

The Auditor-General
Audit Report No.14 2012–13
Performance Audit

Delivery of Workplace Relations Services by the Office of the Fair Work Ombudsman

Office of the Fair Work Ombudsman

Australian National Audit Office

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Canberra ACT
18 December 2012

Dear Mr President
Dear Madam Speaker

The Australian National Audit Office has undertaken an independent performance audit in the Office of the Fair Work Ombudsman in accordance with the authority contained in the *Auditor-General Act 1997*. Pursuant to Senate Standing Order 166 relating to the presentation of documents when the Senate is not sitting, I present the report of this audit, and the accompanying brochure, to the Parliament. The report is titled *Delivery of Workplace Relations Services by the Office of the Fair Work Ombudsman*.

Following its presentation and receipt, the report will be placed on the Australian National Audit Office's Homepage—<http://www.anao.gov.au>.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Ian McPhee', is positioned above the printed name.

Ian McPhee
Auditor-General

The Honourable the President of the Senate
The Honourable the Speaker of the House of Representatives
Parliament House
Canberra ACT

AUDITING FOR AUSTRALIA

The Auditor-General is head of the Australian National Audit Office (ANAO). The ANAO assists the Auditor-General to carry out his duties under the *Auditor-General Act* 1997 to undertake performance audits, financial statement audits and assurance reviews of Commonwealth public sector bodies and to provide independent reports and advice for the Parliament, the Australian Government and the community. The aim is to improve Commonwealth public sector administration and accountability.

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Abbreviations

| | |
|------------------------|--|
| Act, the | <i>Fair Work Act 2009</i> |
| AVR | assisted voluntary resolution |
| complaint | workplace complaint |
| Finance | Department of Finance and Deregulation |
| FWO | Office of the Fair Work Ombudsman |
| KPI/s | Key Performance Indicator/s |
| manual | Fair Work Ombudsman Operations Manual |
| NAVR | National Assisted Voluntary Resolution |
| NEP | National Employer Program |
| NES | National Employment Standards |
| PBS | Portfolio Budget Statements |
| state partner agencies | Three State Government agencies (New South Wales, Queensland and South Australia) which have staff appointed as Fair Work Inspectors and that are contracted to complete an agreed number of investigations audits and education visits in their state |
| website | Fair Work Ombudsman website < fairwork.gov.au > |

Glossary

| | |
|-------------------------------|--|
| audit | A process to check an employer's compliance with workplace legislation by examining a range of employment records. |
| campaign | A planned compliance activity that seeks to reduce systemic patterns of non-compliance in industries and/or locations that usually includes an education and audit phase. |
| complaint | A complaint from an employee about their workplace pay and/or conditions, and/or rights. |
| investigation | A formal process to determine if workplace legislation has been breached by an employer. |
| modern award | Industry or occupation-based awards that supplement the National Employment Standards. The awards set out additional minimum terms and conditions for particular industries or occupations, including monetary entitlements. |
| National Employment Standards | Ten minimum standards applying to employment of employees under the <i>Fair Work Act 2009</i> . |
| Nexus | The Office of the Fair Work Ombudsman's investigations case management system. |
| pre-modern award | A non-legal term used by the Office of the Fair Work Ombudsman to refer to federal and state-based awards and instruments that were replaced by modern awards. |

Summary and Recommendations

Summary

Introduction

1. The current national workplace relations system began to take effect for employers and employees with the commencement of the *Fair Work Act 2009* (the Act) on 1 July 2009.¹ Key changes introduced at that time included a revised collective bargaining framework for enterprise agreements and strengthening of protection for employees against unfair dismissal. Subsequently, on 1 January 2010, a safety net for employees was established. This included the National Employment Standards and modern awards for industries and occupations. At this time certain states referred industrial relations powers to the Australian Government, resulting in the large majority of Australian employers and employees becoming subject to the Fair Work legislation.
2. Under the Act, a revised institutional framework for the administration of the workplace relations system was introduced, including two new agencies which commenced operations on 1 July 2009: the Office of the Fair Work Ombudsman (FWO) and Fair Work Australia (FWA).² The Fair Work Ombudsman is an independent statutory office created by the Act to promote harmonious, productive and cooperative workplace relations and ensure compliance with workplace laws. FWO consists of the Fair Work Ombudsman, his staff, and Fair Work Inspectors appointed under the Act by the Fair Work Ombudsman to exercise compliance powers. The broad coverage of the Act and the extent of change it introduced for the community highlight the importance of FWO's workplace relations services, both in terms of the initial implementation and ongoing operation of the reformed workplace relations system. FWO is the focus of this audit.

¹ The Act replaced the *Workplace Relations Act 1996* which was amended in 2005 to introduce the former Government's 'WorkChoices' workplace relations system.

² FWA is the national workplace relations tribunal that makes decisions about the national minimum wage and can create and change modern awards. It deals with a range of workplace matters including unfair dismissal, right of entry and enterprise bargaining. FWA is also responsible for administering the provisions of the *Fair Work (Registered Organisations) Act 2009* which deal with registration and accountability of unions and employer associations registered under that Act.

Office of the Fair Work Ombudsman

3. The main functions of FWO under the Act are to: provide information and advice about the workplace relations system; educate people about their workplace rights and obligations; investigate suspected contraventions of workplace laws, awards and agreements; and litigate to enforce workplace laws and to deter people from not complying with their workplace responsibilities. The mechanisms FWO uses to perform these functions include:

- the Fair Work Ombudsman website, which provides self-service tools and other resources;
- the Fair Work Infoline (FWO's call centre);
- national and regional campaigns, which involve education and audit activity in selected industries and/or locations; and
- processes for resolving workplace complaints, including assisted voluntary resolution and investigations.

4. As part of its service delivery model, FWO also has contractual arrangements with relevant agencies in the New South Wales, Queensland and South Australian governments (state partner agencies). These agencies are contracted to complete an agreed number of education visits, audits and investigations into complaints in their state.³ To enable the delivery of these services, the Fair Work Ombudsman appoints certain state partner agency staff as Fair Work Inspectors, with the same powers as Fair Work Inspectors who are on the staff of the Fair Work Ombudsman.⁴ The current contractual arrangements with the three state partner agencies commenced on 1 January 2010 and are due to expire on 31 December 2012. In December 2012, FWO advised that two of the state partner agencies have agreed to extend their contracts through to June 2013.⁵

5. As at 30 June 2012, FWO had 827 employees, including 360 Fair Work Inspectors and 181 Fair Work Infoline staff (these figures are based on

³ FWO has 26 offices across Australia, located in all capital cities and in 18 regional centres, with the state partner agencies offering the benefits of providing services through an additional 26 offices.

⁴ FWO's Fair Work Inspectors also undertake audit and investigation work in these states.

⁵ The Queensland Government decided not to enter into another contract.

head-count). There were an additional 183 state partner agency Fair Work Inspectors. Between 2010–11 and 2012–13, FWO's departmental expenses are forecast to decline by 9 per cent to \$137 million, and its average staffing level is forecast to decline by 13 per cent to 753 staff. FWO advised that its funding levels were determined based on an assumption that incidents of non-compliance following the introduction of the Act would reduce as employers and employees gained a better understanding of their rights, responsibilities and obligations.⁶

6. Based on information in FWO's annual reports, in the three years to end June 2012, the Fair Work Ombudsman website received nearly 14.1 million visits and over 2.4 million telephone calls to the Fair Work Infoline were answered. In addition, FWO reported finalising over 72 000 workplace complaints and approximately 16 700 audits of employers, recovering more than \$91 million in unpaid wages and entitlements for approximately 51 000 employees.

Audit objective, criteria and scope

7. The audit objective was to assess the effectiveness of FWO's administration of education and compliance services in relation to the *Fair Work Act 2009*. The three high-level audit criteria used to assess FWO performance against the objective were:

- education and compliance services are well-designed and appropriately targeted;
- education and compliance services are effectively delivered; and
- the effectiveness of education and compliance services is monitored, evaluated and reported to stakeholders.

8. The scope of the audit included FWO's administration of the Fair Work Ombudsman website, the Fair Work Infoline and national and regional campaigns, and its handling of workplace complaints received from

⁶ FWO received approximately \$20 million per annum in appropriations from 1 January 2010 to meet its extra obligations arising from the referral of industrial relations powers from New South Wales, Queensland, South Australia and Tasmania. This funding ceases on 30 June 2013. The 2012-13 Education, Employment and Workplace Relations Portfolio Budget Statements indicates a further reduction of \$19 million in FWO's departmental expenses in 2013–14 related to the non-continuation of this funding. FWO advised in October 2012 that it is seeking additional ongoing funding of approximately \$20 million per annum in order to maintain its current levels of service.

employees. The audit considered FWO's investigations manual, processes and data; but did not examine FWO's use of coercive powers or the appropriateness of the outcomes of its investigations into workplace complaints.

Overall conclusion

9. To support the introduction of workplace relations reforms in 2009, the Office of the Fair Work Ombudsman (FWO) was established to educate employers, employees and contractors about the reformed workplace relations system, and to ensure compliance with new workplace laws. The changes in workplace relations were far-reaching, including additional protections for employees, new employment standards and awards, affecting the large majority of Australian employers and employees. Within this context, FWO seeks to optimise voluntary compliance with workplace legislation by providing information and education services, while taking enforcement actions to address identified non-compliance where this is necessary.

10. The demand for FWO's services has remained high⁷ following the introduction of the *Fair Work Act 2009* (the Act)—for 2011–12, FWO reported nearly 6.6 million visits to the Fair Work Ombudsman website, over one million calls to the Fair Work Infoline and more than 26 000 workplace complaints.⁸ In the main, available feedback on FWO's workplace relations services has been positive.⁹ A substantial increase in the use of the website, and the low level of requests for a review of the handling or outcome of a workplace complaint, provide other positive indications of service quality.¹⁰ Nonetheless, some key workplace relations services have not been consistently accessible or timely. For 2011–12, FWO reported that 24 per cent of calls to the Fair Work Infoline were abandoned, reflecting lengthy call wait times; and

⁷ One of the factors that has influenced the demand for FWO's services is the transitional arrangements in place for modern awards. More than 4000 pre-modern awards are being transitioned into 122 modern awards. The transition to modern awards finishes at end June 2014.

⁸ Statistics are sourced from FWO's 2011–12 Annual Report. ANAO analysis of data in FWO's investigations case management system calculated the same number of workplace complaints received.

⁹ For example, out of 600 respondents to a client survey in late 2010 on the Fair Work Infoline and workplace complaints services, more than 70 per cent of the respondents were either 'very satisfied' or 'satisfied' with the level of service they received from the Fair Work Ombudsman.

¹⁰ In 2011–12, the reported number of requests for a review of the handling or outcome of a workplace complaint was less than one per cent of the total number of complaints.

approximately 68 per cent¹¹ of workplace complaints were finalised within 90 days compared to a target of 80 per cent.¹²

11. FWO's administration of education and compliance services in relation to the Act has generally been sound, with scope for the agency to improve its use of information and analysis to further inform service delivery strategies. FWO has delivered a good range of well developed services to support compliance with workplace laws. Appropriate training and guidance material underpin FWO's program delivery, and the agency has established monitoring and reporting mechanisms.

12. Similar to some other Australian Government agencies, FWO has experienced reductions in its departmental budget since 2009–10, with a further reduction forecast for 2013–14. A strategic approach to the design and delivery of its program is crucial for FWO to effectively manage the ongoing demand for its services and best support compliance with workplace laws. Along these lines, FWO has strengthened the design and content of the Fair Work Ombudsman website to assist in meeting the information needs of clients without intervention. It also recently formalised mediation as another mechanism to resolve workplace complaints in a timely manner and developed and commenced implementing a diverse range of agency change projects.

13. However, FWO could improve its overall program planning and monitoring approaches by integrating risk management into these activities, and through systematic measurement of the effectiveness and efficiency of its workplace relations services. Currently, FWO does not apply a structured risk management approach as part of its identification and response to key workplace relations issues for employers and employees, nor does it apply such an approach to its development and application of internal capabilities to meet the demand for its services. A strengthened approach to measuring effectiveness and efficiency would provide a stronger basis for FWO to assess the working of the reformed workplace relations system over time, and to

¹¹ ANAO analysis of data in FWO's investigations case management system calculated the percentage of complaints finalised by FWO in 90 days to within one per cent of the number reported in FWO's 2011–12 Annual Report.

¹² In the second half of 2011–12, FWO prioritised the resolution of 'old' complaints. Reducing the backlog of old complaints has assisted with the timeliness of complaints resolution in the early part of 2012–13. In July and August 2012, 78 per cent and 82 per cent respectively of complaints were finalised within 90 days.

make adjustments in service delivery strategies to improve their cost-effectiveness.

14. The ANAO made two recommendations which aim to assist FWO to strengthen its overall approach to service delivery in support of the reformed workplace relations system.

Key findings by chapter

Program governance arrangements (Chapter 2)

15. FWO's Executive Committee provides the Fair Work Ombudsman with a collaborative forum to assist him to exercise his responsibilities, including oversight of the strategic direction of FWO's program and monitoring program performance. The key matters considered by the committee in 2011–12 included reductions to FWO's budget and staff numbers in the context of the continuing high level of demand for services. The Executive Committee also instigated 28 strategic projects aimed at assisting FWO to change its program support, design and delivery arrangements, and to achieve the Government's vision of fair Australian workplaces.

16. FWO identified its strategic program delivery risks for the period 2009–2012. The identified risks included shortcomings in internal capabilities and inability to enforce the reformed workplace system. However, FWO's risk mitigation strategies to identify and respond to any issues arising in the implementation of the major changes in the workplace relations system were underdeveloped. FWO also did not allocate risk management responsibilities, or update its risk register to take into account emerging risks as its budget situation changed. There would be benefit in FWO applying a structured approach to risk management as part of its strategy, planning and decision-making, including through regular assessment of difficulties being experienced by employers and employees in the application of workplace relations requirements. This would assist FWO to maintain and improve its capabilities to be able to effectively respond to the demand for its services. FWO faces challenges in improving the accessibility, timeliness and/or targeting of its Fair Work Infoline, audit and complaints handling services, and decisions that impact on these services should take into account an assessment of the associated risks.

17. As mentioned in paragraph 4, FWO has contractual arrangements with relevant government agencies in New South Wales, Queensland and South

Australia. Fair Work Inspectors in these state partner agencies conduct education visits, audits and investigations into complaints. FWO has several mechanisms in place to oversee and support the delivery of these services. These include a Partnership Management Committee, mandatory training of the state partner agencies' Fair Work Inspectors and quality assurance reviews. Despite these mechanisms, there have been some issues with the quality and timeliness of services delivered by the state partner agencies during the term of the contracts. In developing any future contracts with state partner agencies, FWO could seek to strengthen performance incentives.

Information and advice (Chapter 3)

18. The provision of accessible and useful information and advice is necessary for FWO to optimise voluntary compliance and meet client needs. In this respect, the Fair Work Ombudsman website is structured around key workplace relations topics, designed to provide easy navigation for a large number of clients. Further, FWO reported that out of over one million calls made to the Fair Work Infoline in 2011–12, approximately 67 per cent of the calls were answered by advisers and 9 per cent of callers chose to use the available self-service option. However, the remaining 24 per cent of calls were abandoned. The high abandonment rate of calls reflected lengthy wait times, which averaged nearly 10 minutes. FWO has planned a further reduction in the number of Fair Work Infoline advisers in 2012–13, and will need to maintain visibility over the impact of the reduction on call wait times and abandonment using informative performance measures.¹³

19. FWO's website contains extensive and tailored content for employers and employees. The website includes several widely used self-service tools, which provide detailed information on pay and conditions for different industries and types of employment. ANAO tested the accuracy of the most used pay calculator for 50 employment scenarios and found that in 43 cases the calculator provided the same hourly rate of pay, including any allowances, as the applicable award. In the remaining seven cases, the webpage recommended the user call the Fair Work Infoline due to the complexity of the

¹³ Changes to the monthly dashboard report presented to FWO's Executive Committee during 2012 reduced the quality of information reported to the Committee about the performance of the Fair Work Infoline.

calculations. The tailored information provided through the website also assists in responding to many enquiries made through the Fair Work Infoline.

Outreach initiatives (Chapter 4)

20. FWO's national and regional campaigns involve education and audit activity in selected industries or locations. In 2011–12, FWO completed 26 campaigns, compared to a target of 20 campaigns. The selection of national campaigns has been well informed by analysis of complaints data and consultation involving relevant FWO staff and representatives of the state partner agencies. However, the basis for selecting regional campaigns was more variable, and in some cases the choice of industry was not supported by data analysis. For completed campaigns, FWO's planning, monitoring and reporting has generally been sound.

21. The number of employer audits undertaken by FWO as part of campaigns has increased substantially in the past three financial years, and significantly exceeded FWO's internal target for 2011–12.¹⁴ However, there has been variability in the number and type of audits undertaken at a state level relative to the size of the state and the number of workplace complaints received. For example, in 2011–12, 860 monetary audits¹⁵ were completed in Victoria, and in New South Wales, 71 monetary audits and 137 non-monetary audits were completed. A more coherent approach to targeting state level audits would base the number and type of audits undertaken on identified risks of non-compliance. Changes in the coverage of state level audits could also be considered as part of contract renegotiations with relevant state agencies.

Workplace complaints handling (Chapter 5)

22. FWO recently amended its arrangements for employees to lodge a workplace complaint, removing the option to lodge a complaint by email. This is likely to result in FWO receiving fewer complaints that are not within its remit. However, it also makes FWO's complaints handling service less

¹⁴ Levels of non-compliance identified as part of the audits have remained relatively stable. For 6547 audits of employers in 2011–12, non-compliance with workplace legislation was identified for 35 per cent of the employers.

¹⁵ Monetary audits consider the appropriateness of wages and penalty rates paid by employers, whereas non-monetary audits focus solely on recordkeeping requirements.

accessible for employees. As a consequence, it is important that FWO review the impact of the change in lodgement arrangements in the short term, and make any necessary adjustments to support accessibility. FWO receives around 100 workplace complaints per working day, which are allocated for resolution using a suitable range of methods based on the nature and complexity of the complaint. In particular, the use of assisted voluntary resolution, and more recently, formal mediation, for inquiring into and resolving less complex complaints has assisted FWO to deal with a large number of the more straightforward complaints in a timely manner. FWO has also pursued a range of other strategies to improve the timeliness of its complaints handling, which include an agency change project directed towards developing an early treatment model for workplace complaints. While in 2010–11 and 2011–12 FWO finalised action on less than 70 per cent of complaints in 90 days compared to a target rate of 80 per cent, the agency reported that timeliness improved in the first two months of 2012–13.

Performance monitoring and reporting (Chapter 6)

23. The objective of FWO's single program is 'to educate employers, employees, organisations and contractors about the workplace relations system and to ensure compliance with workplace laws'.¹⁶ The FWO KPIs in the Education, Employment and Workplace Relations Portfolio Budget Statements focus on activity in relation to its program deliverables, including aspects of timeliness and accessibility of services. However, the KPIs do not directly measure the effectiveness of FWO's program in achieving its objective and contributing to FWO's outcome. Although developing measures of effectiveness can be challenging, it is important that they are established for internal management and external accountability purposes, including gauging the impact of changes in delivery approaches over time. Along these lines, FWO should develop effectiveness measures and targets for underlying levels of non-compliance with workplace laws¹⁷, and for stakeholder satisfaction with the quality of its information, advice and education (as identified through an annual client survey). Effectiveness measures would also contribute to the

¹⁶ Portfolio Budget Statements 2012–13, Budget Related Paper No.1.6, Education, Employment and Workplace Relations Portfolio, p. 256.

