

The Fair Work Commission and the Fair Work Ombudsman are independent government bodies that are central to industrial (employment) relations in Australia. This article will discuss what the functions and limitations of each of the two organisations are.



The Fair Work Commission ('FWC') and the Fair Work Ombudsman ('FWO') were created by the Rudd Government under the Fair Work Act 2009 (Cth) ('FWA'). These two organisations helped reform industrial relations in Australia and dismantle the Howard Government's 'Workchoices' legislation. The FWC and FWO were established with the purpose of regulating the industrial relations system in Australia. Despite having the same purpose, both organisations have different functions, limitations and processes.

### **A. THE FAIR WORK COMMISSION (FWC)**

The FWC (previously known as Fair Work Australia) is an independent national tribunal specialising in Australian industrial relations matters. As a tribunal, the FWC operates like a court in the sense that it is able to hear workplace disputes and make binding decisions.

#### **A.1. FUNCTIONS AND POWERS OF THE FAIR WORK COMMISSION**

The FWC's functions and powers are set out in section 576 of the FWA. Some of these functions and powers include:

- Setting the national employment standards (eg maximum working hours and leave entitlements);
- Setting and varying modern awards (eg setting the minimum wages in modern awards);
- Dealing with enterprise agreements (eg through facilitating bargaining, approving, varying and terminating enterprise agreements);
- Setting and varying the national minimum wage;
- Dealing with unfair dismissal and unlawful termination claims;
- Dealing with matters concerning industrial action by national system employees and employers (eg making stop or suspension orders);
- Dealing with disputes regarding the standing down of an employee;
- Determining right of entry permit applications; and
- Dealing with matters concerning bullying in the workplace.

The FWC's role also extends to:

- Promoting supportive and productive workplace relations;
- Preventing disputes from arising; and
- Advising and assisting employees and employers of the functions and roles carried out by the FWC.<sup>1</sup>

<sup>1</sup> *Fair Work Act 2009* (Cth) s 576(2) ('FWA').

## A.2. LIMITATIONS OF THE FAIR WORK COMMISSION

The FWC is unable to:

- Provide employees and employers with advice on award entitlements and/or entitlements acquired under a registered agreement; and
- Enforce minimum pay and award entitlements.

Unlike the FWC, the FWO can carry out these functions, as will be discussed below.

## A.3. DISPUTE PROCESS

You can initiate a matter before the FWC by lodging an application (through the Online Lodgment Service or posting it to a FWC office). To avoid having the application dismissed, it is important to ensure that the correct form is used when lodging an application.<sup>2</sup> After the application has been lodged, the FWC will assess and respond to the application by determining the appropriate course of action to resolve the dispute. This can include:

- Resolving the dispute informally through mediation or conciliation;
- Taking verbal or written submissions from the parties involved in the application;
- Taking evidence from the parties involved in the application;
- Holding fair and impartial hearings; and
- Making decisions and orders.

The FWC also has powers to dismiss applications on its own initiative.<sup>3</sup> Applications can also be dismissed in certain circumstances where the application:

- Is not made in accordance with the FWA;
- Is frivolous and vexatious; or
- It is reasonably likely that the application will not succeed.<sup>4</sup>

## B. THE FAIR WORK OMBUDSMAN (FWO)

The FWO (formally known as the Office of the Fair Work Ombudsman) is an independent statutory organisation that investigates and enforces compliance with the FWA, and other related workplace legislation. To encourage compliance, the FWO also provides employees and employers with free advice and education about the national workplace laws.

## B.1. FUNCTIONS AND POWERS OF THE FAIR WORK OMBUDSMAN

The FWO's functions and powers are set out in section 682 of the FWA. Some of these functions and powers include:

- Promoting harmonious, supportive and productive workplace relations;
- Providing reliable education, assistance and advice to employees, employers and organisations about fair work practices (eg providing the Fair Work Information Statement);
- Promoting and monitoring compliance with the FWA;
- Investigating acts that may breach the FWA and commencing proceedings;
- Representing employees who become a party to proceedings; and
- Taking enforcement action by seeking appropriate penalties from the court.

## B.2. LIMITATIONS OF THE FAIR WORK OMBUDSMAN

The FWO is unable to:

- Investigate matters concerning unfair dismissal and unlawful termination;
- Investigate matters concerning bullying and harassment in the workplace; and
- Make changes to the legislation, awards or registered agreements.

While the FWO cannot perform these activities, the FWC has the power and authority to carry out these functions. As such, these matters would be dealt with by the FWC.

## B.3. DISPUTE PROCESS

To make a complaint or ask the FWO for help, you will need submit an online enquiry. To do this, you will need to login or register an account on the FWO's website. Submitting an online enquiry is a quick and easy process that takes about 5 - 10 minutes to complete.

<sup>2</sup> <https://www.fwc.gov.au/resources/forms>.

<sup>3</sup> FWA s 587(3)(a).

<sup>4</sup> Ibid s 587(1).



When making an online enquiry, it is important to include information pertaining to what the dispute is about and other key information regarding the work situation (eg employer's business name, employee's duties and pay rate). Evidence (such as pay slips and contracts) do not need to be included in the online enquiry. If the FWO requires such evidence, they will ask for it later.

Once an enquiry has been submitted, FWO will contact you within the next business day and inform you about whether they will get involved in the matter. Before deciding if they will get involved, FWO will consider:

- The seriousness of the dispute;
- The circumstances of the parties involved;
- The practicality in resolving the dispute; and/or
- How long it has been since the workplace issue occurred (generally FWO does not get involved in matters if it has been more than two years).

### C. CONCLUSION

While different, the FWC and FWO's primary purpose is to promote and assist in maintaining fair and productive workplaces.

Comasters Law Firm can help clients make a complaint to the FWC or FWO, and/or respond to a complaint made to the FWC or FWO.

Comasters is able to assist clients with matters concerning the FWC or FWO.

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