

**Senate Standing Committee on Education Employment and Workplace  
Relations**

**QUESTIONS ON NOTICE  
Supplementary Budget Estimates 2010-2011**

**Agency - Fair Work Ombudsman**

**DEEWR Question No.EW0552\_11**

**Senator Ryan asked on 20/10/2010, Hansard page 18.**

**Question**

**FWO- INFORMATION RE: FAIR WORK INSPECTORS.**

Senator RYAN—Are the nominees of the state agencies that have been appointed inspectors, as we discussed earlier, publicly available? Mr Wilson—They are not. There is no reason why they cannot be. Senator RYAN—Can you take that on notice—the names of the people who have been appointed as Fair Work Inspectors. As I understand it, New South Wales, Queensland and South Australia nominate people to undertake these visits and to be Fair Work Inspectors. You consider those suggestions—they are not nominations—and then you appoint them. I would be interested in knowing who they are. CHAIR—It is not actually usual for names of public servants at that level to be provided to the committee. There is not necessarily any rule about it, but I know that information has been sought over the years I have been involved with this committee, and there has been a reluctance to provide it. Senator RYAN—I will be honest and explain the reason—I want to know the background of the people who have been appointed as Fair Work Inspectors. CHAIR—That information has been sought about other appointments without necessarily providing the names. Senator RYAN—I am happy with that; that is why I said what I said. Senator Chris Evans—I think we will be able to help with that.

**Answer**

The Fair Work Ombudsman has provided the following response:

To 30 September 2010, 206 State Government employees have been appointed as Fair Work Inspectors. The state by state breakdown is as follows:

New South Wales	South Australia	Queensland
97	37	72

Fair Work Inspectors are appointed by the Fair Work Ombudsman or his delegate. In the case of the appointment of Fair Work Inspectors employed by state partner agencies to undertake duties as specified in the Contract for the Provision of Services to Implement the *Fair Work Act 2009*, the Fair Work Ombudsman has delegated this responsibility to Mr. Bill Loizides, Group Manager, Field Operations Group.

Staff members from state partner agencies are required to complete a nomination form.

(See Attachment A – Nomination of State Government Employee for appointment as a Fair Work Inspector).

As agreed during the Senate Standing Committee on Education Employment and Workplace Relations Hearing, it is not usual for names of public servants at that level to be provided to the Committee.

The Fair Work Ombudsman does not keep information regarding the backgrounds of the people appointed as Fair Work Inspectors. However, under the *Fair Work Act 2009*, the Fair Work Ombudsman may appoint as a Fair Work Inspector a person who has been appointed, or who is employed, by the Commonwealth; or a person who is employed by a State or Territory; and if the Fair Work Ombudsman is satisfied that the person is of good character.

This declaration covers matters such as criminal convictions and membership of any organisation that may be perceived as a conflict of interest.

The nominee to be bound by the Australian *Public Service Act 1999* as well as the Australian Public Service Values and Code of Conduct. Finally, the nominees' manager is required to declare that to the best of their knowledge the nominee is of good character and specify why they believe this to be so.

It should also be noted that the final decision to accept or reject the nomination of appointment rests with the Fair Work Ombudsman.

To ensure that the Fair Work Ombudsman has confidence in the appointment and ongoing good behaviour of Fair Work Inspectors appointed to work under the contracts, the contracts contain a number of clauses that are relevant. These are:

2.3.1 No assigning or subcontracting

2.3.2 State Agency must not assign or subcontract the performance of the Services (or any aspect of the performance of the Services) without the prior written approval of the Fair Work Ombudsman. Approval to any assignment or subcontracting of the provision of any part of the Services may be subject to such conditions as the Fair Work Ombudsman deems fit, including compliance with the Fair Work Principles.

#### 4. State Agency Personnel

4.1. State Agency Personnel are to be of good character

4.1.1. Subject to the next clause, a State Agency must ensure that all Personnel it uses in the provision of the Services are of good character and are appointed as Fair Work Inspectors.