¹⁷ This measure would require the use of a consistent measurement technique. For example, a random sample of audits each year, or a stratified random sample at an industry level.

quality of external reporting to Parliament and stakeholders, and understanding about the ongoing operation of the reformed workplace relations system.

24. FWO's executive and divisions use several key management reports to monitor the delivery of services. However, these reports generally do not include measures which reflect the relationship between number, type and cost of resource inputs, and workplace relations services delivered. The inclusion of efficiency measures in the reports would inform senior management about the impact of changes in the level of resources applied to particular service delivery activities.

Summary of agency response

25. The Office of the Fair Work Ombudsman provided the following summary response. FWO's full response is shown at Appendix 1.

The Office of the Fair Work Ombudsman notes the ANAO's comments concerning the sound administration of education and compliance services in relation to the *Fair Work Act 2009* delivered by the Fair Work Ombudsman.

The report makes reference to a number of new and changed initiatives implemented by the Fair Work Ombudsman that have led to an ongoing improvement in the timeliness and quality of our service delivery. These initiatives are all aligned to improving governance of the Fair Work Ombudsman and delivery of outcomes for citizens in line with the recommendations made by the ANAO report.

The report makes two recommendations with which we substantially agree.

Recommendations

**Recommendation
No. 1
Paragraph 2.17.**

To support the ongoing operation of the reformed workplace relations system and effectively respond to the demand for its services, the ANAO recommends that the Office of the Fair Work Ombudsman better integrate risk management into strategic and operational planning and decision-making.

FWO response: Broadly supported

**Recommendation
No. 2
Paragraph 6.28.**

To better inform monitoring, reporting and adjustments in service delivery approaches, the ANAO recommends that the Office of the Fair Work Ombudsman:

- establish key performance indicators to measure the effectiveness of its services in supporting compliance with workplace laws; and
- develop measures of the efficiency of its service delivery, which relate the number, type and cost of resource inputs, and the level of workplace relations services delivered.

FWO response: Broadly agreed

Audit Findings

1. Introduction

This chapter provides an overview of the Office of the Fair Work Ombudsman. It also outlines the audit approach.

Background

1.1 The current national workplace relations system began to take effect for employers and employees with the commencement of the *Fair Work Act 2009* (the Act) on 1 July 2009.¹⁸ Key changes introduced at that time included a revised collective bargaining framework for enterprise agreements and strengthening of protection for employees against unfair dismissal. Subsequently, on 1 January 2010, a safety net for employees was established. This included the National Employment Standards and modern awards for industries and occupations. At this time certain states referred industrial relations powers to the Australian Government, resulting in the large majority of Australian employers and employees becoming subject to the Fair Work legislation.¹⁹

1.2 Under the Act, a revised institutional framework for the administration of the workplace relations system was introduced, including two new agencies which commenced operations on 1 July 2009: the Office of the Fair Work Ombudsman (FWO) and Fair Work Australia (FWA).²⁰ The Office of the Fair Work Ombudsman is an independent statutory office created by the Act to promote harmonious, productive and cooperative workplace relations and ensure compliance with workplace laws. FWO consists of the Fair Work Ombudsman, his staff, and Fair Work Inspectors appointed under the Act by the Fair Work Ombudsman to exercise compliance powers. The broad coverage of the Act and the extent of change it introduced for the community highlight the importance of FWO's workplace relations services, both in terms

¹⁸ The Act replaced the *Workplace Relations Act 1996* which was amended in 2005 to introduce the former Government's 'WorkChoices' workplace relations system.

¹⁹ The application of the Act in the states and territories is illustrated in Table 2.1 on page 41.

²⁰ FWA is the national workplace relations tribunal. FWA makes decisions about the national minimum wage and can create and change modern awards. It deals with a range of workplace matters including unfair dismissal, right of entry and enterprise bargaining. FWA is also responsible for administering the provisions of the *Fair Work (Registered Organisations) Act 2009* which deal with registration and accountability of unions and employer associations registered under that Act.

of the initial implementation and the ongoing operation of the reformed workplace relations system. FWO is the focus of this audit.

Office of the Fair Work Ombudsman

1.3 FWO's strategic vision is to achieve fair Australian workplaces; and its mission is to work with Australians to educate, promote fairness and ensure justice in the workplace. The agency's single outcome identified in the 2012–13 Education, Employment and Workplace Relations Portfolio Budget Statements (PBS) is: 'compliance with workplace relations legislation by employees and employers through advice, education and where necessary enforcement'.²¹

1.4 The main functions of FWO under the Act are to: provide information and advice about the workplace relations system; educate people about their workplace rights and obligations; investigate suspected contraventions of workplace laws, awards and agreements; and litigate to enforce workplace laws and to deter people from not complying with their workplace responsibilities. The mechanisms FWO uses to perform these functions include:

- the Fair Work Ombudsman website, which provides self-service tools and other resources;
- the Fair Work Infoline (FWO's call centre);
- national and regional campaigns, which involve education and audit activity in selected industries and/or locations; and
- processes for resolving workplace complaints, including assisted voluntary resolution and investigations.

Table 1.1 provides details on FWO's reported service levels in 2011–12.

²¹ Under this outcome FWO has one program: 'Education Services and Compliance Activities'. The objective of this program is 'to educate employers, employees, organisations and contractors about the workplace relations system and to ensure compliance with workplace laws'. Portfolio Budget Statements 2012–13, Budget Related Paper No.1.6, Education, Employment and Workplace Relations Portfolio, p. 256.

Table 1.1**FWO's services in 2011–12**

| Service | Total |
|--|--------------|
| Website visits | 6 595 855 |
| Number of answered calls to the Fair Work Infoline | 683 992 |
| National campaigns completed | 4 |
| Regional campaigns completed | 18 |
| Audits finalised | 6547 |
| Complaints received | 26 366 |
| Complaints completed | 28 412 |
| Wages and entitlements recovered—complaints | \$33 650 626 |
| Wages and entitlements recovered—audits | \$6 158 875 |

Source: Data provided by FWO's Reporting and Analysis Team 13 July 2012.

1.5 FWO's services are to be provided in accordance with the five principles that are set out in its Customer Service Charter. The five principles are: accessibility; customer focus; continued consultation and review; fairness; and accountability. A key of aspect of FWO's work is to support workplace relations and resolve issues that arise between employers and employees.

1.6 As part of its service delivery model, FWO also has contractual arrangements with relevant agencies in the New South Wales, Queensland and South Australian governments (state partner agencies). These agencies are contracted to complete an agreed number of education visits, audits and investigations into complaints in their state. To enable the delivery of these services, the Fair Work Ombudsman appoints certain state partner agency staff as Fair Work Inspectors, with the same powers as Fair Work Inspectors who are on the staff of the Fair Work Ombudsman.²² The current contractual arrangements with the three state partner agencies commenced on 1 January 2010 and are due to expire on 31 December 2012.²³

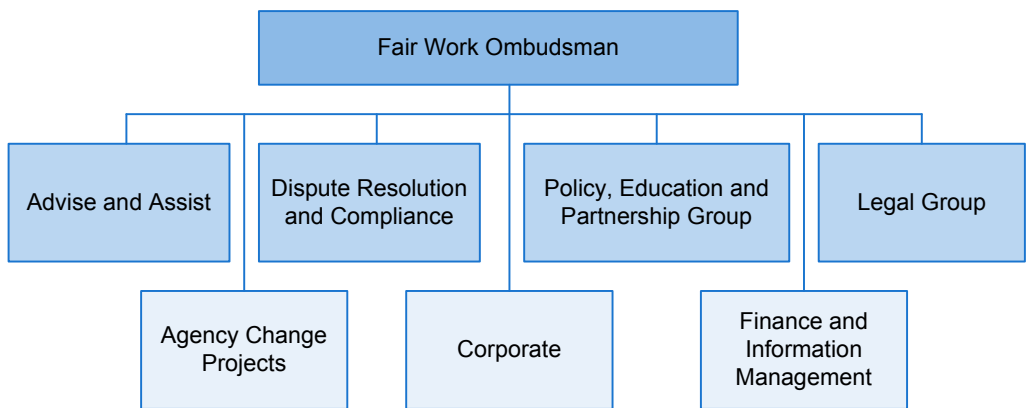
²² FWO's Fair Work Inspectors also undertake audit and investigation work in these states.

²³ In December 2012, FWO advised that the Queensland Government will not be renewing its contract. FWO also advised that the New South Wales and South Australian Governments have agreed to extend their contracts through to June 2013.

1.7 As at 30 June 2012, FWO had 827 employees, including 360 Fair Work Inspectors and 181 Fair Work Infoline staff.²⁴ There were an additional 183 state partner agency Fair Work Inspectors. FWO had 26 offices across Australia, located in all capital cities and in 18 regional centres, with the state partner agencies offering the benefits of providing services through an additional 26 offices. FWO’s organisation structure is illustrated in Figure 1.1.

Figure 1.1

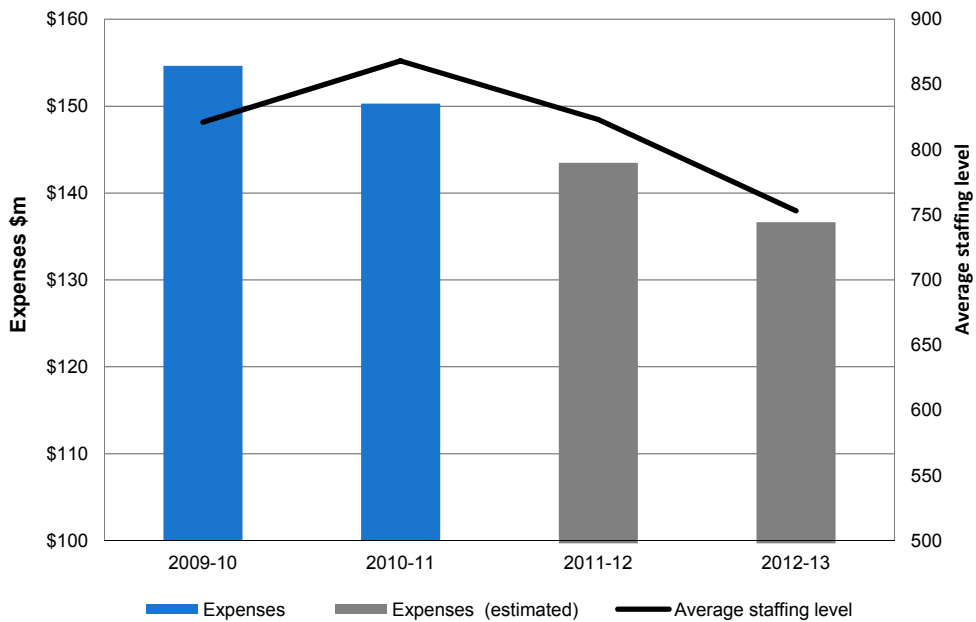
FWO’s organisation structure



Source: <fairwork.gov.au> sourced 1 August 2012.

1.8 In October 2012, FWO was implementing initiatives to reduce its budget and staffing level. For example, between 2010–11 and 2012–13, FWO’s departmental expenses are forecast to decline by 9 per cent to \$137 million, and its average staffing level is forecast to decline by 13 per cent to 753 staff (Figure 1.2). The reductions in staff are occurring throughout FWO, including in front line operational areas.

²⁴ These staffing figures are based on head-count.

Figure 1.2**FWO's expenses and average staffing levels**

Source: FWO Annual Reports 2009-10, 2010-11 2011-12, and Education, Employment and Workplace Relations Portfolio Budget Statements 2012-13.

1.9 FWO advised that its funding levels were determined based on an assumption that incidences of non-compliance following the introduction of the Act would reduce as employers and employees gained a better understanding of their rights, responsibilities and obligations.²⁵ However, the demand for FWO's services remains high to date²⁶, and in some areas has increased since the introduction of the Act. For example, the reported number of workplace complaints received by FWO was 11 per cent higher in 2011-12

²⁵ FWO received approximately \$20 million per annum in appropriations from 1 January 2010 to meet its extra obligations arising from the referral of industrial relations powers from New South Wales, Queensland, South Australia and Tasmania. This funding ceases on 30 June 2013. The 2012-13 Education, Employment and Workplace Relations Portfolio Budget Statements indicates a further reduction of \$19 million in FWO's departmental expenses in 2013-14 related to the non-continuation of this funding. FWO advised in October 2012 that it is seeking additional ongoing funding of approximately \$20 million per annum in order to maintain its current levels of service.

²⁶ One of the key factors that has influenced the demand for FWO's services is the transitional arrangements in place for modern awards. More than 4000 pre-modern awards are being transitioned into 122 modern awards. The transition to modern awards finishes at end June 2014.

than in 2009–10. This highlights the importance of a strategic and targeted approach to the ongoing delivery of FWO's workplace relations services.

Audit approach

1.10 The audit objective was to assess the effectiveness of FWO's administration of education and compliance services in relation to the *Fair Work Act 2009*. The three-high level audit criteria used to assess FWO performance against the objective were:

- education and compliance services are well-designed and appropriately targeted;
- education and compliance services are effectively delivered; and
- the effectiveness of education and compliance services is monitored, evaluated and reported to stakeholders.

1.11 The scope of the audit included FWO's administration of the Fair Work Ombudsman website, the Fair Work Infoline and national and regional campaigns, and its handling of workplace complaints received from employees. The audit considered FWO's investigations manual, processes and data; but did not examine FWO's use of coercive powers or the appropriateness of the outcomes of its investigations into workplace complaints.

1.12 The audit included document and file reviews, examination and analysis of data, and interviews with FWO staff. The audit also considered client feedback on FWO's education and compliance services, obtained through its website, surveys and reviews.

1.13 The audit was conducted in accordance with the ANAO Auditing Standards at a cost of approximately \$487 000.

Report structure

1.14 The remaining chapters are structured as follows:

| Chapter | Chapter overview |
|---|---|
| 2. Program Governance Arrangements | This chapter reviews FWO's governance arrangements for its single program: <i>Education Services and Compliance Activities</i> . FWO's organisation structure, the role and focus of its Executive Committee in relation to the program, FWO's strategies and plans to deliver its program, and its relationships with state partner agencies are reviewed. |
| 3. Information and Advice | This chapter reviews FWO's provision of information and advice through the Fair Work Ombudsman website and the Fair Work Infoline. Commonly used self-service tools and resources available on the website are also reviewed. |
| 4. Outreach Initiatives | This chapter reviews FWO's planning and management of national and regional campaigns which involve education and audit activity in selected industries and/or locations. Other FWO initiatives to support the operation of the workplace relations system are also reviewed. |
| 5. Workplace Complaints Handling | This chapter reviews FWO's processes for lodgement, management and resolution of workplace complaints. |
| 6. Performance Monitoring and Reporting | This chapter reviews FWO's performance information framework in the Portfolio Budget Statements, executive performance monitoring, and reporting to the Parliament and stakeholders. |

2. Program Governance Arrangements

This chapter reviews FWO's governance arrangements for its single program: Education Services and Compliance Activities. FWO's organisation structure, the role and focus of its Executive Committee in relation to the program, FWO's strategies and plans to deliver its program, and its relationships with state partner agencies are reviewed.

Introduction

2.1 The Office of the Fair Work Ombudsman (FWO) is responsible for a single program which involves the delivery of education and compliance services in relation to the reformed workplace relations system. The broad nature of FWO's legislative functions and program necessitates the development of a range of different services to support compliance with workplace laws. These services are delivered by both FWO staff and three state partner agencies. In light of these factors, sound program governance arrangements are important for the effective management and coordinated delivery of FWO's program.

2.2 Taking into account FWO's responsibilities under the *Fair Work Act 2009* (the Act) and the outcome established in the Education, Employment and Workplace Relations Portfolio Budget Statements (PBS), this chapter examines the following key aspects of FWO's program governance arrangements:

- the organisation structure used by FWO to support service development and delivery;
- the role and focus of FWO's Executive Committee in relation to the program;
- FWO's strategies and plans to deliver its program, including its approach to risk management; and
- FWO's relationships with state partner agencies.

Organisation structure

2.3 The organisation structure adopted by an agency is central to its program delivery approach. FWO's organisation structure is illustrated in

Figure 1.1 on page 30. The structure includes four divisions responsible for specific services and two enabling divisions. The four service divisions are:

- Advise and Assist, with responsibilities including development of online tools and call centre operations;
- Dispute Resolution and Compliance, with responsibilities including campaigns and complaints handling;
- Policy, Education and Partnership Group, with responsibilities including education and stakeholder relationships; and
- Legal Group, with responsibilities including legal advice and litigation.

FWO's two enabling divisions are Finance and Information Management and Corporate. A separate team, led by a group manager, has been established to oversee, assist and integrate a range of agency change projects (discussed later in this chapter). The main benefit of FWO's organisation structure is that each division is responsible for specialised services. The structure therefore supports the development and application of specialist expertise.

2.4 It is important that FWO effectively integrates the work of its divisions. For example, where FWO receives a large number of similar complaints, it can choose to provide additional education materials on its website to address the issue. Also, useful self-service tools available via the website may reduce calls for assistance. In this respect, the audit identified coordination of work and information sharing between FWO's divisions. Examples include the use of complaints data in selecting national and regional campaigns, and the development of tailored education materials for these campaigns (Chapter 4).²⁷

Executive Committee

2.5 The Chief Executive of an agency may establish committees to support the governance of the agency. These frequently include an Executive Committee, comprising senior management officials, which provides advice to the Chief Executive. Such a committee, with carefully selected membership,

²⁷ In addition, Fair Work Infoline information and data are used by a number of internal stakeholders, such as in planning for national and regional campaigns, and to inform updates of website tools and resources. For example, if there are a considerable number of calls relating to a pre-modern award which is not included in the website tools, FWO may decide to update the tools to include pertinent information.

and clearly defined goals and functions, can be a valuable addition to an organisation's management framework.

2.6 FWO has an Executive Committee which meets monthly. Membership of the committee includes the Fair Work Ombudsman, the group managers of FWO's six divisions, and the group manager responsible for the agency change projects. The intended operation of the committee is set out in the *Executive Committee Charter March 2012* which states that the purpose of the committee is to provide the Fair Work Ombudsman a collaborative forum to assist him to exercise his responsibilities, specifically to:

- oversight proper financial and prudential management of the agency;
- ensure the business is performing in line with agreed outcomes and key performance indicators; and
- oversight strategic direction and monitor implementation of strategy.²⁸

2.7 The ANAO reviewed the minutes of FWO's 2011–12 Executive Committee meetings. The key matters considered by the committee in 2011–12 included reductions to FWO's budget and staff numbers in the context of continuing high demand for its services. The committee also instigated 29 (recently amended to 28) strategic projects. Each of the projects has a nominated lead group manager responsible for its implementation. The projects are aimed at assisting FWO to change the way it works and deliver on its strategic vision of fair Australian workplaces. For example, projects are directed towards enhancing the accessibility of high demand website content, developing an early treatment model for workplace complaints, developing a new knowledge management system and improved client relationship management. With reducing resources, the success of the change projects is important to enable FWO to more efficiently manage its interactions with clients and further support their voluntary compliance with workplace laws.

