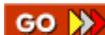




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▶▶ FWO will tread carefully on modern award mistakes: Wilson

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The FWO is expecting a spike in calls to its helpline to coincide with the July 1 start to the phase-in of modern award transitional provisions; describes its major employer branch as "an experiment"; and says it is too early to tell whether IFAs are being misused.

In an interview with *Workplace Express* ahead of the first anniversary of the bulk of the Federal Government's new IR regime commencing, ombudsman Nick Wilson says his organisation's focus is firmly on preparing for the first phase-in of changes to modern award wages, loadings and penalties. "The modern awards are obviously the biggest issue that everyone is grappling with," he says.

Two of the FWO's interpretations of the transitional provisions - that overtime isn't subject to phasing arrangements and that employers have to seek employees' agreement to absorb over-award payments - are to be tested before a full bench of FWA next week (see Related Article), but Wilson says his agency won't be seeking to intervene.

"I don't think that's proper at this stage," he says. "We're not arguing for a particular position, we are merely looking at the judgments that have been issued so far then applying our views of the law to those judgments."

Wilson says the agency earlier this year had been predicting July would be a "really bumpy month as the number of calls really increased". He is still expecting the volume to rise this month and next as the first pay period affected by the phase-in approaches, but says there are also signs that efforts the FWO, employer organisations and unions have made on educating employers and employees are paying off.

According to FWO statistics, of the 974,467 phone calls received between July 1 last year and April 30 this year, 47,040 have been on modern awards. In March, [Fair Work Online](#) had 272,706 visitors - the highest number in a single month since the site (which has had a total of 2.195m hits) was launched in July last year. Also, users have viewed the Top 10 Modern Awards page more than 90,000 times between it going live on February 12 and April 30, and [PayCheck](#) has had more than 100,000 views over the same period. And, Wilson says, the agency has spoken to 100,000 businesses in five months.

"I couldn't say that every employer, every worker knows exactly what to do," he says. But, there is a "very large number" who have accessed the information that has been made available to them.

Wilson stresses that his organisation has taken on board the "public debate" on the need to be "careful" in enforcing compliance in the early days of the changes.

"We really are very mindful of the fact that there is some uncertainty, people need to have to have a look at what they have to do, they might come up with different interpretations and they might get it wrong.

"And certainly the style of approach that we're taking, both through the inspectorate and the contact centre, is very much reflective of that. The retail audits that we deferred [after being criticised for not waiting until FWA's decision on the sector's modern award - see Related Article] is the kind of pressure we're responding to and the debates internally are now very much about how are we affecting the community as a regulator and is it appropriate - do we need to let people have time to look at what they're doing? And the answer is yes, they do need time."

Major employer branch an experiment, Wilson says

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Wilson in April announced the FWO was creating a new branch - headed up by executive director Geoff Casson - to focus exclusively on large, national enterprises and franchise operations, and he told *Workplace Express* this week it was an "experiment".

"I'm quite open about it to my staff and to the public, it's an experiment, we've given Geoff no defined period but we've said you can have a couple of years and some resources to see what sort of change you can make."

Wilson says Casson has only a very small team of five or six, but we "want to see what can come out of that".

"Our role is to use our resources in a way that maximises our effect. . . the national employer branch is a way to experiment and see, look, if we put some resources in, will it work, and if it doesn't work, we'll try something else."

Despite the fact that the employers the FWO will be dealing with will typically have HR specialists, Wilson says the FWO's approach will still be that litigation is a last resort.

"There's no desire on our part to suddenly use it as a means to race a large employer into court and use that as a scalp or anything of that nature. It's about trying to understand from a systems point of view why are these problems occurring, and there could be many reasons."

Wilson in April said the branch would contact employers who were "repeat customers" and "invite a dialogue about our perceptions" with a designated officer then appointed as the key contact for ongoing liaison.

The branch would provide advice and assistance, rather than focusing on compliance. At the end of the period of engagement, the branch would re-assess the employer's level of compliance and report on its findings.

At the time he gave as an example a major retailer with more than 3,000 employees in 500 stores nationally that did not pay staff for training sessions and meetings, saying that: "In our experience, this systematic non-compliance by a major national employer is by no means an isolated case, which leads us to the view that an alternative to the 'one worksite or one pay packet at a time' investigation is clearly needed."

On franchises, Wilson says the FWO picks up "all the time that certain franchises are great, and certain franchises are not. And that's a really interesting question, why are some chains not, what is that?"

Quiet so far on adverse action, IFAs

On adverse action complaints, which many in the IR community believe is a slow-burner issue, Wilson says it is an "evolving area" for the FWO, with its strongest interest in the "discrimination space". He says his organisation has received a few complaints, but "none that are heading off to court immediately by any means".

On IFAs, he says it's also too early to say whether they are being misused, and as far as he is aware there haven't been any complaints or queries on them.

He says the unregistered instruments will become part of the FWO's routine audit process, and if "any intelligence comes in" in the interim that it should look at certain employers or sectors, it will.

"I'm confident that if there are problems playing out with IFAs they will come on our radar."

"This year there will be 5000 to 6000 audits, then there's also the transitional visits - that's a lot of interaction with workplaces - and usually they're the ones not using collective agreements, so you'd presume you'd get a pretty good reach coming out of that."

The FWO is also currently looking at alleged underpayments by McDonald's in the wake of Commissioner Donna McKenna's comments in April when she refused to approve its agreement, in a decision which is now under appeal (see Related Article).

Wilson told *Workplace Express* that the investigation was still "at the planning stage".

"We're talking 80,000 employees, it's going to be a challenge to actually drill down and see what issues might emerge."

"The closest model we've got is the work we did with Telstra two years ago over alleged AWA breaches where we set up a polling system where we emailed a very large number of employees and invited their response just to see what responses were occurring, so it may well be that we try that approach again."

Asked whether the agency had the resources and power to do its job properly, Wilson said it would be a rare agency head who said they didn't need more of both.

"However, what I always say is that I think we are very well resourced, and we're very grateful to government for making those resources available to us. We're very conscious that we have to use them very, very effectively."

The agency's budget for the next financial year is about 5% lower than the current one, then it reduces again in the following year as the new IR legislation is bedded down.

That was, Wilson says, "what you'd expect Treasury to be doing".

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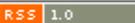
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