reflected in our guidance material and training.

***Finding Two: A Notice to Produce did not sufficiently describe the connection between the recipient of the NTP and the compliance purpose***

We identified one NTP which failed to explain how the recipient was related to the compliance purpose and investigation listed in the NTP.

The FWO's NTP Guide provides guidance to FWIs on the requirement to be as specific as possible regarding the purpose for which they are requiring the records or documents. The NTP must allow the recipient to understand the relationship between the requested records or documents and the compliance purpose for which the NTP is being issued.

During the inspection we asked the FWO for further information on the connection between the recipient, the company listed on the NTP and the witness. The FWO advised the recipient was a third party to the FWO investigation and had investigated a complaint and completed an audit into the company listed on the NTP. The NTP was seeking documentary evidence relating to the recipient's investigation.

Despite the FWO providing this context, it was unclear on the face of the NTP how the recipient related to the compliance purpose. Further information should have been included to assist the recipient in understanding their involvement in the FWO investigation and how the records or documents the FWO was seeking from the recipient, would progress this investigation.

While we have previously made findings relating to FWO not clearly explaining the connections between the recipient, requested documents and compliance purpose in an NTP, this record appeared to be an isolated incident. The remaining NTPs we inspected adequately demonstrated the connection between the requested records with the compliance purpose for which the NTP was issued.



## Suggestion:

**Suggestion 2:** Where an NTP is issued to a third-party of the investigation, the FWO should ensure that the NTP has undergone a review process to guarantee the connection between the recipient and compliance purpose is clearly explained.

### **FWO response:**

FWO will identify opportunities to support FWIs to document their decision making, which will include ensuring that the NTP clearly explain the connection between the records or documents being sought and the compliance purpose of the notice.

### ***Finding Three: A Notice to Produce contained multiple errors which would provide the recipient with a reasonable excuse not to comply***

We identified one NTP which was withdrawn by the FWI, that contained several errors and did not comply with the FWO's internal guidance. The NTP was not withdrawn because of these errors.

#### Timeframe given to recipients to comply

According to the FWO's NTP guide, if an NTP is sent by registered post, a FWI should allow 19 days in total, as a minimum, for a response. FWIs must consider that service is deemed to take effect at the time at which the letter would be delivered in the ordinary course of post.

This NTP was issued on 6 May 2025 and served by registered post. The records were required to be produced by 20 May 2025, being 14 days later. The FWI did not follow FWO's internal guidance, which may not have given the recipient sufficient time to comply.

#### Insufficient details included in the notice



When describing the compliance purpose, the NTP stated the following:

*“The Office of the Fair Work Ombudsman is investigating whether the Business has contravened provisions of the Fair Work Act 2009, and/or Terms of the Social Community, Home Care and Disability Services Industry Award 2010, In respect of current employees of the business you have already identified to us on 15 April 2025.”*

While this was stated in the compliance purpose, the NTP did not list any provisions of the Fair Work Act or Modern Award that were being assessed by the FWO or alleged to have been contravened by the business.

We consider the NTP to be a standalone document, and all details must be included within the NTP to allow the recipient to consider whether the records or documents requested relate to the compliance purpose. These requirements are set out clearly in Section 8 (Issuing an NTP) of the FWO’s NTP guide. If the NTP does not relate to all employees of the company under investigation, then the names of the relevant employees should be included within the NTP, rather than referring to previous email correspondence.

#### Administrative errors

We identified inconsistencies in the NTP on which records or documents the company was requested to produce. The records or document set out in the first paragraph of the NTP initially was not consistent with what was specified in the NTP’s section addressing “Information required for production”. While this may not invalidate the NTP, it may give the recipient a reasonable excuse not to comply as it is not clear what records or documents were required.

The NTP was not withdrawn because of these issues, but rather in response to other factors highlighted by the recipient. These included errors identified by the recipient with:

- the nature of the work site and its current use
- the engagement of workers or staff
- clarification of worker roles, and
- the use of an incorrect ABN.

We were concerned that these issues were not identified prior to the NTP being issued and highlights the importance of NTPs being subject to a quality checking process.



Our Quarter 3 inspection in 2024-25 identified several minor administrative errors in the drafting and issuing of NTPs. As the FWO had not received our report from that inspection, prior to the conduct of this inspection, the FWO has not been provided the opportunity to respond to our suggested remedial action. Our suggestion (**Suggestion 2**) from the Quarter 3 inspection of 2024-25 also applies to this finding.



### Suggestion:

**Suggestion 2 from the Q3 2024-25 report applied to this finding, being:** *"The Fair Work Ombudsman implement a quality review process for NTPs to minimise the risk of administrative errors occurring."*

### FWO response:

FWO acknowledges that administrative errors have occurred and will consider strategies and approaches to assist in reducing and eliminating these types of errors.

### ***Finding Four: Improving processes and consistency when withdrawing a Notice to Produce***

We reviewed four NTPs which had been withdrawn by the FWI. We were unable to identify a consistent process used by FWIs for withdraw NTPs and learnt that the FWO's NTP guide does not provide sufficient guidance on process for FWIs to follow.

During the inspection, the FWO confirmed that the NTP guide does not contain specific guidance on withdrawing NTPs. That said, FWO's new Acorn training module and case management system user guide would provide some material on how to record the withdrawal of an NTP in the case management system.

For one NTP the data provided to our Office before the inspection stated this NTP was withdrawn. The case management system failed to reflect this status and there were no notes relating to the withdrawal within the accompanying NTP Served Document Activity.



We were only able to locate an email from FWI to the recipient's advising the NTP would be withdrawn based on matters raised by the recipient.

In a second example, the NTP was withdrawn after the recipient advised the FWO that the incorrect Modern Award was listed on the NTP. When withdrawing the NTP, the FWI issued a brief letter to the recipient advising the NTP had been withdrawn.

A third NTP was withdrawn due to the recipient's business moving addresses. When withdrawing the NTP, the FWI issued a letter to the recipient referencing:

- a summary of the compliance purpose in the initial NTP
- the date the original NTP was issued, and the date of compliance for the NTP
- summary of the phone call the FWI had with the recipient which led to the withdrawn of the NTP, and
- statement by the FWI advising the NTP was withdrawn, and a new NTP would be issued in due course.

The fourth NTP was withdrawn by the FWI approximately 6 weeks after the compliance due date. This NTP was deficient as it did not contain the necessary details for the company to comply with the NTP. The FWO advised that the issuing FWI had ceased employment with the FWO shortly after the NTP was due and that the new FWI for the investigation had failed to identify the deficiencies within the compliance period, resulting in the subsequent delay in withdrawing the NTP. The new FWI emailed the recipient advising of the error in the NTP and the withdrawal of the Notice. No formal letter was issued for this withdrawal.

While we identified no specific non-compliance with the Act, we suggest that additional guidance or implementing a consistent practice would strengthen the FWO's administration and monitoring of NTPs.



### **Suggestion:**

**Suggestion 3:** The FWO updates their NTP guide to include a process FWIs should undertake when withdrawing an NTP.

### **FWO response:**

FWO will consider strategies to update and improve our guidance materials regarding withdrawing NTPs.

### **Progress since previous inspection**

The FWO had not received the reports from our 2024-25 third and fourth quarterly inspections prior to conducting this inspection. We did not assess the FWO's implementation of previous findings from those inspections.

We were pleased however, with the 92% completion rate of the Fair Work Inspector training that was launched on 12 June 2025. This training was implemented in response from the Quarter 1, 2023-24 report and aims to improve consistency when Fair Work Inspectors are preparing and issuing an NTP.