4.1.2. State Agency Personnel engaged in providing direct referral Services and other functions approved by the Fair Work Ombudsman are not required to be appointed as Fair Work Inspectors.

- 4.1.3. State Agency must ensure that all Personnel it uses in the provision of the Services comply with any directions issued by the Fair Work Ombudsman to Fair Work Inspectors in addition to any particular directions issued by the Fair Work Ombudsman under this contract.
- 4.2. Removal and replacement of State Agency Personnel
  - 4.2.1. State Agencies agree, at the request of the Fair Work Ombudsman acting in its absolute discretion, to remove any person used in the provision of the Services from work in relation to the Services.
  - 4.2.2. State Agencies will provide replacement Personnel acceptable to the Fair Work Ombudsman at no additional cost and at the earliest opportunity.
- 4.3 Training
  - 4.3.1. The Fair Work Ombudsman will provide mandatory training to all State Agency Personnel who will be involved in the provision of the Services.
  - 4.3.2. State Agency must ensure that all of its Personnel attend all mandatory training. Introductory mandatory training must be completed by the State Agency Personnel within 3 months of appointment as Fair Work Inspectors. Any further mandatory training (and the time frame within which it must be completed) will be determined by the Partnership Management Committee or the Project Officer.

#### Other security obligations of state agencies

##### 7.3.1. State Agency agrees:

- a. to ensure that all its Personnel that require access to security classified resources have obtained the appropriate security clearance;
- b. to make its Personnel available to attend any security training provided by the Fair Work Ombudsman;
- c. to notify the Fair Work Ombudsman immediately if it becomes aware that a security incident has occurred and otherwise implement the Fair Work Ombudsman 's procedures for security incident reporting as advised by the Fair Work Ombudsman from time to time;

#### Obligations of state agencies in relation to privacy

##### 8.2.1. State Agency agrees, in providing the Services:

- a. not to do any act or engage in any practice which, if done or engaged in by the Fair Work Ombudsman, would be a breach of an Information Privacy Principle; and

- b. to comply with any directions, guidelines, determinations or recommendations referred to in, or relating to the matters set out in, Item 15 [Privacy Directions, Guidelines, Determinations or Recommendations], to the extent that they are consistent with the Information Privacy Principles.

8.2.2. State Agency agrees to notify the Fair Work Ombudsman immediately if it becomes aware of a breach or possible breach of any of its obligations under this clause 8.

### **Extension of provisions to Personnel**

15.4.1 In this clause 15.4:

**Requirement** means an obligation, condition, restriction or prohibition binding on a State Agency under this contract.

15.4.2 State Agency agrees to ensure that its Personnel comply with all relevant requirements.

15.4.3 State Agency agrees to exercise any rights it may have against any of its Personnel in connection with a Requirement in accordance with any reasonable direction by the Fair Work Ombudsman.

15.5 Conflict of interest

15.5.1 In this clause 15.5:

**Conflict** means any matter, circumstance, interest, or activity affecting the State Agency or its Personnel which may or may appear to impair the ability of State Agency to provide the Services to the Fair Work Ombudsman diligently and independently.

15.5.2 State Agency warrants that, to the best of its knowledge after making diligent inquiry, at the commencement date no conflict exists or is likely to arise in the performance of the Services.

15.5.3 If, during the period of this contract a conflict arises, or appears likely to arise, the State Agency agrees:

- a. to notify the Fair Work Ombudsman immediately;
- b. to make full disclosure of all relevant information relating to the conflict; and
- c. to take any steps the Fair Work Ombudsman reasonably requires to resolve or otherwise deal with the conflict.

### **From the Schedule to the contract**

**3. Policies, Standards and Guidelines**  
**(see clause 2.2.1.d of the contract provided in answer to Question on Notice EW0551\_11)**

---

State Agency will observe (and will ensure that all State Agency Personnel observe) the following policies, practices and procedures in performing the Services:-

- i. Australian Standard for Document Management;
- ii. Australian Public Service Values and Code of Conduct in Practice;
- iii. The Fair Work Principles.