2.8 FWO's Executive Committee monitors program performance using a monthly dashboard report. The purpose of the dashboard report is to inform the committee about how well FWO is delivering services to the Australian community, using measurable data as evidence. Based on the committee

²⁸ FWO Executive Committee Charter, p. 4. The Executive Committee has created a number of sub-committees to provide support and expertise in specific areas. These committees are the: Contract Committee; IT Project and Capital Expenditure Sub-committee; Recruitment Committee; and National Health & Safety Committee.

minutes examined, there is regular discussion on the performance information provided in the dashboard reports, with responsible group managers outlining reasons for performance levels and associated operational actions. Other members of the committee also provide insights and suggestions on the performance matters discussed. For example, during 2011–12, the committee discussed the reasons for differences between the performance of FWO's Fair Work Inspectors and those of the state partner agencies in resolving workplace complaints. The information provided in the dashboard report to the Executive Committee is covered in detail in Chapter 6.

Program strategies and plans

2.9 Strategic planning is the process of determining long term goals and then identifying the best approach for achieving those goals, taking into account the operating context. Business planning allows organisations to link day-to-day operations with strategic directions. A key aspect of planning processes is to identify and assess strategic and operational risks in relation to program delivery and performance. Managing risks requires the design and implementation of procedures that treat unacceptable risks.

Strategic level planning and risk management

2.10 FWO developed its initial strategic plan in 2009. The plan set out FWO's vision of fair Australian workplaces, and its mission of working with Australians to educate, promote fairness and ensure justice in the workplace. The plan also included five key goals for 2009–2012, with associated strategies and key actions. However, the strategic plan did not specify how progress would be measured. FWO reviewed its achievements against the strategies of the 2009–2012 plan prior to the development of its 2012–2016 Strategic Plan.

2.11 FWO's 2012–2016 Strategic Plan came into effect in July 2012. The plan retains FWO vision and mission. Its focus is on assisting clients to more easily comply with workplace legislation and on improving service delivery, in the context of reduced resources and staffing. The plan seeks to optimise voluntary compliance, where possible. It also identifies an overarching goal and contributing strategies for FWO's four key areas of service delivery: advise and assist; educate; resolve disputes; and ensure compliance.

2.12 In August 2009, FWO developed a strategic risk register that covered the period 2009–2012. The register listed the goals in FWO's 2009–2012 strategic plan and strategic risks to the achievement of the goals. The identified

risks included shortcomings in internal capabilities²⁹ and inability to enforce the reformed workplace system. However, FWO's risk mitigation strategies to identify and respond to any issues arising in the implementation of the major changes in the workplace relations system were underdeveloped. FWO also did not allocate risk management responsibilities, or update its risk register to take into account emerging risks as its budget situation changed.

2.13 FWO planned to update its strategic risk register following finalisation of the 2012–2016 Strategic Plan, but this had not yet occurred as at October 2012. FWO advised in October 2012 that an internal audit into risk management was underway and that:

FWO expects that the results of this [internal] audit will recommend the most appropriate approach for risk management for the FWO, including the process to identify and manage strategic risks.

2.14 There would be benefit in FWO applying a structured approach to risk management as part of strategy, planning, decision-making and other processes, including through regular assessment of the difficulties being experienced by employers and employees in the application of workplace relations requirements. This would assist FWO to maintain and improve its capabilities to be able to effectively respond to the demand for its services.

2.15 As indicated in paragraph 2.7, FWO's Executive Committee and senior management have considered the implications of reduced funding and staffing, and developed plans and projects aimed at addressing these challenges while continuing to deliver quality services. A structured approach to risk management would assist the Committee and senior management in such deliberations, and in applying resources to reduce risks to a tolerable level. FWO faces challenges in improving the accessibility, timeliness and/or targeting of its services, and decisions that impact on these services should take into account an assessment of the associated risks.

Business level planning and risk management

2.16 Five of FWO's six divisions developed a 2011–12 business plan. However, the quality of the business plans was variable, particularly in terms of alignment with the strategic plan and projects, performance information and

²⁹ For example, inability to advise, educate, investigate and litigate to the required extent and quality, and inability to develop technical and professional skills.

risk assessments. For example, one division plan included performance indicators and targets, associated dependencies, and risks and risk treatments for each activity; and another division's plan did not include performance information or risks.

Recommendation No.1

2.17 To support the ongoing operation of the reformed workplace relations system and effectively respond to the demand for its services, the ANAO recommends that the Office of the Fair Work Ombudsman better integrate risk management into strategic and operational planning and decision-making.

FWO response

2.18 Broadly the Fair Work Ombudsman supports the recommendation, while noting that the discussion in the report leading to the recommendation is not entirely correct. Paragraph 2.14 states that a structured approach to risk management may be beneficial in strategy and other functions. Aside from this comment potentially overstating the benefits of risk management to the development of strategy and understating the extent to which strategy is a managerial response to many environmental variables, including but not limited to risk, it runs the risk itself of overlooking the rigour and sophistication of the Fair Work Ombudsman's 2012 strategic planning process, which demonstrably was a discussion about, and a response to, the forward risks facing the Agency.

2.19 Paragraph 2.15 notes that a structured approach to risk management would assist the Agency's Executive Committee and senior management in determining the implications of, and responses to, reduced funding and staffing. Again, this paragraph potentially overstates the benefits of risk management systems in strategic decision making and understates the processes that actually were used in the course of the past year, every part of which were to do with identifying and controlling the risks faced by the Agency. The Fair Work Ombudsman is currently embedding two initiatives in the area of strategic risk management. These are the establishment of a Project Management Office which provides risk based oversight to a number of significant initiatives designed to enhance service delivery. In addition, the Fair Work Ombudsman is establishing a formalised operational Quality Assurance Program to minimise the risk of errors or poor quality outcomes and to promote continuous improvement as a method of promoting high

performance. Additionally, as part of its regular work program an internal audit report on risk management has been provided to the Fair Work Ombudsman Audit Committee for their consideration.

2.20 *ANAO comment:* In making this recommendation the ANAO is seeking to highlight better practice considerations in relation to operationalising risk management approaches as part of overall governance. For example, Comcover's *Australian Government Better Practice Guide—Risk Management*, emphasises the benefits of developing structured approaches to risk management. Giving risk management an explicit focus and maintaining up to date risk information can assist to ensure consistent application of risk management across an organisation, enable regular monitoring and review of risks and contribute to corporate knowledge and broader understanding of an agency's risks.³⁰

Relationships with state partner agencies

2.21 As provided for under the Act, New South Wales, Queensland, South Australia and Tasmania referred industrial relations powers to the Commonwealth from 1 January 2010. Victoria, the Australian Capital Territory and the Northern Territory were already subject to national workplace relations legislation. Western Australia did not refer its industrial relations powers to the Commonwealth. The Act applies in the states and territories as shown in Table 2.1.

³⁰ Comcover's *Australian Government Better Practice Guide- Risk Management*, June 2008, p. 5.

Table 2.1***Fair Work Act 2009 coverage in the states and territories***

| State or Territory | Constitutional corporations | All other employment | Other private Sector | State public sector | Local government |
|--------------------|-----------------------------|----------------------|----------------------|---------------------|------------------|
| ACT | ✓ | ✓ | | | |
| NT | ✓ | ✓ | | | |
| VIC | ✓ | ✓ | | | |
| TAS | ✓ | | ✓ | X | ✓ |
| NSW | ✓ | | ✓ | X | X |
| QLD | ✓ | | ✓ | X | X |
| SA | ✓ | | ✓ | X | X |
| WA | ✓ | | X | X | X |

Source: ANAO analysis of documents on www.fairwork.gov.au

2.22 From 2010–11 to 2012–13, FWO received additional Commonwealth funding of \$20 million per annum to meet its additional workplace relations responsibilities following the referral of powers from four states. FWO undertook negotiations with the New South Wales, Queensland, South Australian and Tasmanian governments to enter into arrangements to meet these responsibilities. These negotiations resulted in the governments of New South Wales, Queensland and South Australia entering into contractual arrangements with FWO to deliver specific services. The partnerships also offer FWO the benefits of delivering services through an extensive network of state partner office locations in the states. The contractual arrangements with the state partner agencies commenced on 1 January 2010 and are due to expire on 31 December 2012.³¹ In addition, the then Tasmanian Government ceased its own workplace relations enforcement and inspectorate functions and agreed through a Memorandum of Understanding that FWO would be the sole provider of these services in Tasmania.

2.23 Under the Act, the Fair Work Ombudsman appoints Fair Work Inspectors from both FWO and the state partner agencies. A Fair Work Inspector may carry out audits, investigations and education activities in

³¹ In December 2012 FWO advised that: the Queensland Government will not be renewing its contract; and the New South Wales and South Australian governments have agreed to extend their contracts through to June 2013.

relation to workplace legislation. As at 30 June 2012, 183 Fair Work Inspectors (34 per cent) were state partner agency staff, which represents a significant proportion of the resources available to conduct audits, investigations and education services.³²

2.24 Each state partner agency is contracted to deliver audits, investigations into complaints and education visits. Negotiations were undertaken separately with each state partner agency to determine the contracted number of services, and unit prices, for each of the three services to be provided.

2.25 Working across boundaries poses organisational challenges for oversight, consistency in approach and service quality. FWO has several arrangements in place to help address these challenges in relation to the state partner agencies (Table 2.2).

³² Numbers are based on head-count.

Table 2.2**State partner agencies—oversight and quality mechanisms**

| Arrangement or requirement | Description |
|----------------------------------|---|
| Partnership Management Committee | Established under the contract with each state partner agency to manage and oversee the provision of services by the state partner agency. Monthly Committee meetings are held involving senior management from FWO and the state partner agency to discuss performance, quality matters and proposed education and audit campaigns. |
| State Partner Management Unit | Responsible for day-to-day relationship management with the state partner agencies and monitoring and reporting on the state partner agencies' performance, including that of individual FWIs. |
| Service provision | The contracts with the state partner agencies stipulate requirements in relation to service provision, which include that the state partner agencies undertake audits and investigations to the standard and complexity detailed in FWO's Field Operations Manual; meet timeliness standards for services; and submit reports to FWO on service provision. |
| Training | The contracts also require that the Fair Work Ombudsman provide training to all state partner agency personnel involved in the provision of services. New FWIs must complete mandatory training within three months of their appointment. The training provided to new state partner agency FWIs is identical to that provided to FWO's FWIs. |
| Quality assurance reviews | Quality assurance reviews are undertaken to check the audit and investigation processes followed by the state partner agencies, as well as the level of service provided. Quality assurance reports are provided to the Partnership Management Committee and inform ongoing staff education and training. The state partner agencies are also subject to individual requests for the review from employers and employees of the handling of a workplace complaint (discussed in Chapter 5). |

Source: ANAO based on contracts with state partner agencies and other FWO documentation.

2.26 Under the contracts, the Fair Work Ombudsman is entitled to defer or reduce the payment amount if the state partner agency does not complete services to his satisfaction. However, as payments are made per service, up to a maximum number of services, and are not directly linked to key aspects of service quality or timeliness, the regime is not performance based.

Performance of the state partner agencies

2.27 As shown in Table 2.3, the state partner agencies have not always completed the annual contracted number of audits and investigations, during the original contract period.

Table 2.3**Completion rate—state partners' contracted services**

| Activity | State 1 Completion rate (per cent) | State 2 Completion rate (per cent) | State 3 Completion rate (per cent) |
|-------------------------------------|--|--|--|
| 2010 investigations | 79 | 56 | 61 |
| 2011 investigations | 134 | 125 | 88 |
| 2012 investigations | 98 | 130 | 76 |
| 2010 audits | 81 | 62 | 31 |
| 2011 audits | 99 | 95 | 95 |
| 2012 audits | 91 | 76 | 38 |
| Total Transitional Education Visits | 99 | 87 | 89 |

Source: Data provided by FWO's State Partner Management Unit.

Note: Data for 2012 is at the end of October. The state partner agencies have until 31 December 2012 to complete the contracted activities.

2.28 During 2011–12, the performance of the state partner agencies in finalising action on complaints within 90 days (against the agency-wide target of 80 per cent of complaints finalised in 90 days) was regularly below that of FWO staff. As a consequence, the timeliness of work undertaken by the state partner agencies poses an ongoing challenge for FWO.

2.29 In addition, FWO documentation indicated that the quality of work undertaken by the state partner agencies has been a significant challenge for FWO during the contract period. In particular, FWO identified the need for improvement in terms of natural justice and procedural fairness in the work undertaken by the state partner agencies based on the results of its quality assurance program.

2.30 In developing any future contracts with state partner agencies, FWO could seek to strengthen performance incentives. FWO will also need to maintain its close oversight of, and the level of assistance it provides for, the work undertaken by the state partner agencies under any future contractual arrangements.

Conclusion

2.31 FWO's Executive Committee provides the Fair Work Ombudsman with a collaborative forum to assist him to exercise his responsibilities, including

oversighting the strategic direction of FWO's program and monitoring program performance. The key matters considered by the committee in 2011–12 included reductions to FWO's budget and staff numbers in the context of the continuing high level of demand for services. The Executive Committee also instigated 28 strategic projects aimed at assisting FWO to change its program support, design and delivery arrangements, and to achieve the Government's vision of fair Australian workplaces.

2.32 FWO identified its strategic program delivery risks for the period 2009–2012. The identified risks included shortcomings in internal capabilities and inability to enforce the reformed workplace system. However, FWO's risk mitigation strategies to identify and respond to any issues arising in the implementation of the major changes in the workplace relations system were underdeveloped. FWO also did not allocate risk management responsibilities, or update its risk register to take into account emerging risks as its budget situation changed. There would be benefit in FWO applying a structured approach to risk management as part of its strategy, planning and decision-making, including through regular assessment of difficulties being experienced by employers and employees in the application of workplace relations requirements. This would assist FWO to maintain and improve its capabilities to be able to effectively respond to the demand for its services. FWO faces challenges in improving the accessibility, timeliness and/or targeting of its Fair Work Infoline, audit and complaints handling services, and decisions that impact on these services should take into account an assessment of the associated risks.

2.33 FWO has contractual arrangements with relevant government agencies in New South Wales, Queensland and South Australia. Fair Work Inspectors in these state partner agencies conduct education visits, audits and investigations into complaints. FWO has several mechanisms in place to oversee and support the delivery of these services. These include a Partnership Management Committee, mandatory training of the state partner agencies' Fair Work Inspectors and quality assurance reviews. Despite these mechanisms, there have been some issues with the quality and timeliness of services delivered by the state partner agencies during the term of the contracts. In developing any future contracts with state partner agencies, FWO could seek to strengthen performance incentives.

3. Information and Advice

This chapter reviews FWO's provision of information and advice through the Fair Work Ombudsman website and the Fair Work Infoline. Commonly used self-service tools and resources available on the website are also reviewed.

Introduction

3.1 An overall compliance strategy frequently includes providing information and advice in order to promote compliance by affected individuals and organisations. Such information and advice should be readily accessible, useful and accurate.

3.2 FWO delivers a range of information and advice about the requirements and flexibilities of workplace laws to promote compliance by employers and employees. Two of the main mechanisms used by FWO are the Fair Work Ombudsman website and the Fair Work Infoline.

3.3 In this chapter, the ANAO examines FWO's provision of:

- information through its website, including the self-service tools and resources available on the website; and
- advice through the Fair Work Infoline.

Fair Work Ombudsman website

3.4 The success of a website is determined by its usefulness—the website and its content should be readily accessible, easily understood and meet clients' needs. The ANAO examined the accessibility, design and content of the Fair Work Ombudsman website. The audit also considered whether FWO monitored the use of the website, and obtained regular feedback from clients on its design and content, in order to improve the information provided.

Accessibility of the website

3.5 To assess the accessibility of the Fair Work Ombudsman website, the ANAO conducted searches on 10 key terms using a commonly used Internet search engine. For example, searches were conducted on the terms 'underpayment', 'pay and conditions' and 'workplace discrimination'. In response to the queries, the Fair Work Ombudsman website was generally the first or second search result after any commercial listings. This indicates that

the website is frequently used to answer key questions of employers and employees.

3.6 In February and March 2012, FWO conducted a pilot Channel Preference Survey to obtain feedback on the way its clients access and use information services, and to assess whether regular surveys of this type would be useful. The survey provided valuable information on use of the website. For example, approximately 87 per cent of respondents who recalled contacting FWO had used the website.³³ Of these, 61 per cent found out about the website by browsing or searching the Internet. The majority of respondents found the answer to their enquiry on the website. When respondents were unable to find information on the website they generally called the Fair Work Infoline.³⁴

Website design and content

3.7 The Fair Work Ombudsman website is structured around key topics, designed to provide easy navigation for users. The website includes a large volume of information on pay rates, awards, employment conditions, termination of employment, workplace complaints and for specific industries. It also includes a range of self-service tools and resources for clients, such as a pay rates calculator, and better practice guides to assist small to medium businesses with workplace issues. Information about workplace rights and obligations is made available on the website in up to 27 languages.

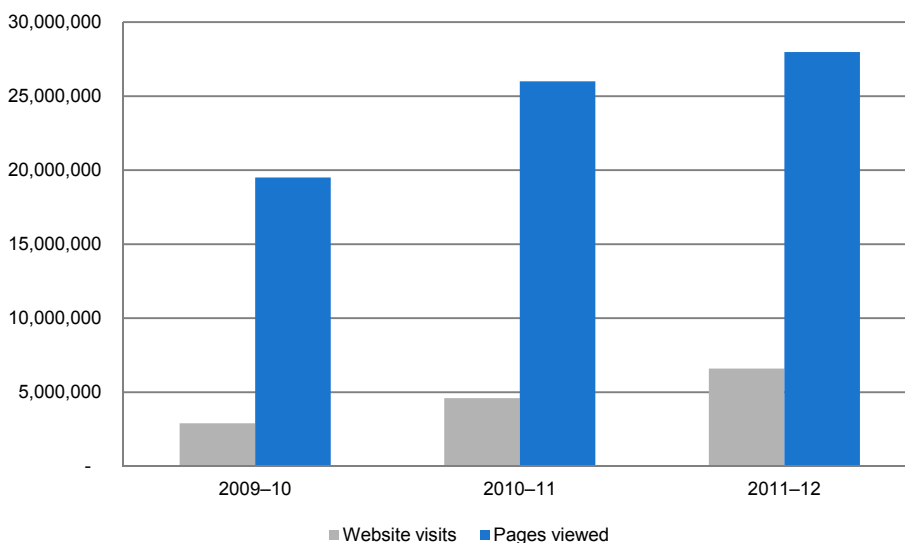
3.8 Since its launch, the Fair Work Ombudsman website has been subject to a range of improvements, including additional self-service tools, guides and checklists. There have also been substantial increases in visits to the website and pages viewed between 2009–10 and 2011–12 (Figure 3.1).

³³ These respondents contacted FWO in the six months preceding the survey.

³⁴ FWO also undertook a Website Accessibility Review in June 2011, using the *Web Content Accessibility Guidelines 2.0* level AAA specification. The specifications consist of 12 guidelines supplemented by 61 success criteria that are testable website standards. These guidelines explain how to make website content more accessible to people with disabilities. The review found that 'overall, the Fair Work Ombudsman website has a moderate level of accessibility'. The report identified 33 minor issues for FWO to address to improve accessibility, such as improving the visibility of some material on the website. FWO has since implemented a number of improvements to its website to achieve AA level compliance.

Figure 3.1

Website visits and webpage views 2008–09 to 2011–12



Source: FWO Annual Reports 2009–10, 2010–11 and 2011–12.

Self-service tools

3.9 Website self-service allows clients to access information and perform routine tasks over the Internet, without requiring any interaction with a representative of the relevant agency. Website self-service is now widely used in client relationship management, and can be an efficient method to deliver services.

