

JUNE 2022

Quarterly Report by the Commonwealth Ombudsman under s 712F(6) of the *Fair Work Act 2009* – for the period 1 October to 31 December 2021

Quarterly report by the Acting Commonwealth Ombudsman, Penny McKay, under Part 5-2 of Chapter 5 of the *Fair Work Act 2009*

Fair Work Ombudsman powers

Under section 712AA of the *Fair Work Act 2009* (the Act), the Fair Work Ombudsman (FWO) may apply to a nominated Administrative Appeals Tribunal (AAT) presidential member for an FWO notice if they reasonably believe a person has information or documents that will assist an investigation and is capable of giving evidence. The FWO notice may require its recipient to:

- give information to the FWO or a specified staff member of the FWO
- produce documents to the FWO or a specified staff member of the FWO, and
- attend before the FWO, or a specified staff member of the FWO who is a Senior Executive Service (SES) employee or an acting SES employee, and answer questions relevant to the investigation.

Commonwealth Ombudsman's review role

Under section 712E of the Act, the FWO must notify the Commonwealth Ombudsman (the Ombudsman) that an FWO notice was issued and provide copies of the notice, affidavit and other information given to a nominated presidential AAT member – as soon as practicable after an FWO notice is issued.

Under section 712F(1) of the Act, the FWO must provide the Ombudsman with copies of the relevant report, video and transcripts as soon as practicable after an examination is completed. We use these records to review how the FWO and any person assisting the FWO exercises the examination powers under the Act, as required under s 712F(3) of the Act.

Under section 712F(6) of the Act, the Ombudsman must report to the Parliament as soon as practicable after the end of each quarter about examinations conducted by the FWO and reviews conducted by the Ombudsman during that quarter.

Review criteria

When conducting our review of the FWO's use of examination powers, we assess its performance against the requirements of the Act, the *Fair Work Regulations 2009* (the regulations), relevant best practice and the FWO's internal guidelines. We also focus on the fair and reasonable treatment of examinees.

We assess FWO notices and examinations against the following criteria:

1. Was the application for a FWO notice made in accordance with the requirements of the Act (s 712AA)?
2. Did the FWO notice comply with the requirements of the Act and the regulations (ss 712AA, 712AB and 712AC)?
3. Was the FWO notice served in accordance with the requirements of the Act (s 712AD)?
4. Was the examination conducted in accordance with the requirements of the Act (ss 712AA, 712AE and 712C), the regulations, relevant best practice and the FWO's internal guidelines?

Progress made since previous report

We did not make any new findings in our previous FWO report for the period 1 July to 30 September 2021. As such it is not necessary for us to report on FWO progress since that previous report.

Report on examinations and reviews conducted

1 October to 31 December 2021 (FWO notice PVW21/00004)

The Ombudsman conducted one review during the period – from 15 to 19 November 2021 – in relation to one examination conducted by the FWO over 3 days: 29 July 2021, 30 July 2021, 5 August 2021. The results are reported below, with reference to the relevant review criteria.

Criterion 1: Was the application for a FWO notice made in accordance with the requirements of the Act (s 712AA)?

We determined the application for the FWO Notice was made in accordance with the requirements of the Act.

Criterion 2: Did the FWO notice comply with the requirements of the Act and the regulations (ss 712AA, 712AB and 712AC)?

We determined the FWO Notice complied with the requirements of the Act and the regulations.

Criterion 3: Was the FWO notice served in accordance with the requirements of the Act (s 712AD)?

We determined the FWO Notice was served in accordance with the requirements of the Act.

Criterion 4: Was the examination conducted in accordance with the requirements of the Act (ss 712AA, 712AE and 712C), the regulations, relevant best practice and the FWO's internal guidelines?

We determined the FWO was compliant with this criterion and the examinee was treated fairly and reasonably.