

Labour Inspection Structure and organization

Name of institution that manager work issues

[The Department of Education, Employment and Workplace Relations](http://australia.gov.au/directories/australia/portfolio/education) (DEEWR) is the lead governmental agency providing national leadership in education and workplace training, transition to work and conditions and values in the workplace. (<http://australia.gov.au/directories/australia/portfolio/education>)

Department(s) responsible for Labour Inspection

The agency with responsibility for labour inspection and law enforcement is the [Office of the Fair Work Ombudsman](http://www.fwo.gov.au), (FWO). The FWO is an independent statutory agency and has both an education and a technical assistance function, as well as the responsibility to monitor and enforce compliance of the Fair Work Act. The Fair Work Ombudsman is responsible for the application of Commonwealth workplace laws, in regard to labour inspection and compliance. The Minister for Employment, Education and Workplace Relation does not direct the Fair Work Ombudsman in relation to the Fair Work Ombudsman's performance of functions.

The Commonwealth Statutory Authority (COMCARE) (<http://www.comcare.gov.au>) administers the Occupational health and Safety Act and undertakes occupational health and safety inspection duties in the Commonwealth jurisdiction.

The Australian Maritime Safety Authority (AMSA) (<http://www.amsa.gov.au/>) regulates occupational health and safety of seafarers on prescribed ships and prescribed units and the National Offshore Petroleum Safety Authority (NOPSA) (<http://www.nopsa.gov.au/>) regulates occupational health and safety of petroleum exploration and production activities in Commonwealth.

Collaboration between the Fair Work Ombudsman, COMCARE, AMSA, NOPSA and other government agencies often take place where there are complementary areas of responsibility.

Law that covers organization and functional composition

- Fair Work Act 2009
- Safe Work Act 2008

Scope of labour inspection

The FWO appoints Fair Work Inspectors that can enter all workplaces covered by the Fair Work Act and are empowered to investigate and enforce compliance with relevant Commonwealth workplace laws and industrial instruments, such as the national employment standards (NES), modern awards and enterprise agreements, which include terms and conditions of employment; orders made by Fair Work Australia; general protections; and relevant provisions of the Independent Contractors Act 2006.

The FWO has the responsibility under the Fair Work Act to perform labour inspections across the vast majority of Australian workplaces. The Fair Work Act does not exempt mining and transport enterprises from inspection. Most State and local government public sector employers and employees (except in Victoria), Western Australian corporations whose main activity is not trading or financial; and Western Australian sole traders, partnerships, or other unincorporated entities, as well as independent contractors are not included within the scope of application of the FW.

Local divisions

The FWO presently has 53 offices throughout Australia, which are located in a number of regional centres and capital cities of all states and territories.

COMCARE has 7 offices in the country (OHS Units).

Programming and communication

The FWO designs an annual program including targets for inspections and audits per year, per investigator and per region.

FWO inspectors use an information system to record all cases and details of investigations which is used to supply information on a weekly and a monthly basis and forms the basis of agency-wide annual reporting to Parliament.

Human Resources and career development

Permanency of inspectors

The majority of Fair Work Inspectors are employed under the Office of the Fair Work Ombudsman Enterprise Agreement 2010-2011 (EA), with a very small number of inspectors covered by individual workplace agreements. The EA and other agreements do not assure stability of employment;

however, they include clear provisions outlining conditions of service, redundancy entitlements, termination procedures, and dispute resolution. The FW Act also sets out provisions governing termination of employment. Fair Work Inspectors are appointed for a period of four years and are eligible for reappointment.

Employees of COMCARE are public officials employed under the Commonwealth's Public Service Act 1999. National Offshore Petroleum Safety Authority NOPSA OHS Inspectors are Australian Public Service employees.

Selection process

Fair Work Inspectors, COMCARE investigators and AMSA inspectors are all recruited in accordance with the merit principles contained in the Public Service Act 1999, which includes an assessment of knowledge and skills. COMCARE may appoint a member of the staff of COMCARE or a person having knowledge of, and experience in, matters relating to occupational health and safety to be an inspector.