3.10 The main self-service tools on the Fair Work Ombudsman website are:

- the Award Finder, which allows users to search for their pre-modern award³⁵ if applicable and the relevant modern award³⁶;
- the Pay and Conditions Guides, which provide a summary of wage rates, allowances and other entitlements for employers and employees

³⁵ Pre-modern award is a non legal term used by the Office of the Fair Work Ombudsman to refer to federal and state based awards and instruments that were replaced by modern awards.

³⁶ Modern awards are industry or occupation-based awards that supplement the National Employment Standards. The standards set out additional minimum terms and conditions for particular industries or occupations, including monetary entitlements.

covered by modern awards. A basic guide to penalty rate calculations is also included;

- the Pay Rates Calculator, which calculates base rates of pay and penalty rates for employees who are covered by transitional awards; and
- PayCheck Plus, which is FWO's most used self-service tool. Once an employer or employee determines the applicable modern award they are able to use PayCheck Plus for more specific calculations such as base pay rates, allowances, overtime, and penalty rates of pay per hour. Users can also calculate pay rates for shifts worked over a seven day period with the ability to print, export or save the selections. The tool automatically calculates the transitional provisions that may apply.

3.11 The development of the self-service tools is complicated by the arrangements in place to transition from pre-modern to modern awards. More than 4000 pre-modern awards are being transitioned into 122 modern awards. The transition to modern awards finishes at end June 2014. Using the tools, pay information is available for 882 pre-modern awards and all of the 122 modern awards.³⁷ The self-service tools are updated as wages and conditions change.³⁸

3.12 The self-service tools are widely used, as shown by the number of visits to the relevant website pages (Table 3.1).³⁹ The tools also form the basis for a significant proportion of the advice and education provided through the Fair Work Infoline.

³⁷ FWO advised it configured the self-service tools to provide information for the most commonly used pre-modern award classifications and pay rates. Further pre-modern award classifications and rates are added based on demand. The 962 Pay and Conditions Guides also assist users when calculating rates.

³⁸ Each year Fair Work Australia's Minimum Wage Panel conducts an annual wage review and issues a decision and national minimum wage order (pay rise). The new minimum wage comes into effect on 1 July.

³⁹ ANAO also requested data on the number of times the Pay and Conditions Guides were downloaded. FWO advised that it is difficult to determine the number of downloads of these guides.

Table 3.1**Website self-service tools utilisation, 2011–12**

| Self-service tool | Accessed |
|----------------------|----------|
| Award Finder | 943 938 |
| Pay Rates Calculator | 362 801 |
| PayCheck Plus | 497 535 |

Source: FWO's response to ANAO's Issues Paper.

3.13 In 2011, FWO received a number of external queries about the accuracy of its self-service tools. This resulted in FWO reviewing the tools, introducing 31 enhancements and correcting 70 errors between July and December 2011. All of the changes were listed on the website. FWO has since strengthened quality controls for the tools. For example, FWO advised that the information made available using the tools is now verified by at least one other staff member.

3.14 ANAO tested the accuracy of hourly pay rates provided by PayCheck Plus against the applicable modern award. The test consisted of 50 employment scenarios, ranging from a senior medical specialist to a 15 year-old casual employed in the fast food industry. There were seven employment scenarios where PayCheck Plus could not provide a rate. In these instances, the webpage displayed a message recommending the user call the Fair Work Infoline due to the complexity of the calculations. Of the remaining 43 employment scenarios, the calculator matched the applicable award for the hourly rate of pay for the period, including any allowances.

Monitoring and feedback

3.15 Managing an effective website requires close attention to its use and responsiveness to feedback from clients. FWO's Online Communications Team monitors the use of website content, including the self-service tools. The team provides data on use to relevant business areas, thereby informing the areas about the take-up of website content. Since September 2011, FWO has also offered website users an option to provide direct feedback on their experience. The option seeks input on whether the web page was helpful and why, and any suggested improvements. This information is collated by the Online Communications Team and distributed to relevant business areas.

3.16 As part of its ongoing management of the website, FWO also conducted a performance review of the website, and obtained feedback from clients

through a website usability survey. The performance review found that the website provided:

... an integrated experience for the customer [that] has had a positive effect on how the audience engages and interacts with the website. Users are finding the right information based on their needs

3.17 The website usability study was based on feedback from 32 employers or employees from a range of industries. The resultant July 2011 report stated that:

General consensus [was] that the website is attractive especially compared to other government websites which participants had had fairly negative experiences with in the past. They realised that the information was very comprehensive, and were overall fairly positive.

3.18 Drawing on the results of website reviews and client feedback, FWO has regularly updated the website. Recent changes include:

- moving the workplace complaints section to make it easier to find;
- adding a leave calculator;
- adding trainee calculators;
- adding a metal manufacturing section prior to the commencement of a large education and audit campaign for the industry; and
- adding a social and community services section to reflect the recent changes to the award for the sector.

Fair Work Infoline

3.19 Call centres are a useful service delivery option for agencies that have a high volume of dispersed client contacts. The quality and timeliness of call centre services depends on a range of factors, including: the accessibility of the services; the number of call centre staff (advisers); how well they are trained; the procedures they following when responding to enquiries; and appropriate monitoring arrangements.

3.20 FWO's Fair Work Infoline sites operate as a virtual or linked call centre to allow services to be delivered Australia wide between 8am and 6pm weekdays, based on each state or territory's local time.⁴⁰ At 30 June 2012, there

⁴⁰ The Fair Work Infoline is not available on public holidays.

were 146⁴¹ Fair Work Infoline advisers. During call centre operating hours up to 90 advisers answer calls (depending on local times). Most calls to the Fair Work Infoline are charged at a local call rate with any additional costs paid by FWO. Mobile call costs depend on the rates charged by the mobile telecommunications company used by the caller.

Accessibility of call centre services

3.21 Readily accessible information and advice is particularly important where new or changed rights and obligations affect large sections of the community. In relation to call centre services, the length of time a caller is prepared to wait in a queue depends on a range of factors, including caller tolerance, motivation, call charging and time available.

3.22 An indicator of the accessibility of Fair Work Infoline services is call wait times. The wait time for calls to the Fair Work Infoline, from 1 March to 30 April 2012, as published daily on the Fair Work Ombudsman website, ranged from nine to 12 minutes, and the average time was 11 minutes and 39 seconds.⁴²

3.23 FWO’s statistics on the average length of time callers waited for their call to be answered, for each month of 2011–12, also provide an indication of accessibility. The statistics show that average call wait times are regularly lengthy, reflecting a high volume of calls throughout the year (Table 3.2). In July 2011, callers waited an average time of 13 minutes and 47 seconds for their call to be answered. July is the peak month for calls to the Fair Work Infoline because it coincides with annual minimum wage changes, which take effect on 1 July each year.

Table 3.2
Average time for advisers to answer calls to the Fair Work Infoline, 2011–12 (minutes and seconds)

| Jul | Aug | Sep | Oct | Nov | Dec | Jan | Feb | Mar | Apr | May | Jun |
|-------|------|------|-------|-------|------|------|-------|-------|-------|------|------|
| 13:47 | 6:49 | 9:35 | 10:45 | 11:11 | 9:18 | 9:58 | 11:58 | 11:22 | 11:38 | 6:30 | 5:26 |

Source: Data provided by FWO’s Reporting and Analysis Team, 26 July 2012.

⁴¹ This number was advised by FWO and is based on head count.
⁴² FWO advised that the published wait time is updated daily at around 9:30am. The published call wait time is based on call centre performance on the previous day.

3.24 ANAO also compared the total number of Fair Work Infoline calls in 2011–12 reported as abandoned, queued for self-service, or answered by advisers. As shown in Table 3.3, 783 264 calls to the Fair Work Infoline were reported as answered or queued for self-service during 2011–12. The table also shows that the reported abandonment rate for calls was quite high, at 24 per cent.

Table 3.3

Calls to the Fair Work Infoline answered, abandoned 2011–12

| Call result | Number | Percentage of total calls |
|-------------------------|------------------|---------------------------|
| Call abandoned | 243 817 | 24% |
| Queued for self-service | 99 272 | 9% |
| Answered by advisers | 683 992 | 67% |
| Total calls | 1 027 081 | 100% |

Source: Data provided by FWO's Reporting and Analysis Team, 23 July 2012.

Note: Self-service enables callers to the Fair Work Infoline to listen to recorded messages to receive information.

3.25 To assess the accessibility of Fair Work Infoline services relative to other call centres, the ANAO also considered available statistics for the call centre services of the Australian Tax Office (ATO) and the Department of Human Services (DHS). While comparisons to other call centres can be useful for benchmarking purposes, it is important to take into account the differences in: the number and nature of calls made; the number of call centre staff; and the client base of the agencies. For 2010–11, the ATO reported answering 10.1 million calls. For the ATO's peak period of July to October, the agency reported that 91 per cent of tax practitioner calls were answered within two minutes, and 81 per cent of general calls were answered within five minutes.⁴³ For 2011–12, DHS reported answering 38 million calls with an average call wait time of 11 minutes and 45 seconds. In addition, DHS reported that the average call wait time increased on the previous year, as did complaints from clients about how long they waited for DHS to answer their call.⁴⁴

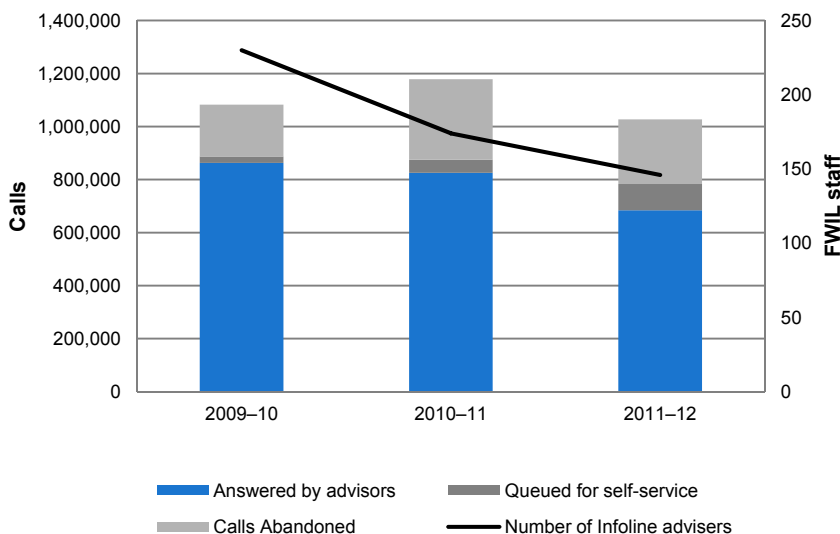
⁴³ *Australian Taxation Office Annual Report 2010–11*.
< http://www.ato.gov.au/content/53636.htm?headline=annualreport2011_12&segment=home >
sourced 19 November 2012.

⁴⁴ *Department of Human Services Annual Report 2011–12*.
< <http://www.humanservices.gov.au/corporate/publications-and-resources/annual-report/> > sourced
19 November 2012.

3.26 In call centres, the number of calls abandoned is related to call wait times, which in turn depend on the total number of calls, and the number of advisers available to answer the calls. As mentioned in paragraph 3.24, the reported rate of abandoned calls to the Fair Work Infoline during 2011–12 was high. Figure 3.2 illustrates the reported number of calls to the Fair Work Infoline answered, queued for self-service and abandoned between 2009–10 and 2011–12. The figure also shows the reported number of Fair Work Infoline advisers as at 30 June at the end of each financial year.

Figure 3.2

Number of Fair Work Infoline advisers, and calls answered, queued for self-service and abandoned, 2009–10 to 2011–12



Source: Data provided by FWO's Reporting and Analysis Team, 23 July 2012.

Notes: Number of Advisers is based on head count (rather than a full-time equivalent) at 30 June for each year. Self-service enables callers to the Fair Work Infoline to listen to recorded messages to receive information.

3.27 As indicated by Figure 3.2, the abandonment rate as a proportion of the number of calls made to the Fair Work Infoline was reported as 18 per cent in 2009–10, 26 per cent in 2010–11 and 24 per cent in 2011–12. The overall number of calls increased in 2010–11 before declining in the following financial year. Further, there has been an increase of 300 per cent in the number of callers opting for self-service between 2009–10 and 2011–12.

3.28 As previously indicated in Figure 1.2, it is anticipated that FWO's average staffing level will reduce from 823 in 2011–12 to 753 in 2012–13. In October 2012, FWO advised ANAO that:

'...staffing reductions will occur across the organisation including frontline operational areas and in support/enabling services. Around 50 per cent of the reduction will occur in Dispute Resolution and Compliance and Customer Contact branches'.

3.29 FWO will need to maintain visibility over call wait times and abandonment rates to support the accessibility of Fair Work Infoline services. A sophisticated approach to the use of call centre statistics is necessary in order to allocate available resources to best meet the demand for Fair Work Infoline services, particularly given the expected further reductions in the number of advisers during 2012–13. The performance reports and measures used by FWO for the Fair Work Infoline are discussed in the following section.

Call centre management practices

3.30 Call centres rely on suitable training, procedures and systems to allow advisers to provide prompt, accurate and consistent advice. In addition, a sound monitoring approach involves checking the performance of advisers, understanding the number and nature of calls, assessing and reporting on call centre performance using appropriate measures, and obtaining client feedback.

Training of advisers and procedures manual

3.31 FWO provides induction and ongoing training for Fair Work Infoline advisers. Induction training runs for three weeks and covers: skills in questioning; information gathering and negotiation; use of telephone and IT systems, including the website and its tools; documentation skills including accuracy and completeness; enhanced listening skills; and ability to work under pressure. FWO also provides a Contact Centre Manual which includes guidance on:

- the scope of FWO's advice, and issues or complaints that should be dealt with by Fair Work Australia or the Fair Work Building Inspectorate⁴⁵;
- how to respond to phone and written enquiries;

⁴⁵ The Inspectorate was formerly the Office of the Australian Building and Construction Commissioner.

- capturing client feedback, call recording and call quality monitoring; and
- Fair Work Infoline workforce management.

Monitoring services

3.32 An effective monitoring and reporting approach provides oversight of the current state of performance in a call centre. It should also provide the means to identify gaps in performance, evaluate strengths and weaknesses, and suggest steps to improve call centre operations.

3.33 Call centres use quality monitoring to help advisers improve skills, and to ensure the information and advice provided are accurate. For the Fair Work Infoline, team leaders in each of the call centre sites conduct quality monitoring of calls. FWO advised that team leaders evaluate eight to 10 calls, per adviser, every six weeks.

3.34 FWO also uses a number of internal reports to monitor Fair Work Infoline performance:

- a daily scorecard report includes metrics on site and individual advisers' performance. For example, the report may include: the number of advisers, phone calls answered, occupancy (number of advisers answering) and average handling times; and the characteristics of callers, such as their industry and employment type (full-time, casual);
- a weekly operations report details the number of calls that were abandoned, queued and answered. Also included is the average speed of answers and abandon time, with details in five minute increments; and
- monthly dashboard reports to the Executive Committee since March 2012 have included the number of calls received and answered.

3.35 Prior to March 2012, the dashboard reports also included the average speed of answer and the average handling time of answered calls. The removal of these two measures from the dashboard reports reduced the quality of information provided to the Executive Committee about the performance of the Fair Work Infoline. There would also be benefit in developing measures for executive consideration which relate Fair Work Infoline resource inputs and service levels achieved (see also Chapter 6).

3.36 In the 2011–12 dashboard reports to the Executive Committee, the Fair Work Infoline measures were all classified as amber. An amber rating is given if the measure presents ‘medium risk of longer-term concerns that require the senior management team to implement remedial action’. FWO advised in relation to the Fair Work Infoline measures that ‘although there was no formal action minuted, the regular discussion on the dashboard led to remedial action being taken at local levels’. For example, FWO advised that to better manage calls in July 2012 (the peak month for calls following the national minimum wage changes), it changed its voice messaging for callers to the Fair Work Infoline. This included the use of ‘real-time’ estimated wait time messaging when the wait time exceeded 20 minutes, further promoting the use of PayCheck Plus and advising clients when updated wage rates would become available. FWO noted that its changed voice messaging and self-service options reduced the number of calls queued to speak to an adviser in June and July compared to the previous year, and that as a result, reduced wait times once callers were in the queue. However, it is also possible that many callers decided not to wait once they understood the wait time would exceed 20 minutes.

3.37 From July 2012, FWO amended the way it presented the number of calls received and answered in the dashboard report. The measure was then rated as ‘green’ for July and August 2012. However, it was not possible to ascertain from the reported data whether there had been an overall improvement in service levels.

Client feedback

3.38 Client feedback portrays the experiences and perceptions of the individuals that have used the services delivered by an agency. In September and October 2010, FWO conducted a customer satisfaction survey, which included 300 callers to the Fair Work Infoline. Reported results of the survey include that more than:

- 70 per cent of respondents were either ‘very satisfied’ or ‘satisfied’ with the level of service they received from the Fair Work Ombudsman; and
- 90 per cent of respondents were comfortable in contacting the Fair Work Ombudsman.

3.39 The Channel Preference Survey (referred to in paragraph 3.6) also sought feedback from clients on Fair Work Infoline services. The results included that: 69 per cent of respondents who recalled contacting FWO in the

last six months used the Fair Work Infoline; 78 per cent of respondents found the phone number by browsing or searching the Internet; and 49 per cent of respondents indicated that they were able to resolve their enquiry entirely over the phone.

3.40 The survey was also a pilot, to assess the benefit in conducting future surveys. It would be beneficial for FWO to carry out annual client surveys to obtain such feedback on a regular basis. Feedback through a regular client survey would further inform improvements in service delivery approaches.

Conclusion

3.41 The provision of accessible and useful information and advice is necessary for FWO to optimise voluntary compliance and meet client needs. In this respect, the Fair Work Ombudsman website is structured around key workplace relations topics, designed to provide easy navigation for a large number of clients. Further, FWO reported that out of over one million calls made to the Fair Work Infoline in 2011–12, approximately 67 per cent of the calls were answered by advisers and 9 per cent of callers chose to use the available self-service option. However, the remaining 24 per cent of calls were abandoned. The high abandonment rate of calls reflected lengthy wait times, which averaged nearly 10 minutes. FWO has planned a further reduction in the number of Fair Work Infoline advisers in 2012–13, and will need to maintain visibility over the impact of the reduction on call wait times and abandonment using informative performance measures.⁴⁶

3.42 FWO's website contains extensive and tailored content for employers and employees. The website includes several widely used self-service tools, which provide detailed information on pay and conditions for different industries and types of employment. ANAO tested the accuracy of the most used pay calculator for 50 employment scenarios and found that in 43 cases the calculator provided the same hourly rate of pay, including any allowances, as the applicable award. In the remaining seven cases, the webpage recommended the user call the Fair Work Infoline due to the complexity of the calculations. The tailored information provided through the website also assists in responding to many enquiries made through the Fair Work Infoline.

⁴⁶ Changes to the monthly dashboard report presented to FWO's Executive Committee during 2012 reduced the quality of information reported to the Committee about the performance of the Fair Work Infoline.

4. Outreach Initiatives

This chapter reviews FWO's planning and management of national and regional campaigns which involve education and audit activity in selected industries and/or locations. Other FWO initiatives to support the operation of the workplace relations system are also reviewed.

Introduction

4.1 In administering legislation, agencies may engage directly with affected individuals to inform them about requirements and to monitor compliance. National and regional campaigns are the main element of FWO's outreach to employers and employees to support compliance with workplace laws. These campaigns seek to reduce systemic patterns of non-compliance by: increasing understanding of workplace laws; ascertaining the level of non-compliance within specific industries and/or locations; and deterring and seeking redress for workplace exploitation.

