

3. PROVIDING INFORMATION, ADVICE AND EDUCATIVE SERVICES

3.1 Introduction

The objective of the information, advisory and educative functions of OWS is to provide employers and employees and their advisers (eg, employer organisations, unions, solicitors, accountants, parents etc) with access to information about the provisions of federal awards, certified agreements and the Act (including Schedule 1A) so they can understand their rights, obligations and entitlements and take advantage of the opportunities available under the Act.

In providing information and advice, OWS Advisers should:

- make every reasonable effort to provide accurate up-to-date information;
- provide impartial advice which is not based on personal views;
- avoid raising expectations about outcomes;
- not express personal views about Government policy; and
- not speculate about policy or legislative changes.

Where appropriate, OWS Advisers should inform clients that they should consider seeking their own legal advice; eg for complex queries, where the caller provides inconsistent or insufficient information, etc – see below for further guidance.

3.2 Key Performance Indicators

The performance standards for information, advisory and educative services are:

Telephone Enquiry Service

- 90% of callers are queued for less than three minutes;

Correspondence

- 90% of correspondence is finalised within 5 working days of being received in the office;

Educative Services – workplace advisory service (WAS)

- The extent to which clients report that our advice has helped them understand their options and enabled them to pursue effective workplace relations outcomes
 - 80% positive feedback

3.3 Telephone Requests for Advice and Assistance

The main information and advisory service provided by the OWS is through Wageline, which provides a basic advisory and referral service to the general public on workplace relations matters including information on federal awards, Schedule 1A in Victoria, certified agreements and the Act.

Wageline staff are not expected to answer every question at the time of the call. Where an enquiry is complex it may be necessary to refer it to another officer or have an officer call the enquirer back. It may also be appropriate to ask for more difficult questions in writing.

Where an enquiry is received from a person who requires the assistance of a translator in order to understand the advice or their entitlements, the Translating and Interpreting Service (TIS - on Ph 131450) or the National Accreditation Authority for Translators and Interpreters (NAATI - on Ph 1300 557 470 or at www.naati.com.au) should be contacted as quickly as possible to arrange for the service to be provided. The relevant manager should also be advised.

Where a telephone request is received from a party making an allegation about a breach matter the officer should:

- try to establish whether the provisions of a federal award, Schedule 1A, a certified agreement or the Act apply to that party;
 - encourage the caller to use relevant dispute resolution procedures if appropriate; and
 - check whether the matter is already the subject of court/AIRC proceedings.
- Where it is revealed that the matter is the subject of court/AIRC proceedings the person should be advised that the matter will not be investigated. Note that where the court/AIRC is only dealing with an unfair dismissal case, the officer could handle any other matters (eg unpaid wages) in the usual way. This might not be the appropriate course of action in all States and Territories, however, particularly where the Commission has a history of negotiating an outcome with the parties in full settlement of all outstanding award matters.

Where an officer is satisfied, on the basis of the telephone conversation:

- that, where appropriate, an employee has made an attempt to resolve the matter with their employer, or visa-versa;
- that they are unable on the basis of the information provided to determine whether the employer is a respondent to a federal award or covered by the federal system; or
- the matter is not subject to court/AIRC proceedings,

the officer should obtain the person's name and address and send them a claim form to complete.

State/Territory offices should develop their own more detailed guidelines and procedures which take account of local issues.

3.4 Written Requests for Advice and Assistance (including via WageNet)

All letters and WageNet requests for information and completed claim forms should be handled initially as correspondence. Such enquiries should be handled on the same basis as telephone requests. Where a request for information or advice is complex or requires further investigation or referral, an interim response indicating an approximate time frame for a final response may be appropriate.

3.5 Counter Enquiries

Clients may request information, advice or assistance from the Department over the counter. These enquiries should be handled in a similar manner to those received over the telephone.

State/Territory Offices should also ensure that appropriate systems are put in place to manage counter enquiries, including procedures to handle difficult or aggressive clients in line with [Departmental policy](#).

3.6 Referral to Unions and Employer Organisations

OWS does not distinguish between enquiries and requests for assistance on the basis of whether the person is a union member, non-unionist, or whether the employer is/is not a member of an employer association. All clients are to be treated equally.