Background required

At the time of appointment Fair Work Inspectors are trained through an induction program on the provisions of the Fair Work Act, including in workplace relations laws and their powers as inspectors, the use of internal systems, and in the skills, such as investigation techniques and communication skills, required to carry out their appointment. Ongoing training is also provided.

COMCARE and AMSA undertake similar training programs when employing new investigators and inspectors. COMCARE has also initiated a program to ensure that all investigators have diploma-level investigation training or better.

Visits and functions

Types of visits

Workplace inspections may be carried out by Fair Work Inspectors in response to an individual complaint or as part of a wider targeted campaign. The Fair Work Ombudsman undertakes targeted education and compliance campaigns based on a particular industry or region, or focusing on a particular workplace issue, such as record keeping.

COMCARE undertakes two types of investigations: proactive and reactive. Proactive investigations are determined in advance by COMCARE and are part of an annual program. They include targeted investigations and review investigations. Targeted investigations generally assess compliance with specific duties under the OHS Act or regulations. Review investigations assess the effectiveness of agency actions in addressing recommendations of previous investigations. Proactive investigations may be scheduled in advance or conducted randomly without notice. Reactive investigations are undertaken in response to a specific complaint.

Role of preventive measures

The FWO implements a compliance model that combines complaints investigations with targeted education and compliance campaigns, public education campaigns and prosecutions deemed to be in the public interest. The FWO's website also provides a range of educational material to assist employers and employees in understanding their workplace rights and obligations. The FWO also produces best practice guides.

During 2009/10, the FWO had a strong emphasis on engagement with relevant industry associations and unions to deliver national educational campaigns. This approach provided industry-specific knowledge that was used to shape the educational activities undertaken. The campaigns were also supported by information shared through industry association and union communication channels.

In its website, COMCARE provides different types of resources for employers and workers including brochures, guidelines, fact-sheets, good practices. COMCARE also organises seminars, conferences, trainings and awards to promote safe working environments.

Programming

Registries and reporting of accidents/diseases at work

There is currently no register of establishments.

In the event of accidents that have caused or could have caused death or serious injury or that incapacitates or could incapacitate a person for thirty or more successive working days or shifts the Safety, Rehabilitation and Compensation Commission (SRCC) (<http://www.srcc.gov.au>) needs to be notified. Members of the SRCC include COMCARE staff as well as representatives from the Australian Council of Trade Unions (ACTU).

Sanction and administrative processes

The FWO enforcement actions include issuing: (i) letters of caution, (ii) infringement notices (on-the-spot fines for issues related to infringements in record-keeping and pay slip obligations), (iii) compliance notices (requiring the person to take specified action to remedy the contravention), (iv) enforceable undertakings (applies to any breaches of the Fair Work Act which attract civil penalties), and (v) initiating court proceedings. Despite the possibility of enforcing these administrative sanctions, the FWO aims to resolve a majority of matters through voluntary compliance, including facilitating Assisted Voluntary Resolution (mutually acceptable outcome for both parties) and undertaking mediation. FWO Inspectors can also give warnings through letters of caution outlining the nature of the alleged contravention, educative advice, and possible consequences if a similar contravention occurs in the future. The FWO has the power under the Fair Work Act to bring proceedings through the courts if sufficient admissible evidence exists of a contravention, and it is deemed in the public interest.

COMCARE inspectors are empowered to issue prohibition notices in order to remove immediate threats to the health or safety of any person if the inspector is satisfied on reasonable grounds that it is reasonably necessary to do so. They may also issue improvement notices and initiate court proceedings.

Social dialogue and labour inspection

Collaboration and consultation with employer and employee organisations is integral to the Fair Work Ombudsman's activities. Representation from these organisations is regularly sought both in respect of the Fair Work Ombudsman's ' ; development and implementation of framework policies, as well as in the conduct of complaints, investigations and Targeted Education and Compliance Campaigns.

Until the 1990s, trade unions were largely responsible for monitoring and enforcing compliance with awards in the Australian system. Unions also continue to have a right to bring legal proceedings against employers for breach of relevant provisions.

ILO Conventions ratified

Australia ratified Convention No. 81 in 1975.