4.2 In this chapter, the ANAO discusses national and regional campaigns and examines FWO's campaign: selection, planning and monitoring; education and awareness activities; audits; and public reporting.⁴⁷ The chapter also discusses other education and compliance initiatives delivered by FWI to support the operation of workplace laws.

National and regional campaigns

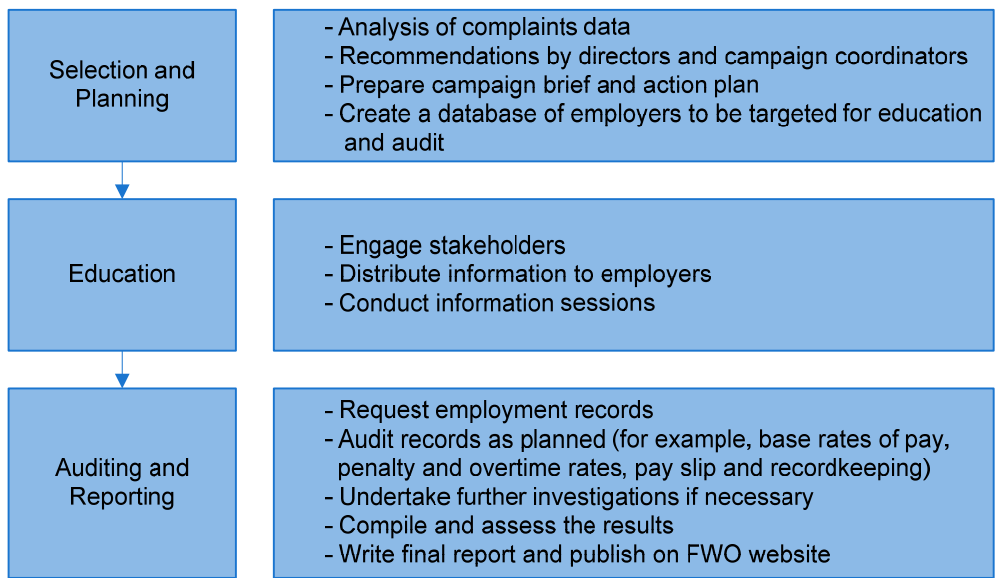
4.3 There are two broad categories of campaigns undertaken by FWO: national and regional. National campaigns are typically large scale industry campaigns, and include stakeholder consultation, an extensive education phase and audit activity. These campaigns are planned and coordinated by FWO's Targeted Campaigns Unit. They are delivered within the states and territories by campaign teams and Fair Work Inspectors, including Fair Work

⁴⁷ The audit examined national and regional campaigns that commenced after 1 July 2009, for which reports were published by 30 June 2012. Reports for FWO campaigns are published on www.fairwork.gov.au.

Inspectors from the state partner agencies.⁴⁸ The process for planning and conducting national campaigns is outlined in Figure 4.1.

Figure 4.1

National campaign processes



Source: Fair Work Ombudsman Operations Manual, November 2011.

4.4 Regional campaigns vary from industry specific activities across a state, to small localised audit programs. These campaigns are planned and managed by locally based campaign coordinators, or the relevant state partner agency. FWO’s Targeted Campaigns Unit helps coordinate the campaigns and monitors their delivery. Regional campaigns typically involve audits of the employment records of a representative sample of employers within the selected industry and/or location. While there is not usually an education phase, stakeholders are normally informed about the campaign, and the employers selected for an audit are provided with links to FWO’s website tools, best practice guides and fact sheets. Most audits examine base rates of pay, penalty and overtime rates, pay slips and recordkeeping practices.

4.5 FWO has an annual KPI target in the Education, Employment and Workplace Relations PBS of completing two regional campaigns in each state

⁴⁸ For the remainder of this chapter, Fair Work Inspectors will refer to both FWO and state partner agencies’ inspectors unless otherwise stated.

or territory. FWO exceeded this target in 2011–12 when it completed 22 regional campaigns in total. In 2009–10 and 2010–11, FWO met the target in all but one state.

Campaign selection and planning

4.6 Sound selection of campaigns is important for FWO to direct available resources towards campaigns with the best prospects of increasing overall compliance with workplace laws. FWO also seeks to target campaigns to reduce exploitation of vulnerable employees, including those who would be unlikely to complain even if aware of unfair treatment.

4.7 Relevant considerations in selecting campaigns include: the extent of complaints arising from different industries; internal and external intelligence; cost pressures within different industries which affect payment of wages; and the vulnerability of employees. Pilot campaigns may also be conducted to gather intelligence about certain industries.

4.8 National campaigns undertaken by FWO have involved targeted education and audit activity for a range of industries, including the security, retail, hair and beauty, and cleaning industries. Of particular note, the campaigns have taken place in industries with many potentially vulnerable employees. Some examples of the large number of smaller regional campaigns include: the Broken Hill Education and Audit Campaign, the Fast Food Campaign and the Mornington Peninsula Hotels and Restaurants Campaign.

4.9 For most of the national campaigns, the analysis of complaints data was a key determinant in the selection of the campaign. The extent of complaints received from an industry was also a reasonable indicator of the level of non-compliance subsequently identified as part of the campaign.

4.10 The basis for selecting regional campaigns was more variable and, in many cases, the choice of industry was not supported by data analysis. For example, in NSW, many campaigns were responses to media reports, while in Victoria a rolling program of campaign audits was used to target a different region each month.

4.11 Over time, FWO has strengthened its analysis of complaints data to better inform campaign selection. As part of this analysis, FWO identifies industries and locations that have a low level of complaints, but high contraventions of workplace requirements for these complaints. The detailed analysis of complaints is provided to FWO's state offices and the state partner

agencies for consideration in selecting campaigns. For example, this resulted in a campaign in the Queensland Real Estate Industry in 2011.

4.12 To inform the development of a program of potential campaigns for 2012 to 2016, FWO also conducted consultations involving senior agency managers, the Targeted Campaigns Unit, campaign coordinators, and state partner agency representatives.⁴⁹ The consultation process helped ensure intelligence and local knowledge were taken into account in selecting the potential campaigns. For example, senior managers with responsibilities for customer contact and education identified industries they considered had lower understanding of workplace laws and higher levels of non-compliance.

4.13 The program of potential campaigns for 2012 to 2016 was endorsed by FWO's Executive Committee in May 2012. The program identifies the timeline and scale of the potential campaign, and the reasons for its selection. Regional campaigns were proposed for 2012–13 by campaign coordinators and state partner agencies. However, these varied in the extent to which the choice of industry was supported by data analysis, and for several states, campaign selection had not commenced or was not progressed.

Planning and coordination of selected campaigns

4.14 For each campaign selected, a project plan is developed in the form of a 'project brief'. The briefs include the campaign rationale, scope, key deliverables and an action plan. The briefs also include details on how the progress and outcomes of the campaigns will be assessed. The briefs for national campaigns are circulated for the information of participating staff.⁵⁰ Overall, the project briefs prepared were appropriate to the scale of the campaigns and informed the conduct of the campaigns.

4.15 FWO uses several mechanisms to coordinate the delivery of campaigns. For example, the Targeted Campaigns Unit meets on a monthly basis with both campaign coordinators from state offices and state partner agency team leaders, to discuss the progress of campaigns and relevant issues.⁵¹

⁴⁹ A two day targeting roundtable was held in March 2012.

⁵⁰ For example, the briefs are circulated for the information of the Contact Centre, the Communication Team, the Education Team, and the Process Improvement and Knowledge Services area.

⁵¹ Coordination also occurs through meetings involving the range of areas within FWO which contribute to campaigns.

Education activity

4.16 Education and awareness strategies are central to an effective compliance regime, and an important element of FWO's campaign activity is the education phase. In particular, campaigns provide an opportunity for FWO to engage with stakeholders and expand knowledge of its self-service tools and resources.

4.17 The education phase of the national campaigns conducted in 2009–10 generally involved distribution of educational material to the industries, and meetings with a broad range of industry stakeholders. FWO subsequently extended on this approach in order to improve the impact of the education phase. For example, as part of the Horticulture National Campaign in 2010:

- tailored information guides for both employers and employees, and tools to check compliance, were developed in coordination with industry organisations;
- an industry wide mail-out to horticulture growers (advising them about the campaign and educational materials) was followed by a series of educational visits and seminars on relevant workplace requirements;
- guides were distributed through educational visits, industry and employer organisations, and published online⁵²; and
- Fair Work Infoline advisers were given templates to assist with frequently asked questions.

4.18 In the smaller regional campaigns, education largely occurs through the audit process. The ANAO noted that most employers selected for audit were provided with links to the self-service tools and resources available on the Fair Work Ombudsman website, in an introductory letter. Employers were subsequently provided with additional guidance if they were found to be in contravention of workplace laws.

4.19 It is difficult for FWO to measure the precise impact of the education phase of campaigns. Nonetheless, the few follow-up campaigns that have been conducted found significantly lower incidence of underpayments. Also, visits

⁵² The horticulture pages of the Fair Work Ombudsman website received over 800 visits during the campaign.

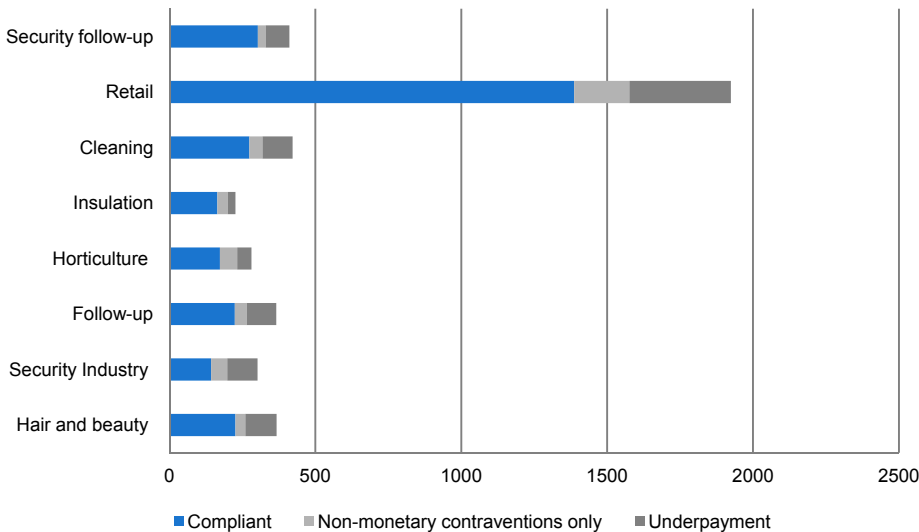
to industry specific website pages during the campaigns peak in response to industry mail-outs from FWO. This indicates that more employers' and employees' become aware of the tools and resources made available by FWO as a result of the education phase.

Audit activity

4.20 Audit activity is a significant element of FWO's campaigns. As part of the national and regional campaigns, Fair Work Inspectors obtain employment records from targeted employers, and use the records to assess their compliance with the relevant award. This may result in identification of monetary and/or non-monetary contraventions of workplace requirements. Monetary contraventions include underpayment of wages, penalty rates and loadings. Non-monetary contraventions relate to recordkeeping requirements for payslips, time worked and wages paid.

4.21 FWO has an annual target of completing 4500 audits, and achieved this target in the past two financial years. In 2009–10, 3413 audits were conducted with 68 per cent of employers found by FWO to be compliant; in 2010–11, 6779 audits were conducted with 68 per cent of employers found by FWO to be compliant; and in 2011–12, 6547 audits were conducted with 65 per cent of employers found by FWO to be compliant. The number of audits undertaken as part of national and regional campaigns doubled from 2009–10 to 2010–11 and increased again in 2011–12. This is a result of an increase in regional audits, including audits undertaken by the state partner agencies following the commencement of contractual arrangements in January 2010.

4.22 For the national campaigns undertaken by FWO, identified levels of compliance vary by industry and campaign (Figure 4.2). For example, only half of the employers audited for the 2009 security industry campaign complied with all of the workplace requirements considered. The 2011 follow-up audit of the security industry found 75 per cent of employers to be compliant.

Figure 4.2**Number of national campaign audits and compliance details, by campaign**

Source: Data provided by FWO's Targeted Campaigns Unit.

Note: 'Underpayment' includes audits in which both underpayments and non-monetary breaches were found.

4.23 Recoveries of wages and entitlements as a result of audits reveal the benefit of a well targeted campaign for employees (Table 4.1). To end June 2012, the eight national campaigns recovered in excess of \$4 million for over 6200 employees. Recoveries resulting from the retail, cleaning, insulation and security follow-up campaigns may rise further when remaining audits are completed; as at 30 June 2012 there were 168 audits ongoing for these campaigns. Most of the ongoing audits were part of the retail industry campaign.

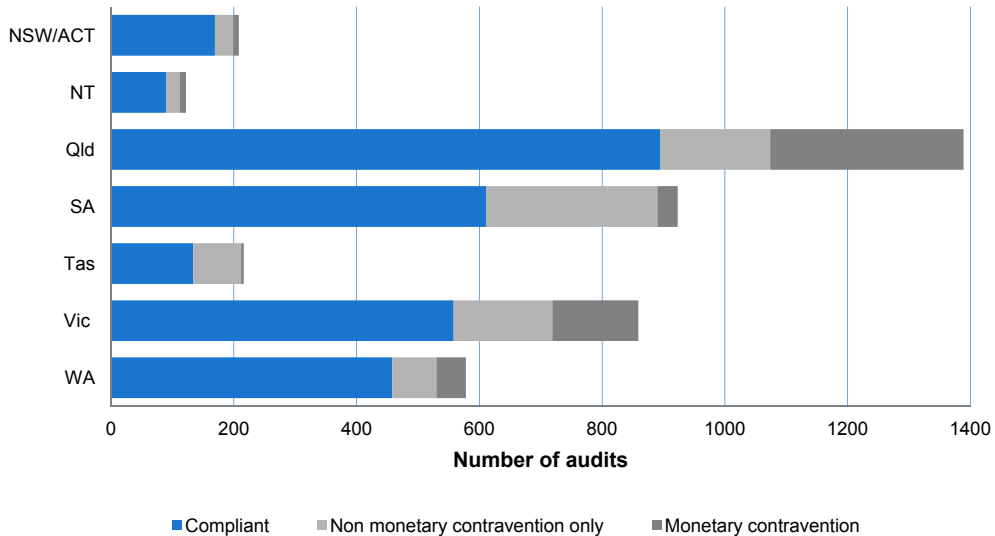
Table 4.1**Monetary recoveries from national campaigns**

| | Number of employees for whom wages were recovered | Average recovery per employee | Total recoveries |
|--------------------|---|-------------------------------|--------------------|
| Hair and beauty | 273 | \$876 | \$239 240 |
| Security Industry | 1156 | \$973 | \$1 125 282 |
| Follow-up | 1595 | \$416 | \$663 260 |
| Horticulture | 665 | \$565 | \$375 406 |
| Insulation | 77 | \$680 | \$52 350 |
| Cleaning | 934 | \$531 | \$495 695 |
| Retail | 785 | \$784 | \$615 098 |
| Security follow-up | 730 | \$637 | \$464 917 |
| Total | 6215 | \$649 | \$4 031 248 |

Source: Data provided by FWO's Targeted Campaigns Unit.

Note: Totals may not add due to rounding.

4.24 The extent to which regional campaigns have identified pockets of non-compliance varies widely (Figure 4.3). In particular, the low number and proportion of underpayment contraventions identified in some areas indicates that the targeting and design of regional campaigns can be improved. For example, regional campaigns in New South Wales/Australian Capital Territory found only nine employers underpaying their employees, recovering \$83 000 for 165 employees.

Figure 4.3**Number of regional campaign audits and compliance details, by state, 2011–12**

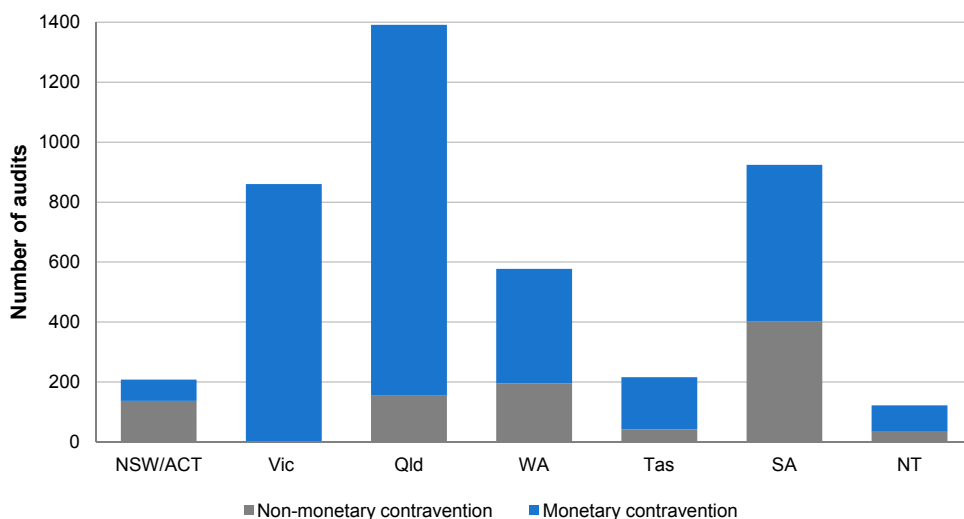
Source: ANAO analysis of FWO data.

4.25 A contributing factor to the low number and proportion of underpayment contraventions in some states is the relatively low number of monetary audits conducted (see Figure 4.4). Monetary audits consider the appropriate payment of wages and entitlements, whereas non-monetary audits focus on recordkeeping. The non-monetary audits conducted included 214 audits of the provision of Fair Work Information Statements.⁵³ As can be seen in Figure 4.4, despite being the largest region, New South Wales/Australian Capital Territory had the second lowest number of audits, with only 71 being monetary audits and 137 being non-monetary.

⁵³ Employers are required to issue new employees with Fair Work Information Statements, but are not required to keep a record of having done so.

Figure 4.4

Monetary and non-monetary regional audits, by state, 2011–12



Source: ANAO analysis of FWO data.

4.26 As discussed in Chapter 2, FWO has contractual arrangements with relevant agencies in the New South Wales, Queensland and South Australian governments that provide for audit activities to be undertaken. While there was a relatively high level of audit activity in Queensland (including monetary audits), the existing contract will cease shortly and the Queensland Government has decided that it will not enter into another contract. A relatively high level of audit activity is also undertaken in South Australia. However, audit activity in New South Wales is relatively low compared to the other larger states, and could be adjusted as part of renegotiating the contractual arrangement.

Monitoring and review of audit activity

4.27 FWO uses a monthly report to track progress against targets for the number of audits to be completed. Completion of audits against targets is also reported in monthly dashboard reports to FWO's Executive Committee.⁵⁴ While the number of audits completed has increased as a result of FWO meeting its internal targets in the past two financial years, many audits have

⁵⁴ FWO also monitors the average age of incomplete audits and monetary recoveries per audit.

continued to take longer to complete than planned. For example, in 2010–11, only one regional campaign was completed within the agreed timeframe. There have been long time lags between employers being informed about their selection for audit, the request for documents and the audit outcome or findings letter. To improve the timeliness of audits, in July 2012 FWO changed its administrative arrangements to better manage the competing demands of complaint and audit work. Dedicated teams of Fair Work Inspectors have been established in each region to undertake the audit work.