However, where employees and employers are seeking information, advice or assistance about a breach matter, the officer handling the case can advise the employee or the employer of the option of contacting the relevant union or employer organisation for assistance.

3.7 Public Sector Employees

Information and advice about the provisions of federal awards, certified agreements and the Act should be provided to public sector employees on the same basis as private sector enquirers.

When providing information, staff should bear in mind the grievance resolution and other mechanisms available to public service employees, such as those available under the *Public Sector Act 1999* (PS Act). The Public Service and Merit Protection Commission (PSMPC - www.psmpc.gov.au.) has primary responsibility for the administration of the PS Act. Among others, the PSMPC is responsible for:

- administering, and facilitating understanding of, relevant legislation made under the PS Act; and
- reviewing actions affecting APS employees in their employment.

Section 4.18 provides guidance on the handling of claims from employees of the Commonwealth, State and Territory governments and Government Business Enterprises.

3.8 Role of the Office of the Employment Advocate

Both the OWS and the Office of the Employment Advocate (OEA) have responsibilities under the Act to provide advice and assistance on the application of the Act, federal awards, Schedule 1A in Victoria, certified agreements and related legislation. A [Memorandum of Understanding](#) has been agreed between the Department and the OEA in relation to who assumes primary responsibility for specific matters. In summary, it is agreed that:

- the OWS will be responsible for issues relating to federal awards, certified agreements,

Schedule 1A in respect of Victorian employers and employees, time and wages records, pay slip requirements and minimum entitlements under the Act (eg, termination provisions);

- the OEA will be responsible for AWAs, including filing and approval requirements and initial inquiries regarding compliance with approved AWAs. It will also be broadly responsible for matters relating to freedom of association, coercion during agreement making, right of entry and strike pay. In addition, it will be responsible for the industrial relations provisions of the National Code of Practice for the Construction Industry; and
- OWS and the OEA will work co-operatively in undertaking educational and promotional activities.

3.9 Role of the Office Building Industry Taskforce (BIT)

BIT operates exclusively in relation to the building and construction industry. Broadly, this includes large-scale residential developments, non-residential developments and engineering construction work, but not the construction of single residential dwellings. You can find more information as to exactly what is and is not included in the meaning of "building and construction industry" on its website at <http://www.buildingtaskforce.gov.au/default.asp>.

Within the industry, BIT's main areas of responsibility are:

- investigating breaches of industrial relations laws in the building and construction industry;
- investigating breaches of awards and agreements (inquiries about these matters are generally referred to OWS);
- dealing with requests for information from participants in the building and construction industry; and
- giving advice on the operation of the law, federal awards and agreements.

BIT also provides a '*whistleblower service*' via its Hotline (Ph 1800 003 338). The hotline gives people the opportunity to anonymously tell BIT of any kind of unlawful behaviour and we can advise, investigate and/or refer the matter.

OWS Managers should liaise with their BIT counterparts on the referral of matters between the two areas.

3.10 Technical Advice Register – *currently being incorporated into WR Act online project*

A Register of technical advice can be accessed at <http://fwian005/tar/default.asp>. The register provides the following types of information to assist enquiry and compliance staff:

- legal advice received from the Department's legal areas and the Australian Government Solicitor relating to the taking of litigation action in particular cases;

- legal, technical or policy advice received from Legal Services and Policy areas of the Department on matters relating to the general interpretation of a federal award, certified agreement, the Act, or other relevant federal legislation (eg, the Freedom of Information Act and the Privacy Act);
- advice from Legal Services on matters relating to the way in which powers and functions under the Act should be exercised; and
- decisions of courts and tribunals which assist with the interpretation of the provisions of federal awards, certified agreements, the Act or other relevant federal legislation (eg, the Freedom of Information Act and the Privacy Act).

State/Territory offices also have a TAR administrator with the capacity to add users and material to the database.

3.11 Legal Advice

Before requests for legal advice are sent to either the Australian Government Solicitor or a DEWR Legal Branch, every reasonable attempt must be made to first resolve the issue within OWS. This could include:

- checking to see if the matter has been dealt with before (ie, it may already be covered in the Register of Technical Advice);
- consideration by a manager;
- consultation with other State Offices or National Office;
- consultation with other areas of the Department;
- examination of relevant court/AIRC decisions (eg, [AUSTLII](#), or the [AIRC](#)); and
- where appropriate, seeking the opinion of a relevant employer organisation, union or major employer(s) covered by the award or in the industry.

