

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

FOR THE PERIOD 1 JANUARY TO 31 MARCH 2023

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

December 2023

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INTRODUCTION

This is the third quarterly report for 2022-2023 by the Commonwealth Ombudsman (Ombudsman) under s 712F(6) of the *Fair Work Act 2009* (the Act).

Under s 712F(3) of the Act the Commonwealth Ombudsman must review the exercise of examination powers by the Fair Work Ombudsman (FWO) and any member of the staff of the Office of the FWO.

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

Fair Work Ombudsman powers

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 and 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.

REVIEW SCOPE AND CRITERIA

Commonwealth Ombudsman's review role

The Ombudsman provides independent oversight of the FWO's compliance with the Act and procedural fairness for examinees.

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. We also focus on whether examinees are treated fairly and reasonably.

As required under s8(5) of the *Ombudsman Act 1976*, we provided the FWO an opportunity to review and respond to our findings before finalising this report.

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?

PROGRESS MADE SINCE PREVIOUS QUARTERLY REPORT

We made one repeat finding in our previous Quarterly Report. We found one instance where an application for a FWO Notice requiring an individual to attend and answer questions related to more than one person. Under s 712AA(4) of the Act, an application can only relate to one person.

We suggested the FWO revise its internal guidance to include information on what must be included in an application to the AAT for a FWO Notice, to ensure an application only relates to one person in accordance with the requirements of the Act.

To address our suggestion, the FWO updated their guidance and application template to indicate an application must relate to only one examinee on address this issue.

REPORT ON EXAMINATIONS AND REVIEWS CONDUCTED

FWO Notices issued between 1 October to 31 December 2022

Between 1 October to 31 December 2022, the FWO issued 3 Notices including one Notice to produce documents and 2 Notices to attend and answer questions. At this inspection (February 2023), we reviewed all 3 FWO Notices and made no findings.

For one record (PVW22/00003), the FWO advised they had not provided a copy of the examination transcript to the examinee in line with internal policies. While there is no legislative provision requiring the FWO to provide a copy of the transcript to the examinee, we see this procedure as good practice.

The examinee was advised that they may be provided with a copy of the transcript at a later date. We will follow this up at our next review.

APPENDIX A — EXAMINATIONS CONDUCTED AND REVIEWED

The Ombudsman reviewed 2 examinations that were conducted by the FWO between 1 October to 31 December 2022.

The table below shows the dates on which the examinations were conducted and when the Ombudsman conducted its review.

FWO Examination Reference Number	Date of FWO Examination	Ombudsman Review Conducted
PVW22/00001	14 October 2022	27-28 February 2023
PVW22/00003	9 December 2022	28 February 2023