4.28 FWO also analyses the findings of campaign audits in order to assess the effectiveness of campaigns. Key considerations include: the extent of non-compliance with workplace laws identified through audits of employers; the types of contraventions identified; the amount of money recovered; and the number of employees for whom money was recovered. However, FWO does not assess the relative efficiency of its audit activities, by comparing the number, type and cost of resource inputs, with the level of audit services delivered. As FWO further develops its systems, it could consider how to capture sufficient information to understand and compare the direct costs and benefits of its audits. Any cost and benefit analysis should remain cognisant of the indirect deterrent effects of audits, which are difficult to measure. Such analysis would further inform FWO's selection of campaigns and audit activity.

Campaign reporting and evaluation

4.29 Public reporting on compliance activity is useful to inform stakeholders about the results and to promote future compliance. For each campaign, FWO publishes a report on its website. These reports reviewed by ANAO gave good coverage of the reasons for the campaign; work undertaken; and the results of the campaign, including the extent of identified non-compliance for the industry and/or location. However, the reports also varied in the presentation of some of the details, such as the dates of the audit period, stakeholder engagement, educational resources provided, and contravention results.⁵⁵ This made it difficult to compare campaigns and audit results. There were also

⁵⁵ To improve consistency in campaign reports, the Targeted Campaigns Unit now assists regional teams to draft and edit the final report. Despite this, regional campaign reports continue to vary in their presentation of audit results, which can be presented in terms of numbers of types of contraventions, or numbers of employers with contraventions (for example, monetary, non-monetary, or both). This does not support aggregation of results across campaigns.

differences between the success criteria nominated in the planning documents and the results reported in the final report.

4.30 Where possible, reports on campaigns are published in accordance with the campaign plan, acknowledging any outstanding audit activity. This has resulted in incomplete public reporting of data on contraventions and recoveries of wages and entitlements for individual campaigns. To give a more complete picture of campaign results, there may be benefit in also publishing a table of the outcomes for recent campaigns, updated on a regular basis, on the Fair Work Ombudsman website.

4.31 The Customer Service Team from Process Improvement and Knowledge Services area conducts internal evaluations of national campaigns. These evaluations draw on feedback from Fair Work Inspectors, industry associations and unions. To date, there have been two evaluations of national campaigns (retail and cleaning). The main focus of the evaluations was identifying aspects of campaigns that worked and areas for improvement, rather than on their overall effectiveness. Stakeholders generally considered that face-to-face education was more effective. They also raised concerns about the wait time for calls to the Fair Work Infoline and time taken to complete audits. The two evaluations made a total of 20 recommendations for the administration of campaigns. For example, recommendations were directed towards improving the quality of internal technical advice for campaigns; and to greater engagement with employees during campaigns.

Other initiatives

4.32 In addition to campaigns, FWO undertakes a range of other initiatives to improve employers' and employees' understanding of, and compliance with, workplace laws. These include: support for national employers and franchises; engagement of community based employee advocates; and media outreach.

National employer and franchise programs

4.33 The National Employer Program (NEP) aims to assist large national enterprises to achieve better workplace policies and practices. The program is designed for enterprises with more than 1000 employees that nominate to work with FWO to improve their workplace relations. FWO's National Employer Advisers examine relevant workplace policies and practices of participating enterprises, and develop a tailored improvement program for the

enterprise when required. FWO advised that by 25 June 2012, 56 national enterprises with more than 332 000 employees had taken part in the NEP.

4.34 Issues identified as part of the NEP include: unpaid training, meetings and work events; inappropriate refusal of leave during peak periods; employment contract clauses permitting inappropriate deductions and cashing out of annual leave; and incorrect application of modern award transitional arrangements. Further, four major enterprises that participated in the NEP entered into self audit agreements with FWO. This involved the enterprise checking their records to make sure that they met workplace requirements.

4.35 FWO launched the National Franchise Program in February 2012. This program is similar to the NEP, and seeks to assist franchisors⁵⁶ in promoting and supporting franchisee compliance with workplace requirements. FWO advised that as at 25 June 2012, it was working with eight franchisors which have over 39 000 employees across their franchise networks.

Community based advocates

4.36 FWO contracts five community based employee advocate organisations to provide legal advice, advocacy and education to vulnerable employees. In total, these organisations have received over \$2 million in funding from FWO since 1 July 2009. The provision of services by these organisations is variable across Australia. Support services that are accessible to all vulnerable employees are only available in Victoria and Western Australia. The services in Queensland, South Australia and the Northern Territory are only for women. No employment advocate is funded in New South Wales or Tasmania.

Print, radio, television and social media

4.37 Media coverage can be used as an active strategy to promote the objectives of an agency. FWO uses media coverage to publicise the Fair Work Ombudsman website self-service tools and resources, as well as its role in enforcing workplace laws. This raises public awareness of FWO's role and the outcomes that it achieves. Media releases are issued nearly every day by FWO, resulting in strong print, radio and television coverage, particularly in the regional media. Over the past two years media coverage has been

⁵⁶ Franchisors may participate in the program if they employ a large number of vulnerable workers and centrally coordinate workplace practices for franchisees.

valued at around \$3 million per year.⁵⁷ Campaigns with high contraventions and recoveries generate a significant amount of media interest.

4.38 FWO also actively engages with the public using the social media sites Twitter, Facebook and YouTube. For example, FWO has published 56 videos on YouTube, including short videos on employing staff in Australia in 14 different languages, and on working in Australia in 13 different languages. These videos target sectors with high levels of non-compliance and vulnerable workers. The videos are also available on the Fair Work Ombudsman website.

Conclusion

4.39 FWO's national and regional campaigns involve education and audit activity in selected industries or locations. In 2011–12, FWO completed 26 campaigns, compared to a target of 20 campaigns. The selection of national campaigns has been well informed by analysis of complaints data and consultation involving relevant FWO staff and representatives of the state partner agencies. However, the basis for selecting regional campaigns was more variable, and in some cases the choice of industry was not supported by data analysis. For completed campaigns, FWO's planning, monitoring and reporting has generally been sound.

4.40 The number of employer audits undertaken by FWO as part of campaigns has increased substantially in the past three financial years, and significantly exceeded FWO's internal target for 2011–12.⁵⁸ However, there has been variability in the number and type of audits undertaken at a state level relative to the size of the state and the number of workplace complaints received. For example, in 2011–12, 860 monetary audits were completed in Victoria, and in New South Wales, 71 monetary audits and 137 non-monetary audits were completed. A more coherent approach to targeting state level audits would base the number and type of audits undertaken on identified risks of non-compliance. Changes in the coverage of state level audits could also be considered as part of contract renegotiations with relevant state agencies.

⁵⁷ The value of media (excluding online coverage) was estimated by a commercial organisation as \$3.0m in 2010–11 and \$1.7m from 1 July 2011 to 31 December 2011.

⁵⁸ Levels of non-compliance identified as part of the audits have remained relatively stable. For 6547 audits of employers in 2011–12, non-compliance with workplace legislation was identified for 35 per cent of the employers.

5. Workplace Complaints Handling

This chapter reviews FWO's processes for lodgement, management and resolution of workplace complaints.

Introduction

5.1 The ability for an employee to lodge a workplace complaint with the Fair Work Ombudsman is a feature of the *Fair Work Act 2009* (the Act). One of the functions of the Fair Work Ombudsman under the Act is to 'inquire into, and investigate, any act or practice that may be contrary to the Act, a fair work instrument or a safety net contractual entitlement'. The effectiveness of FWO's handling of workplace complaints is a key factor in its overall contribution towards fair Australian workplaces and justice in the workplace. To support its success, a complaint handling system should generally be modelled on principles of fairness, accessibility, responsiveness, efficiency and integration.⁵⁹

5.2 This chapter outlines the number and type of workplace complaints received by FWO. The chapter then examines FWO's arrangements for managing and resolving the workplace complaints it receives.

Number and types of complaints received

5.3 The number of workplace complaints received by FWO and the Workplace Ombudsman (FWO's predecessor agency) from 2007–08 to 2011–12 is shown in Figure 5.1. There is no obvious trend in total number of workplace complaints since 2007–08, which was under the former workplace relations system. The broader coverage of the reformed workplace relations system also needs to be considered when making any comparison to the former system.

5.4 In 2011–12, FWO recorded the receipt of 26 366 workplace complaints, which is an increase of 20 per cent from the 21 980 complaints reported as received in 2010–11. FWO cited a potential lag in the lodgement of claims following time taken to embed the reformed workplace relations as a possible reason for the increase in complaints.⁶⁰ However, FWO had not undertaken

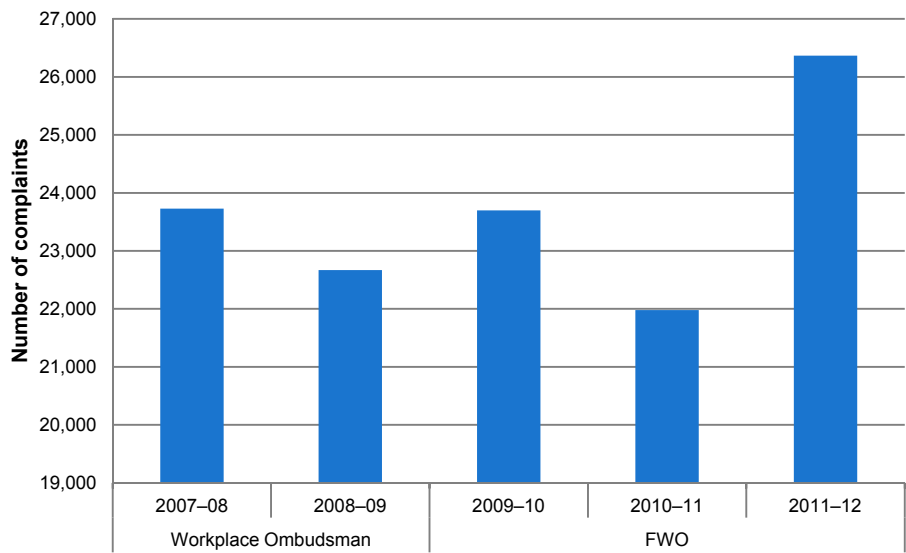
⁵⁹ Commonwealth Ombudsman, *Better Practice Guide to Complaint Handling*, April 2009, p. 3.

⁶⁰ Executive Meeting minutes, 20 June 2012.

detailed analysis of the underlying causes of the increase in complaints, which would help the agency to understand the potential implications and respond appropriately.

Figure 5.1

Reported number of workplace complaints received, 2008–09 to 2011–12



Source: ANAO analysis of FWO’s investigation case management system (Nexus) data, FWO Annual Reports for 2010–11 and 2009–10 and the Workplace Ombudsman Annual Report for 2008–09.

5.5 While the majority of complaints received by FWO in 2011–12 related to employees’ wages (63 per cent), the remainder covered a variety of other issues such as: leave from the workplace, discrimination in the workplace, general protections for employees and recordkeeping matters. The profile of complaints received by FWO requires efficient arrangements to manage the large volume, and application of relevant expertise to resolve more complex matters. It also calls on the application of relationship management and negotiation skills in interacting with employers and employees to resolve issues of concern to these parties.

Lodging a workplace complaint

Accessing information on lodging a workplace complaint

5.6 In order to lodge a workplace complaint, potential complainants need to be aware of FWO’s complaint system and how to access it. Essential details to be conveyed to potential complainants include: how a workplace complaint

can be submitted; timeliness standards for handling complaints; limitations on the agency's jurisdiction to handle complaints; and the options available to a person dissatisfied with the outcome of the complaint or the way the complaint was dealt with.⁶¹

5.7 FWO's website provides relevant information on lodging a complaint through a tab on the home page. The information on the website caters for clients with particular needs⁶² and provides details on:

- who can make a workplace complaint to FWO;
- how to make a complaint, including documents needed to support claims;
- the time limits on lodging complaints; and
- the process that occurs after a complaint has been lodged.

5.8 FWO advises potential complainants to approach their employer before lodging a workplace complaint. However, if an employee is vulnerable, the issues are complex or the employee wishes the complaint to be confidential, they may choose to lodge a complaint without first approaching their employer.

5.9 FWO also states that its aim is to resolve workplace complaints within 90 days, noting that claims which require investigation may take longer depending on their complexity. FWO's Customer Service Charter, also available on the website, states that complainants who believe they have been given the incorrect information, or are dissatisfied with the outcome of an investigation, are able to have the information clarified or the decision reviewed by FWO in the first instance and subsequently by the Commonwealth Ombudsman if necessary.

Mechanisms to lodge a workplace complaint

5.10 Potential complainants should be offered a range of options to lodge a complaint. As a minimum, this means a telephone number (preferably toll

⁶¹ Commonwealth Ombudsman, *Better Practice Guide to Complaint Handling*, April 2009, p. 11.

⁶² Such as clients who need to use translation services, or those with hearing or speech impairments.

free), an email address and a postal address. Other options include face to face contact with a staff member and online lodgement of complaints.⁶³

5.11 Until recently, complainants were able to complete a Workplace Complaint Form available on the Fair Work Ombudsman website. The form was then able to be emailed, faxed or posted to FWO, or delivered in person at a FWO office or state partner agency office. One of the consequences of this approach was that FWO was dealing with some complaints that were not within its remit. To address this issue, FWO updated the procedures for making complaints. The Fair Work Ombudsman website now recommends that potential complainants call the Fair Work Infoline in the first instance to establish how to calculate their entitlements.⁶⁴ The adviser may then recommend the completion of a Workplace Complaint Form. Complainants now submit a Workplace Complaint Form by post or in person at a FWO or state partner agency office. FWO's website no longer provides the option to submit a complaint via email.

5.12 While the changes in workplace complaint lodgement are likely to reduce FWO's work in responding to complaints that are not within its remit, they have an impact on accessibility. In this respect, complainants can only contact the Fair Work Infoline during business hours, on weekdays. Online lodgement options are used by government agencies to support accessibility, however this is not an option offered by FWO.

5.13 FWO intends to review the impact of this change on accessibility, although it has not established when this will occur. A review is essential to help ensure that FWO's stated commitment to a citizen-centric focus, particularly for vulnerable employees, remains supported by the new procedures for lodging complaints.

Handling workplace complaints

5.14 The nature of complaints received by an agency can differ widely. Simple complaints may often be resolved quickly without the involvement of specialised complaints handling staff. More complex or sensitive complaints

⁶³ Commonwealth Ombudsman, *Better Practice Guide to Complaint Handling*, April 2009, p. 12.

⁶⁴ Most calls to the Fair Work Infoline are charged at a local call rate with any additional costs paid by FWO. Mobile call costs depend on the rates charged by the mobile telecommunications company used by the caller.

may take longer to resolve and need specialist attention. A guiding principle is that complaints should be handled in a way that is proportionate and appropriate to the matter being complained about.⁶⁵

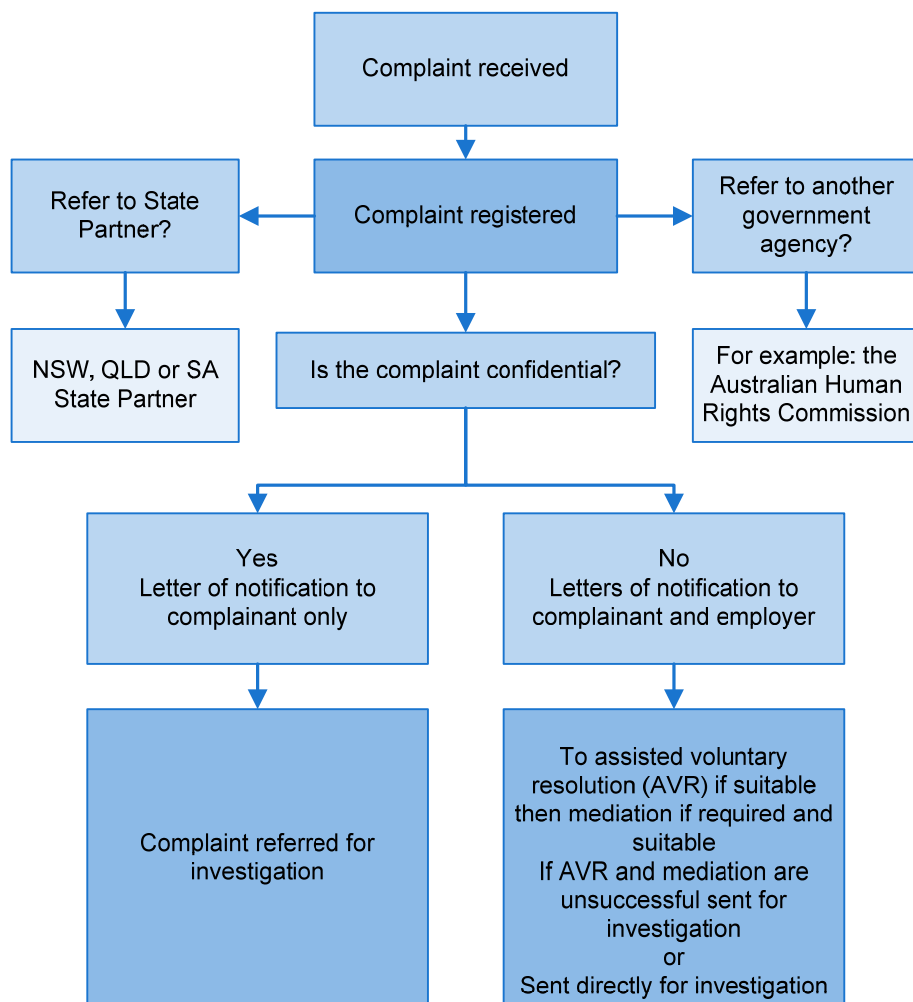
5.15 FWO receives approximately 100 complaints per working day and its early assessment of the complaints is essential for their effective handling.⁶⁶ Once received, a registration team enters the information on the complaint form into the investigation case management system (Nexus) then searches the complaint document for key words and phrases. The search is to determine whether the matters include discrimination, coercion, freedom of association, or industrial action. In these instances the complaint is referred directly to an investigator who specialises in complex investigations. In other instances, the assignment of complaints to different areas and resolution methods follows the pathway illustrated in Figure 5.2.

⁶⁵ Commonwealth Ombudsman, *Better Practice Guide to Complaint Handling*, April 2009, p. 14.

⁶⁶ A complaint can also raise several related but differing concerns which require separate handling or referral to another agency.

Figure 5.2

Registration and distribution of workplace complaints



Source: *Fair Work Ombudsman Operations Manual*, November 2011.

5.16 State partner agencies receive a proportion of the complaints received by FWO each week from their jurisdiction, and use a range of techniques to resolve these complaints based on their complexity. The state partner agencies deal with their allocated complaints until they are resolved, including in some instances through litigation. The state partner agencies also use Nexus as their case management system to enable combined reporting.

5.17 Within FWO, complaints are allocated for assisted voluntary resolution (AVR), mediation and/or investigation. A complaint is referred directly for investigation if the complainant has asked that the complaint be treated

confidentially, the complaint appears serious, or the employer is a 'repeat offender'. A very small proportion of the workplace complaints received by FWO are subject to other Commonwealth or State laws. Where this occurs the complainant will be notified of the responsible agency.⁶⁷

5.18 To support staff in handling workplace complaints, the *Fair Work Ombudsman Operations Manual* outlines specific protocols for AVR, mediation and investigations. The manual includes: a definition of each type of complaints resolution method; when the method is suitable for use (including escalation); the process for each method; and documentation and recordkeeping requirements for each method. The guidelines help to ensure a consistent approach to resolving complaints within FWO.