If the matter is not resolved, an officer can, following the approval of their State/Territory OWS Manager, seek legal advice on matters which involve the provision of federal awards or certified agreements directly from the Australian Government Solicitor. An information copy of requests must also be sent to the Assistant Secretary, OWS.

Requests for legal advice on matters which involve general interpretations of the provisions of the Act should be referred through the State/Territory OWS Manager to the Assistant Secretary, Workplace Services Branch who will determine whether the matter should be referred to Legal Policy Branch for an opinion.

Properly certified accounts from the Australian Government Solicitor for legal services are paid from the Legal and Compensation Appropriation which is administered by Workplace Relations

Legal Group (WRLG). Such accounts should be forwarded to WRLG through the Director OWS-NO.

NOTE: OWS-NO is currently finalising a new protocol with Legal Services

3.12 Educative Activities – workplace advisory service (WAS)

Educational activities and seminars play an important role in:

- Helping employers and employees to understand their employment rights and responsibilities
- Promoting flexible employment arrangements and opportunities available under the Act

State/Territory OWS Managers are responsible for ensuring that National Office is appropriately consulted on any WAS programs that are being developed.

Criteria for deciding to conduct educative activities include:

- Government priorities
- New or amended legislation
- Perceived problem areas (eg Time and Wage Records and Payslip Regs, specific award or industry problems, etc); or
- Client feedback

Educative activities should be consistent with the Departmental communication guidelines at <http://fmtan104/guidelines/communication/default.asp> and the WAS procedures manual.

State/Territory OWS Managers are responsible for ensuring that National Office is advised on the outcome of any education programs. Such advice should be in writing and include sufficient details to allow the information to be used for internal (briefs, benchmarking, etc) and external reporting (annual report, ILO reporting, etc) purposes.

3.13 Fee for Service

The general principle which applies when providing information and advice is that when it is a fundamental part of the Department's responsibilities under the Act it is provided free of charge, ie. it is provided in the public interest. The public interest is served by providing information and advice for the purpose of observance with the provisions of federal awards, Schedule 1A in Victoria, certified agreements and the Act.

OWS often receives requests for assistance which extend beyond its core responsibilities (ie public interest). Such requests could include:

- requests for historical wages and other information for a compliance matter, eg a request

from a solicitor handling a private matter, a request from an organisation seeking details for a worker's compensation case, etc;

- requests for complex advice from organisations or individuals who have the resources or capacity to pay for such advice or who themselves charge for providing that advice to clients (eg solicitors, employer organisations, unions and consultants);
- requests for information comparing various award provisions which are purely for research purposes, eg a request from a student, an organisation or private consultant (note that where individuals such as students request information which is likely to incur a charge they could be directed to alternative sources of information, eg libraries and/or the Internet);
- requests from students or educational institutions; and
- providing speakers or materials for seminars on topics which are not part of the OWS' information and/or seminar work program.

Such requests are considered outside of the core responsibilities for OWS. Accordingly:

- OWS is not obliged to provide these services merely because they have been requested;
- Resources should not be redirected from core enquiry, compliance and programmed educational activities to research such requests; and
- Enquirers should be advised on how best to otherwise obtain the information sought eg; internet sites, union/employer associations, AIR, public libraries, private research organisations, etc

It may be considered appropriate on occasions to provide some of these requested services. This could be done on a fee-for-service basis.

State/Territory OWS Managers are responsible for developing and implementing guidelines for the type of services, which may be provided on a fee for service basis. These guidelines should address:

- The type of services which may be provided (bearing in mind the implications for personal development, providing a greater variety of work, the utilization of particular skills/qualifications, OWS core activities);
- The circumstances in which such work may be performed (bearing in mind core workloads); and
- The fee to be charged (which should generally cover at least the real cost of undertaking the work).

Such guidelines are to be consistent with the Departmental guidelines at <http://fmtan104/guidelines/financialManagement/default.asp>.