

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

**FOR THE PERIOD 1 APRIL TO 30 JUNE 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 fourth 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 no findings at our previous inspection.

## **REPORT ON EXAMINATIONS AND REVIEWS CONDUCTED**

There were no FWO Notices issued in the period for review.

At our previous review, we noted that for one Notice (PVW22/00003), the FWO had not provided an examinee a copy of the transcript in line with the FWO's internal policies. In June 2023, our Office sought to confirm whether the examinee had been provided a copy at a later date. The FWO advised the examinee will be provided a copy of the transcript prior to any further interviews or at the end of the investigation.

In October 2023, the FWO provided an update to our office and advised that the examinee will be provided with a copy of the transcript of the examination at the end of the investigation (which is still ongoing). In addition to this, the examinee was offered the opportunity to review the transcript and provide comment on its accuracy.



## CHANGES TO OMBUDSMAN REVIEWS

On 6 June 2023, the Commonwealth Ombudsman wrote to the Fair Work Ombudsman advising of changes to our reviews. Our Office had unintentionally excluded a review of two powers under *Part 5-2, Division 3, Subdivision DB - Powers to ask questions and require records and documents* since changes were made to the Act in 2017. These powers are the power to ask names under s 711 and notices to produce under s 712 of the Act.

The FWO provided us with preliminary information on these powers to inform changes to our reviews. These powers will be reviewed in 2023-24 and our office will continue to review these powers moving forward.