5.19 In addition, at the time of their appointment Fair Work Inspectors complete an induction program which covers: key aspects of the Act, including the powers of Fair Work Inspectors; the use of internal systems; investigation techniques; and communication skills. As mentioned in Table 2.2, Fair Work Inspectors from state partner agencies must complete mandatory training within three months of their appointment.

Methods for resolving workplace complaints

Assisted voluntary resolution

5.20 In the first instance, many complaints are allocated for AVR, which involves discussions between a Fair Work Inspector and the employer, independent of the discussions between the Fair Work Inspector and the employee.⁶⁸ AVR is used to voluntarily and cooperatively deal with a workplace complaint. The option was initially developed to tackle the high volume of non-complex workplace complaints which could be addressed

⁶⁷ For example, if the workplace complaint is in relation to unfair dismissal or termination, the complainant will be advised to contact Fair Work Australia. For reporting purposes, FWO considers that such complaints have been resolved by its registration team, which is part of the National Assisted Voluntary Resolution Team.

⁶⁸ AVR will not be attempted if the allegation or complaint is: confidential; from an overseas worker employed in Australia under a visa; related to unpaid trial work or unpaid work experience; involves complex matters, such as discrimination, industrial action or right of entry; involves an employer with a history of non-compliance; is a particularly serious nature; and/or the assessor, using their discretion, decides AVR is not appropriate or in the public interest. Additionally, the complaint will be referred immediately for mediation or investigation if the employer or employee refuses the option of resolution via AVR.

quickly and effectively without a full investigation. If no contravention is found or a mutually agreeable outcome between the parties is reached, the complaint process usually ends at this stage.⁶⁹ However, if no mutually agreeable outcome is reached, the matter may be referred for mediation or investigation.

5.21 AVR provides an effective method for resolving less complex workplace relations issues between employers and employees. The use of AVR has resulted in the finalisation of a large number of the more straightforward workplace complaints in a timely manner (see Figure 5.3 and Table 5.1 later in this chapter).

Mediation

5.22 In March 2012, FWO formalised mediation⁷⁰ as a process for dealing with workplace complaints. Previously, mediation was generally conducted as an informal part of an investigation process. Mediation also assists in resolving the high volume of low complexity complaints received by FWO. Mediation is usually confidential, with only the parties to the dispute and the mediator privy to the process and outcome.⁷¹

5.23 If mediation is successful and results in an agreed payment to a complainant, the mediator will draw up a legally binding contract setting out the terms and conditions, to be signed by the complainant and the alleged wrongdoer. If the contract is breached, the matter is transferred for investigation or possible litigation. If mediation is unsuccessful, the complaint is transferred to a Fair Work Inspector for investigation.

5.24 The formalisation of mediation provides FWO with another useful mechanism to resolve workplace complaints before proceeding to a full investigation. In addition, the initial results of formal mediation have been encouraging in terms of the timely finalisation of complaints (see also Figure 5.3 and Table 5.1 later in this chapter).

⁶⁹ Although voluntary resolution may be achieved, in some circumstances a full investigation may still be necessary. For example, when a contravention may have been identified as serious or systemic and may affect other employees.

⁷⁰ Mediation usually occurs following attempted AVR. However, some complaints may be referred by a Fair Work Inspector for mediation during the investigation process, or mediation may be requested by a complainant. Mediation can also occur prior to legal action.

⁷¹ The mediation process and/or the outcome may be disclosed if all parties agree.

Investigation

5.25 If a workplace complaint is received that is not suitable for AVR or mediation, it is investigated. As noted above, complaints are also investigated if they cannot be resolved via AVR or mediation. Complaints that are referred for investigation can be difficult to resolve. ANAO analysis of Nexus data showed that a workplace complaint may include a number of lines of investigation.⁷² Complaints with more than one line of investigation comprised 20 per cent of the total number of complaints received in 2011–12, and the number of lines of investigation ranged from two to 15.

5.26 Investigations are a necessary component of FWO's overall approach to complaints handling, particularly for more difficult workplace relations issues. Accordingly, FWO has investigators who specialise in complex matters. FWO's performance in relation to investigations is also discussed later in this chapter.

Reviews of complaint handling

5.27 One of FWO's objectives is to ensure justice in the workplace, which requires procedural fairness in the handling of workplace complaints. Along these lines, an important aspect of an agency's complaints handling is the establishment of suitable review arrangements for people dissatisfied with how a complaint is handled, or with the outcome. The procedure for seeking a review of this kind should be explained in the letter of notification about the complaint and on the agency's website.⁷³

5.28 FWO's Customer Service Charter, available on the Fair Work Ombudsman website, states that if the parties to a complaint believe they have been given the incorrect information, or are dissatisfied with the outcome of an investigation, they are able to have the information clarified or the decision reviewed.⁷⁴ FWO also indicates in its completion notifications to the parties involved in a workplace complaint that a review may be requested, although these notifications are not explicit about the review process available.

⁷² For example, a complaint was received about underpayment of meal allowances and was referred for investigation. After discussing the issues and calculating the entitlements, it was found that the complainant had also been underpaid their hourly rate, overtime, leave loading and other entitlements. This resulted in 10 lines of investigation rather than the original single line of investigation.

⁷³ Commonwealth Ombudsman, *Better Practice Guide to Complaint Handling*, April 2009, pp. 25–26.

⁷⁴ A review may be requested of FWO: due to poor process or client service; based on dissatisfaction with the advice or information received; or dissatisfaction with the outcome of a complaint.

5.29 A request for a review may be received from an employee, employer, a state partner agency or from within FWO. Requests made by a state partner agency or FWO reflect management concerns about the way a complaint was handled. All requests for review are sent to FWO's File Review Team for consideration and allocation. Review work may be allocated to a Fair Work Inspector who had no involvement in the initial action or decision, or undertaken as a new investigation by the File Review Team itself.

Monitoring and reporting on complaints handling

5.30 The managers within FWO responsible for complaints handling use a monthly operations report to monitor service levels. The operations report is generated using Nexus data and includes the number of complaints received, finalised and on-hand, by month and year-to-date. The report shows the number of complaints finalised by different areas (the National Assisted Voluntary Resolution Team, the Mediation Unit, state partner agencies or FWO's investigation area). Other report details include the number of complaints by industry, the most common allegation types, and monies owed to employees. In addition to these standard reports, Nexus is also used to generate ad-hoc reports which allow managers to monitor performance by jurisdiction, team and individual.

5.31 In addition, monthly dashboard reports provided to FWO's Executive Committee include a number of statistics on complaints handling by the agency. These statistics are: complaints received; complaints on hand (FWO and state partner agencies); complaints completed in 90 days (%); Mediation Unit complaints on hand and completed; and the completion rate for complaints referred to the Mediation Unit.

5.32 FWO's management reports provide some useful information on service levels and timeliness for complaints handling. However, they do not identify the resource cost of the services delivered. The development and inclusion of measures of efficiency in these reports could assist improvement of the efficiency of service delivery over time. There are also limitations in the data that can be extracted from Nexus. For example, information on the time complaints were in AVR and mediation prior to being investigated. Reporting would also be strengthened through analysis of the time taken to resolve different types of complaints, such as those involving discrimination.

5.33 For AVR and investigations, FWO has primarily relied on subsequent reviews (following requests for a review) to identify issues with the workplace complaint process. FWO advised that from September 2012, its notifications to clients following the completion of a complaint, or its referral to another area, have advised the client that they could provide general feedback on the process. However, FWO has not routinely seek such feedback through a client satisfaction survey.

5.34 Monitoring the mediation process is particularly important given it is a relatively new process and usually confidential. FWO advised that since March 2012, the Director of the Mediation Unit has observed the performance of each mediator. FWO also advised that it is currently conducting a voluntary online survey of between 300 and 400 mediation clients to obtain feedback and identify any enhancements to the mediation process..

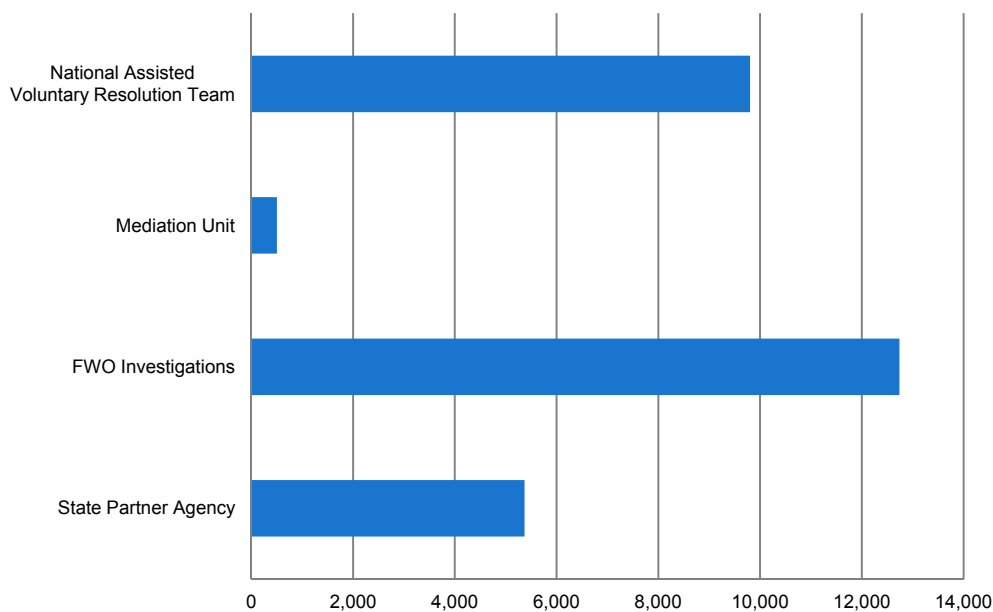
Performance of complaints handling methods and overall results

5.35 FWO has a target of finalising 80 per cent of workplace complaints within 90 days. The ANAO examined Nexus data and FWO's internal reports on complaints handling to understand the contribution of different resolution methods towards the finalisation of complaints, and the timeliness of finalisation.

5.36 The number of workplace complaints finalised by area during 2011–12 is shown in Figure 5.3. Forty-five per cent of the complaints finalised were resolved through FWO's investigations, 19 per cent were finalised by the state partner agencies and 34 per cent were resolved through AVR.

Figure 5.3

Number of complaints finalised by area, 2011–12



Source: ANAO analysis of Nexus data and FWO Annual Report 2011–12.

5.37 The areas within FWO that finalise complaints use differing measures of performance. Table 5.1 discusses the measures and each team’s performance.

Table 5.1**Complaints handling measures and performance, by area, 2011–12**

| Area | Measures and performance |
|---|---|
| National Assisted Voluntary Resolution Team | <p>The NAVR Team's aim is to effectively resolve as many workplace complaints as possible within 30 days of their registration. In 2011–12, the NAVR Team received 17 913 complaints, and finalised 52 per cent of these in 30 days or less, with another two per cent of the complaints finalised in more than 30 days.</p> <p>The NAVR Team referred four per cent of the complaints received to mediation, 36 per cent for investigation, and the final six per cent of complaints were being actioned at end June 2012.</p> |
| Mediation Unit | <p>The Mediation Unit has a target of finalising 1000 mediations per annum. It also aims to finalise 80 per cent of mediations within 25 days of the commencement of mediation.</p> <p>From March 2012 to June 2012, the Mediation Unit received 674 complaints. The unit reported that it resolved seventy-five per cent of these and referred 12 per cent for an investigation, with the remaining 13 per cent being actioned at end June 2012. The Mediation Unit also reported that it met its timeliness target overall, and in each month except for April.</p> |
| Investigations (FWO) | <p>The investigations area of FWO uses the overall KPI for complaints handling to measure their performance, even where complaints have already been through AVR and/or mediation.</p> <p>In 2011–12, 12 782 complaints were resolved through a FWO investigation, with 46 per cent of these resolved within 90 days.</p> |
| Investigations (state partner agencies) | <p>The state partner agencies also use the overall KPI for complaints handling to measure their performance.</p> <p>In 2011–12, 5369 complaints were resolved through a state partner agency investigation, with 59 per cent of these resolved within 90 days.</p> |

Source: ANAO analysis of Nexus data and FWO management reports for the Mediation Unit.

5.38 There are several reasons for the lengthy average time taken to resolve complaints through investigations:

- for FWO, many complaints have already been through AVR and mediation prior to reaching the investigation stage;
- some FWO Fair Work Inspectors were also involved in education and audit activity; and

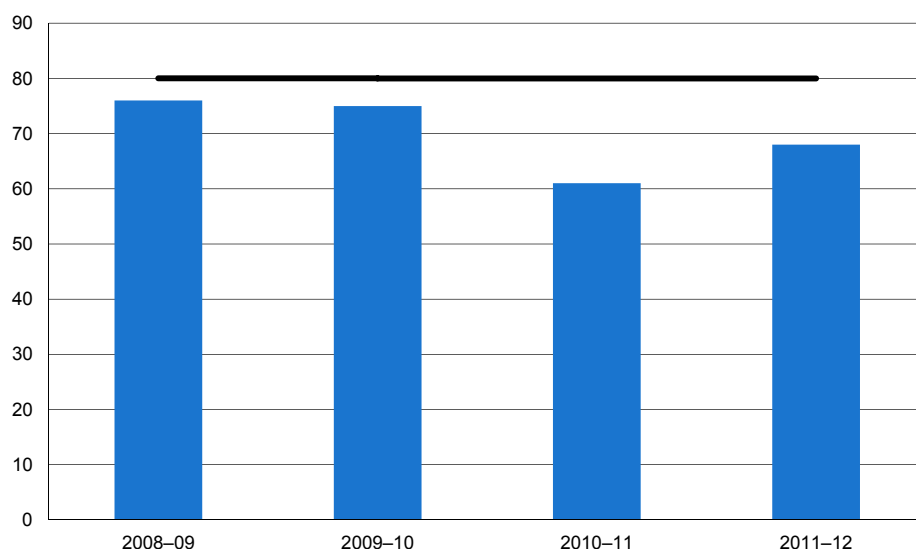
- many complaints referred for investigation are complex and/or involve multiple lines of investigation.⁷⁵

Overall performance of complaints handling

5.39 As mentioned in paragraph 5.35, FWO aims to finalise 80 per cent of workplace complaints within 90 days. This target is reflected as a key performance indicator (KPI) in the Education, Employment and Workplace Relations Portfolio Budget Statements (PBS), '*investigations into complaints about breaches of federal agreements or awards completed within 90 days (80 per cent of total complaints)*'. The results against the KPI from 2008–09 to 2011–12⁷⁶, as reported in annual reports, are presented in Figure 5.4. The result for the final year of the Workplace Ombudsman (FWO's predecessor agency) has also been included.

Figure 5.4

Percentage of complaints finalised in 90 days (80 per cent KPI)



Source: 2008–09 result is from the Workplace Ombudsman Annual Report; 2009–10, 2010–11 and 2011–12 results are from Fair Work Ombudsman annual reports.

⁷⁵ In 2011–12, for complaints with more than one investigation line, the average number of days to resolve the complaint was 239 days. This compared to an average of 77 days for complaints with only one investigation line.

⁷⁶ The ANAO calculation of the KPI result for 2011–12 using Nexus data was within one per cent of FWO's reported result of 68 per cent.

5.40 While FWO has not met the 80 per cent KPI target on an annual basis, FWO's 2011–12 Annual Report indicated that on a monthly basis, the complaints finalised in 90 days had increased during the year to 73 per cent for the month of June 2012. The report also stated that the reasons for the increase were:

- a concerted focus by the agency in the second half of 2011–12 on resolving the oldest ongoing complaints;
- a growing foundation of technical advice and experience with the new Fair Work system, which has enabled Fair Work Inspectors to assess and investigate complaints more effectively;
- the enhancement and stabilisation of Nexus, which has improved the efficiency of business processes associated with administering and reporting on complaints; and
- the greater use of alternative dispute resolution methods, which have enabled more timely resolution of complaints without requiring a full investigation treatment.⁷⁷

5.41 FWO advised that this trend had continued and reported that in July and August 2012, 78 per cent and 82 per cent respectively of complaints were finalised within 90 days. As mentioned in Chapter 2, one of FWO's change projects is to develop an early treatment model for workplace complaints to improve the timeliness of complaints resolution. The ANAO has also previously noted that FWO could negotiate to include strengthened performance incentives into renegotiated contracts with the remaining state partner agencies.

5.42 The number of requests for a review of the handling or outcome of a complaint provides an indication of the quality of service delivery. In 2011–12, FWO resolved 28 412 complaints and received 216 requests for a review (0.8 per cent of total complaints). Of these requests, 201 were received from employees or employers. For around one-third of the reviews, the original decision was overturned or the complaint handling process was found to be deficient in areas such as information gathering, analysis and findings, and

⁷⁷ *Fair Work Ombudsman 2010-11 Annual Report*, p. 17.

recordkeeping.⁷⁸ The File Review Team often makes recommendations for improvement to responsible areas based on the findings of the reviews.

Conclusion

5.43 FWO recently amended its arrangements for employees to lodge a workplace complaint, removing the option to lodge a complaint by email. This is likely to result in FWO receiving fewer complaints that are not within its remit. However, it also makes FWO's complaints handling service less accessible for employees. As a consequence, it is important that FWO review the impact of the change in lodgement arrangements in the short term, and make any necessary adjustments to support accessibility. FWO receives around 100 workplace complaints per working day, which are allocated for resolution using a suitable range of methods based on the nature and complexity of the complaint. In particular, the use of assisted voluntary resolution, and more recently, formal mediation, for inquiring into and resolving less complex complaints has assisted FWO to deal with a large number of the more straightforward complaints in a timely manner. FWO has also pursued a range of other strategies to improve the timeliness of its complaints handling, which include an agency change project directed towards developing an early treatment model for workplace complaints. While in 2010–11 and 2011–12 FWO finalised action on less than 70 per cent of complaints in 90 days compared to a target rate of 80 per cent, the agency reported that timeliness improved in the first two months of 2012–13.

⁷⁸ Information is sourced from the File Review Team's annual report for 2011–12.

6. Performance Monitoring and Reporting

This chapter reviews FWO's performance information framework in the Portfolio Budget Statements, executive performance monitoring, and reporting to the Parliament and stakeholders.

Introduction

6.1 Performance monitoring and reporting are important elements of program delivery. They contribute to informed decision-making and use of resources, and provide for accountability to the Parliament and stakeholders. The collection and analysis of relevant performance information underpins monitoring and reporting activities.

6.2 To assess FWO's performance monitoring and reporting, the ANAO reviewed FWO's performance information framework in the Portfolio Budget Statements (PBS), its executive performance monitoring⁷⁹, and its reporting to the Parliament and stakeholders through its annual reports.

Performance information framework

6.3 The Australian Government's budget reporting framework requires agencies to establish deliverables and key performance indicators for each program. Deliverables are the goods and services produced and delivered by a program in meeting its objective, while KPIs demonstrate the performance of the program in achieving its objectives and contributing to its respective outcome.⁸⁰

6.4 The deliverables for FWO's *Education Services and Compliance Activities* program are to:

- provide information, advice and education on the requirements and flexibilities of workplace laws to foster voluntary compliance;

⁷⁹ Monitoring at the divisional and operational levels is covered in the previous chapters.

⁸⁰ Department of Finance and Deregulation, 2012, *Guidance for the Preparation of the 2012–13 Portfolio Budget Statements*, Canberra, pp. 34–38.

- investigate claims regarding alleged breaches of workplace laws and undertake targeted activities; and
- litigate, where necessary, to enforce compliance with workplace laws.

