

1. LEGISLATIVE AND POLICY FRAMEWORK

1.1 ILO Convention No 81

Australia has ratified Part 1 of [ILO Convention No. 81](#) (Labour Inspection in Industry and Commerce) which requires the maintenance of a system of labour inspection which, among other things, assists with the enforcement of any legal provisions relating to conditions of work and provides technical information and advice to employers and employees concerning the most effective ways of complying with the provisions.

1.2 *Workplace Relations Act 1996 (the Act)*

The following provisions of the Act are particularly relevant for the purposes of this guide:

- the principal object (s.3) which:
 - places primary responsibility for workplace relations with employers and employees at the workplace or enterprise level and provides choice in agreement making, including the making of informal agreements not provided for by the Act;
 - provides the means:
 - (i) for wages and conditions of employment to be determined as far as possible by the agreement of [employers](#) and [employees](#) at the workplace or enterprise level, upon a foundation of minimum standards; and
 - (ii) to ensure the maintenance of an effective award safety net of fair and enforceable minimum wages and conditions of employment; and
 - provides a framework of rights and responsibilities for employers and employees, and their organisations, which supports fair and effective agreement-making and ensures that they abide by awards and agreements applying to them;
- s.84, s.86 and Reg 9 give Advisers powers (subject to the Ministerial Directions) to investigate possible breaches of federal awards and certified agreements and contraventions of the Act and to sue for penalties; other people (eg, employees) may also sue for a penalty for a breach of a federal award or certified agreement (s.178(5) and (5A));
- during litigation for penalties under s.178, a court can also order an employer to pay the amount of the underpayment (with interest) and/or restore superannuation benefits by making a payment into a superannuation fund (s.178(6) & (6A) and s.179B);
- s.179 gives employees the right to sue to recover wages or other payments. A small claims procedure is provided for (s.179D) which allows a court to act in an informal manner, without regard to technicalities and with the discretion to allow or restrict legal representation;
- s.305 makes it an offence for a person to hinder, obstruct or make a false or misleading statement to an Adviser/during an inspection;
- s506(2) which provides for employees under Schedule 1A to take their own legal action; and

- Reg 131L and 131M relating to the inspection and copying of records and makes it an offence to not advise an Adviser where the records are kept.

1.3 Workplace relations advice and services for employers and employees output

OWS' role is to help employers and employees understand and exercise their rights, obligations and choices under the *Workplace Relations Act 1996* (the Act), awards and certified agreements, and in Victoria, Schedule 1A of Part XV of the Act.

In performing this role, OWS inspectors have a duty of care to take reasonable steps to correctly advise employers and employees of their rights and obligations under relevant industrial instruments, and to investigate all suspected breaches, regardless of whether the party suspected of breaching its obligations is an employer, employee, union, employer organisation or another third party.

The activities of OWS fall within Outcome 2 of the annual Portfolio Budget Statement, *Flexible and fair workplace relations at the enterprise level*. The objective of the OWS element of the Outcome is outlined in the section titled *Workplace relations advice and services for employers and employees output* (Output 2.2.4).

1.4 Ministerial Delegations and Directions

Under s.84(5) of the Act, the Minister may by notice published in the *Gazette*, give directions specifying the manner in which Advisers exercise and perform their powers and functions. Under s.84(6), Advisers are required to comply with the directions given. The Minister has delegated his powers to issue directions to the Secretary under section 348 of the Act.

State/Territory OWS Managers have a responsibility to ensure all their Advisers are provided and familiar with the Ministerial Directions issued by the Secretary. The current Ministerial Directions can be accessed via the Commonwealth of Australia Government Gazette, Special Gazette No. S360 of 30 September 2002.

1.5 Reporting

ILO and DEWR Annual Reports

The Act and the ILO Convention require reports to be prepared on the activities of OWS. These reporting requirements are important for our public accountability and are met in the Department's Annual Report. To assist in the preparation of these reports, State offices and the Contracted States will periodically be required to provide necessary information.

OWS Quarterly Reports

In addition to the annual reports, quarterly reports are to be provided to National Office within 15 working days of the end of the September, December, March and June quarters and copied to other State/Territory Managers. Quarterly reports should provide an overview to National Office

of activities within each OWS State and so information to be included is at the discretion of the OWS State and Territory Managers. However, at minimum information should be provided on:

- Performance against key indicators (eg. OWS-KPIs & DOORS indicators) and workload levels
- Information on workload and performance not sourced through CLAIMS (for example, telephone inquiry activity, any counter activity not recorded in CLAIMS)
- Results of client survey activity
- Information on Workplace Advisory Service activities and performance

State Offices should also have a system in place where, as part of their quarterly reporting requirements, all staff are involved in critically examining performance against their workplans and performance standards.

Contracted States

Contracted States quarterly reporting requirements are defined within each Contract.