6.5 Guidance from the Department of Finance and Deregulation (Finance) states that KPIs:

- should demonstrate the performance of the program in achieving its objectives and contributing to its respective outcome. As many programs will be long term (that is, 10+ years), the projected time scale for the KPIs is at the discretion of the agency and can go beyond the forward years; and
- are not measures of the output of the program (that is, quality and quantity indicators which are included in the deliverables section) but the effectiveness of the program in achieving its objective.⁸¹

6.6 FWO is funded to support compliance with workplace relations legislation through education and enforcement activities. Accordingly, FWO's KPIs should measure the effectiveness of its activities in educating stakeholders and supporting compliance.

6.7 Table 6.1 lists the KPIs for FWO outlined in its 2012–13 PBS, and the associated targets. Actual performance against the targets is presented later in this chapter in Table 6.3.

⁸¹ *Department of Finance and Deregulation, 2012, Guidance for the Preparation of the 2012–13 Portfolio Budget Statements*, Canberra, p. 37.

Table 6.1

FWO's KPIs for 2012–13

| Key performance indicators | Target |
|---|--------|
| Number of campaigns: | |
| - <i>National</i> | 4 |
| - <i>State (number of campaigns in each state/territory)</i> | 2 |
| Investigations into complaints about breaches of federal agreements or awards completed within 90 days (per cent of total complaints) | 80% |
| Calls to the contact centre resolved at the first point of contact | 80% |
| Availability of contact centre services (during advertised hours) | 99% |
| Availability of website (time available as a percentage of total time) | 99% |

Source: Education, Employment and Workplace Relations Portfolio Budget Statements 2012–13.

6.8 FWO's KPIs focus on activity in relation to its program deliverables, including aspects of timeliness and accessibility of services. However, the KPIs do not directly measure the effectiveness of FWO's program in achieving its objective⁸² and contributing to FWO's outcome.⁸³ Although developing measures of effectiveness is challenging, it is important that they are established for internal management and external accountability purposes.

6.9 One of the 28 strategic projects currently underway within FWO involves the development of lead and lag performance measures. It is envisaged that these measures will be both financial and non-financial, and will take a balanced scorecard approach in assessing FWO's performance against financial, operational, client and staff dimensions. A preliminary report on the findings of the project in October 2012 included a list of potential performance measures. Some of these measures address levels of compliance with workplace laws, and client satisfaction with FWO's services. However, further work is required on the design of the measures and their implementation. Along these lines, FWO should develop effectiveness measures and targets to address underlying levels of non-compliance with workplace laws⁸⁴, and stakeholder satisfaction with the quality of its

⁸² The program objective is 'to educate employers, employees, organisations and contractors about the workplace relations system and to ensure compliance with workplace laws'.

⁸³ The outcome is 'compliance with workplace relations legislation by employees and employers through advice, education and where necessary enforcement'.

⁸⁴ This measure would require the use of a consistent measurement technique. For example, a random sample of audits each year, or a stratified random sample at an industry level.

information, advice and education. Effectiveness measures would also contribute to the quality of external reporting to stakeholders.

Performance monitoring

6.10 A sound monitoring regime is a critical element of effective administration of government programs. Monitoring should include executive oversight of overall progress and key issues in relation to program delivery. The effectiveness of executive oversight is dependent on the quality of information provided to the executive on the agency's performance.

6.11 As discussed in paragraph 2.6, FWO has an Executive Committee which meets monthly. The *Executive Committee Charter March 2012* includes that the committee 'ensures the business is performing in line with agreed outcomes and key performance indicators'. To enable this, the committee monitors program performance using a monthly dashboard report. The purpose of the dashboard report is to inform the committee on how well FWO is delivering services to the Australian community, using measurable data as evidence.

6.12 A CPA Australia guide provides some insight into how dashboard reports can assist management action:

As dashboard reports provide an overview of consolidated business information, usually in a visual format and focused on key metrics and risks, users of the reports are more likely to read them regularly and initiate actions or ask appropriate questions. The information in a dashboard report should facilitate discussion or focus where deviations from benchmarks are noted and encourage management by exception. In essence, the report provides triggers for further action if required.⁸⁵

6.13 The performance measures presented in FWO's monthly dashboard report are shown in Table 6.2. FWO uses 'traffic lights' in the dashboard report with the following meaning: red—high risk of short-term and immediate concerns that need to be addressed urgently by the senior management team; amber—medium risk of longer-term concerns that require the senior management team to implement remedial action; and green—on track or low risk.

⁸⁵ CPA Australia, *Dashboard Reporting—A guide to improving management reporting in SMEs*, 2011, p. 4.

Table 6.2**FWO's Executive Committee dashboard report performance measures**

| Work area or aspect | Measures |
|-------------------------------|--|
| Fair Work Ombudsman website | - Website visitors (per month) |
| Fair Work Infoline | - Number of calls received, queued and answered (per month) |
| Education and audit campaigns | - Audits finalised against targets by broad area, year to date |
| Workplace complaints | <ul style="list-style-type: none"> - Complaints on-hand—FWO and state partner agencies, at the end of the month - Complaints received and allocated within FWO or the state partner agencies, per month and year to date - Complaints completed in 90 days against 80% target—combined FWO and state partner agencies, per month - Complaints completed in 90 days against 80% target—comparison of FWO and state partner agencies, per month - Mediation Unit complaints on-hand and completed, per month - Mediation Unit, percentage of complaints completed, per month |
| Legal | <ul style="list-style-type: none"> - Underpayment matters commenced, per month - Non-underpayment matters commenced, per month |
| Staff | - Average staffing level, per month |

Source: Fair Work Ombudsman Dashboard Report August 2012.

6.14 The presentation of red and amber tables to the committee should facilitate discussion or focus, and encourage management by exception. In this respect, it was noted at a November 2011 Executive Committee meeting that:

The Dashboard is being seen as business as usual and not as a management tool. It is not apparent that there is any urgency of action or priority attached to tables which are amber or red ... The responsible Executive Board member/s must engage with the question of whether the measurement setting is the correct one and be prepared to address the Executive Board on why certain KPIs are not being met and what is being done to rectify the situation.⁸⁶

6.15 The minutes from Executive Committee meetings in the following months include discussions on different aspects of the dashboard reports.

⁸⁶ Executive Committee Meeting minutes, 17 November 2011, p. 4.

Further, in line with the committee's March 2012 Charter, a specific part of the Executive Committee meetings is now dedicated to examining the dashboard report and discussing business performance.

6.16 Nonetheless, there is considerable scope to improve the dashboard report to better inform the Executive Committee's consideration of program performance and key risks:

- the measures used in the report do not provide a balanced perspective of performance or shed light on some key risks to FWO's service delivery. For example, half of the measures in the dashboard report are used to gauge the level of workplace complaints and the timeliness of their finalisation. There is also only one measure for the Fair Work Infoline, and it does not specify the number of abandoned calls or call wait times, despite these presenting key risks, particularly with reductions in the number of Fair Work Infoline advisers.
- the dashboard report and KPIs outlined in FWO's 2012–13 PBS can be better aligned; and
- the dashboard report does not include measures which reflect the relationship between number, type and cost of resource inputs, and the level of workplace relations services delivered.

6.17 The preliminary report for the performance measures project also identified shortcomings in the dashboard report. Some of the potential measures suggested as part of the project could be used to strengthen the quality of information in the dashboard report, and its coverage of key risks.

6.18 Chapters 3, 4 and 5 of this report discussed the operational-level reports used by FWO to monitor its Fair Work Infoline, audit and complaints handling services respectively.⁸⁷ As is to be expected, these reports include more detailed data than that provided in the dashboard report to the Executive Committee. For example, data is made available on abandonment rates, the speed of answers, types of calls and average call handling times at a site level for the Fair Work Infoline. However, these reports also do not include measures which directly relate resource inputs and services delivered. Such measures of efficiency could, for example, consider:

⁸⁷ See paragraphs 3.34, 4.22 and 5.30.

- the relationship between the average number of Fair Work Infoline advisers for a period, and call wait times and abandonment rates for the period;
- the average number of audits (by type) completed by Fair Work Inspectors in different jurisdictions in a period and the cost of this work; and
- the resources used and time spent in resolving different workplace complaint investigation lines.

6.19 The development of suitable measures of efficiency would offer several benefits to FWO. Such measures would inform senior management about the potential impact of changes in resource allocation, including the impact of reductions in the number of staff in front line operational areas. They would also enable FWO to compare the productivity of staff who work in different jurisdictions or areas on similar tasks, as a basis for generating improvements. In addition, FWO's understanding of impediments to timely service delivery could improve, thereby helping the agency to reshape service delivery approaches in these areas.

Changes to internal reporting

6.20 FWO has identified that although it is a data rich agency, its data holdings are dispersed and often difficult to access. In many cases, business units are unable to identify all the information sources.

6.21 In May 2012, FWO established a Reporting and Analysis Team to streamline and enhance its internal reporting capability. The objectives of the team are to:

- define and improve data capture processes, improve processes by which reports are requested and distributed, and provide analysis,
- establish strong links with all operational areas and reduce risk to the organisation by ensuring a coordinated succession plan to ensure skills in data extraction are maintained; and
- produce a range of reports, including on financial and human resources, the website, Fair Work Infoline, audits and complaints handling.

6.22 An important role for the Reporting and Analysis Team will be to assess available data to determine how it can be used to measure the efficiency and effectiveness of FWO's service delivery. This would also inform any

necessary improvements in data generation, capture and maintenance. For example, FWO does not currently record the time staff spend on significant tasks, which would assist in developing agency understanding of resource intensive work.

External reporting

6.23 Agency annual reporting on program performance provides stakeholders with an indication of the relative success of programs. Annual reporting is meant to align with the structure of the PBS, including a high degree of compatibility and a 'clear read' between the performance indicators in the PBS and the annual report.

6.24 The performance results in FWO's annual reports against the KPIs in its PBS are shown in Table 6.3.

Table 6.3

FWO's reporting against the PBS KPIs 2009–10 to 2011–12

| Key performance indicators | Target | 2009–10 Annual Report | 2010–11 Annual Report | 2011–12 Annual Report |
|---|---|-----------------------------|-----------------------------|-----------------------------|
| Number of campaigns: - <i>National</i> - <i>State (number in each state/territory)</i> | 4 At least 2 in each state/territory | 3 Met except Qld | 4 Met except NSW | 4 Met (22 in total) |
| Investigations into complaints about breaches of federal agreements or awards completed within 90 days (per cent of total complaints) | 80% | 75% | 61% | 68% |
| Calls to the contact centre resolved at the first point of contact | 80% | 95% | 97% | 98% |
| Availability of contact centre services (during advertised hours) | 99% | 99% | 95% | 99% |
| Availability of website (time available as a percentage of total time) | 99% | 99% | 99% | 99% |

Source: FWO 2009–10, 2010–11 and 2011–12 annual reports.

6.25 As mentioned in paragraph 6.8, the KPIs listed in the PBS do not directly measure the agency's effectiveness in achieving its program objective and contributing to its outcome. The development and measurement of performance using more direct effectiveness measures would enable FWO to

improve the quality of information reported to stakeholders through its annual reports.

Conclusion

6.26 The objective of FWO's single program is 'to educate employers, employees, organisations and contractors about the workplace relations system and to ensure compliance with workplace laws'.⁸⁸ The FWO KPIs in the Education, Employment and Workplace Relations Portfolio Budget Statements focus on activity in relation to its program deliverables, including aspects of timeliness and accessibility of services. However, the KPIs do not directly measure the effectiveness of FWO's program in achieving its objective and contributing to FWO's outcome. Although developing measures of effectiveness can be challenging, it is important that they are established for internal management and external accountability purposes, including gauging the impact of changes in delivery approaches over time. Along these lines, FWO should develop effectiveness measures and targets for underlying levels of non-compliance with workplace laws⁸⁹, and stakeholder satisfaction with the quality of its information, advice and education (as identified through an annual client survey). Effectiveness measures would also contribute to the quality of external reporting to Parliament and stakeholders, and understanding about the ongoing operation of the reformed workplace relations system.

6.27 FWO's executive and divisions use several key management reports to monitor the delivery of services. However, these reports generally do not include measures which reflect the relationship between number, type and cost of resource inputs, and workplace relations services delivered. The inclusion of efficiency measures in the reports would inform senior management about the impact of changes in the level of resources applied to particular service delivery activities.

⁸⁸ Portfolio Budget Statements 2012–13, Budget Related Paper No.1.6, Education, Employment and Workplace Relations Portfolio, p. 256.

⁸⁹ This measure would require the use of a consistent measurement technique. For example, a random sample of audits each year, or a stratified random sample at an industry level.

Recommendation No.2

6.28 To better inform monitoring, reporting and adjustments in service delivery approaches, the ANAO recommends that the Office of the Fair Work Ombudsman:

- establish key performance indicators to measure the effectiveness of its services in supporting compliance with workplace laws; and
- develop measures of the efficiency of its service delivery, which relate the number, type and cost of resource inputs, and the level of workplace relations services delivered.

FWO response

6.29 The Fair Work Ombudsman broadly agrees with this recommendation. In doing so, it notes the current frame of key performance indicators as set out in the Agency's Portfolio Budget Statements are those that evolved for workplace relations inspectorates nationally from the Workplace Relations Ministers Council work that led to a series *Benchmarking of Commonwealth and State Workplace Relations Inquiry and Compliance Services* reports starting in 1999. This work was sponsored by the Ministerial Council and led to a framework agreed to by all jurisdictions. It included a number of agreed key performance indicators against which all jurisdictions, including the Commonwealth forerunner of the Fair Work Ombudsman, agreed to be measured and held accountable.

6.30 The key performance indicators were chosen for a number of critical reasons, including that they may need to serve as surrogates for efficiency and effectiveness measures, due either to the absence of better information, or because better information might be too costly to obtain. Of course, the Fair Work Ombudsman is not against the idea of changing these indicators, or of finding more accurate measures of efficiency and effectiveness, assuming that the information needed can be found and the cost of its collection is not disproportionate to its value. As noted in the report, the Fair Work Ombudsman currently has a number of agency change projects underway designed to equip the Fair Work Ombudsman to meet its future service demands in a cost effective and high quality manner. Two of these projects relate to this recommendation. One is a project to determine the cost of each service delivery option, and the other project is to establish a new set of measures that incorporate lead and lag indicators as well as measure the

organisation's effectiveness and efficiency. In addition, a dedicated centralised reporting unit has been established to ensure data integrity and quality of reporting.



Ian McPhee

Auditor-General

Canberra ACT

18 December 2012

Appendices

Appendix 1: Agency Response



Australian Government

Fair Work OMBUDSMAN

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Dr Andrew Pope
Group Executive Director
Performance Audit Services Group
19 National Circuit
Barton, ACT 2601

Dear Dr Pope

I refer to the current audit by the Australian National Audit Office (ANAO) of the "Delivery of Workplace Relations Services by the Office of the Fair Work Ombudsman", the proposed report of which I received on 7 November 2012.

The Office of the Fair Work Ombudsman notes the ANAO's comments concerning the sound administration of education and compliance services in relation to the *Fair Work Act 2009* delivered by the Fair Work Ombudsman.

The report makes reference to a number of new and changed initiatives implemented by the Fair Work Ombudsman that have led to an ongoing improvement in the timeliness and quality of our service delivery. I am pleased to say that these improvements are ongoing and I expect them to continue to enhance the delivery of our services. Some of these initiatives include the expansion of the range of resolution services we offer for complainants, the implementation of a dedicated Project Management Office to assist with greater strategic risk and project management, and the establishment and strengthening of our data collection and reporting functions. These initiatives are all aligned to improving governance of the Fair Work Ombudsman and delivery of outcomes for citizens in line with the recommendations made by the ANAO report.

I am also pleased to confirm that as noted in the report, the Fair Work Ombudsman has continued since July this year to meet or exceed its important service delivery KPI of completing 80% of matters within 90 days.

I provide the following formal response for incorporation into the audit report and brochure.

The report makes two recommendations with which we substantially agree.

Recommendation No 1

"To support the ongoing operation of the reformed workplace relations system and effectively respond to the demand for its services, the ANAO recommends that the Office of the Fair Work Ombudsman better integrate risk management into strategic and operational planning and decision-making."

www.fairwork.gov.au

Fair Work Infoline 13 13 94

ABN: 43 884 188 232

Fair Work Ombudsman comment:

Broadly the Fair Work Ombudsman supports the recommendation, while noting that the discussion in the report leading to the recommendation is not entirely correct.

Paragraph 2.14 states that a structured approach to risk management may be beneficial in strategy and other functions. Aside from this comment potentially overstating the benefits of risk management to the development of strategy and understating the extent to which strategy is a managerial response to many environmental variables, including but not limited to risk, it runs the risk itself of overlooking the rigour and sophistication of the Fair Work Ombudsman's 2012 strategic planning process, which demonstrably was a discussion about, and a response to, the forward risks facing the Agency.

Paragraph 2.15 notes that a structured approach to risk management would assist the Agency's Executive Committee and senior management in determining the implications of, and responses to, reduced funding and staffing. Again, this paragraph potentially overstates the benefits of risk management systems in strategic decision making and understates the processes that actually were used in the course of the past year, every part of which were to do with identifying and controlling the risks faced by the Agency.

The Fair Work Ombudsman is currently embedding two initiatives in the area of strategic risk management. These are the establishment of a Project Management Office which provides risk based oversight to a number of significant initiatives designed to enhance service delivery. In addition, the Fair Work Ombudsman is establishing a formalised operational Quality Assurance Program to minimise the risk of errors or poor quality outcomes and to promote continuous improvement as a method of promoting high performance. Additionally, as part of its regular work program an internal audit report on risk management has been provided to the Fair Work Ombudsman Audit Committee for their consideration.

Recommendation No 2

"To better inform monitoring, reporting and adjustment in service delivery approaches, the ANAO recommends that the Office of the Fair Work Ombudsman:

- establish key performance indicators to measure the effectiveness of its services in supporting compliance with workplace laws; and
- develop measures of the efficiency of its service delivery, which relate to the number, type and costs of resources inputs, and the level of workplace relations services delivered."

Fair Work Ombudsman comment:

The Fair Work Ombudsman broadly agrees with this recommendation.


In doing so, it notes the current frame of key performance indicators as set out in the Agency's Portfolio Budget Statements are those that evolved for workplace relations inspectorates nationally from the Workplace Relations Ministers Council work that led to a series *Benchmarking of Commonwealth and State Workplace Relations Inquiry and Compliance Services* reports starting in 1999.

This work was sponsored by the Ministerial Council and led to a framework agreed to by all jurisdictions. It included a number of agreed key performance indicators against which all jurisdictions, including the Commonwealth forerunner of the Fair Work Ombudsman, agreed to be measured and held accountable.

The key performance indicators were chosen for a number of critical reasons, including that they may need to serve as surrogates for efficiency and effectiveness measures, due either to the absence of better information, or because better information might be too costly to obtain.

Of course, the Fair Work Ombudsman is not against the idea of changing these indicators, or of finding more accurate measures of efficiency and effectiveness, assuming that the information needed can be found and the cost of its collection is not disproportionate to its value. As noted in the report, the Fair Work Ombudsman currently has a number of agency change projects underway designed to equip the Fair Work Ombudsman to meet its future service demands in a cost effective and high quality manner. Two of these projects relate to this recommendation. One is a project to determine the cost of each service delivery option, and the other project is to establish a new set of measures that incorporate lead and lag indicators as well as measure the organisation's effectiveness and efficiency. In addition, a dedicated centralised reporting unit has been established to ensure data integrity and quality of reporting.

Yours sincerely



Nicholas Wilson
FAIR WORK OMBUDSMAN
3 December 2012

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