State Agency will, performing functions associated with the provision of the Services, observe (and will ensure that all State Agency Personnel observe) and follow all of the Fair Work Ombudsman 's policies, practices and procedures, including but not limited to:

- i. the Fair Work Ombudsman Standard;
- ii. the Fair Work Ombudsman Field Operations Manual and Guidance Notes.



**NOMINATION OF STATE GOVERNMENT EMPLOYEE  
FOP APPOINTMENT AS A FAIR WORK INSPECTOR**

**Part A: Details of person nominated to be appointed as a Fair Work Inspector:**

Surname	
Given Name(s)	
Given Name to appear on Identity Card (can be abbreviated name)	
Employee Identification Number	
Current Employer	
Office Location	
Name of Current Manager	
Level of Current Manager	

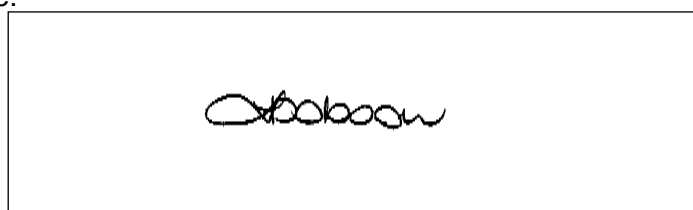
*Note: The current manager who is required to authorise aspects of this nomination form must be employed as a senior employee by a State Government agency (ie Deputy Director, an officer with a significant financial delegation, etc).*

**Part B: Signature requirements**

To ensure that the signature provided is able to be adequately transferred to the Identity Card, please ensure that your signature is:

- dark enough to print out on card - use a fine to medium thickness black felt tip pen (This will avoid signatures fading out in sections or completely on the printed card);
- kept inside the specified area provided on the template - NOT TOUCHING any other text provided including printed name;
- witnessed by your Current Manager; and
- provided at the time of photo submission and not separately.

An example of a valid signature:



**Signature of nominated inspector:**

Use black felt tip pen – please sign within the box, not touching any lines

Signature of Witness (Current Manager): \_\_\_\_\_

Date: \_\_\_\_\_

**Part C: Nominee’s Declaration**

The *Fair Work Act 2009* requires that the Fair Work Ombudsman be satisfied that a person to be appointed as a Fair Work Inspector is of good character. In addition, the Fair Work Ombudsman is keen to protect Fair Work Inspectors from unfair public scrutiny that may result from potential conflicts of interest. To assist both these purposes, please complete the Declaration below.

Do not complete the Declaration until you have read the following considerations:

- Some criminal convictions or an unresolved disciplinary action may impact on your ability to perform your role as a Fair Work Inspector. If you have an unspent conviction, or are currently subject to disciplinary action, you should discuss this with your Current Manager prior to completing the statement.
- Membership of some organisations/clubs/social networking websites may lead to a perception of conflict of interest generally, or in relation to particular investigations. If you think that your membership of any organisation/clubs/social networking websites may be perceived to be a potential conflict of interest, you should discuss this with your Current Manager prior to completing the statement.
- If there is any other condition or matter which if brought into the public arena may call into question your good character or fitness to be appointed as a Fair Work Inspector, please discuss this with your Current Manager prior to completing the statement.

Please note: The matters noted above will not necessarily prevent your appointment as a Fair Work Inspector, but must be disclosed to the Fair Work Ombudsman.

**Declaration**

I, ....., wish to be appointed as a Fair Work Inspector.

I have been informed of those obligations under the *Public Service Act 1999*, the *Fair Work Act 2009*, and the APS Values and APS Code of Conduct that will apply to me during my appointment as a Fair Work Inspector. I will perform my duties as a Fair Work Inspector in accordance with these obligations.

I have no unspent criminal convictions.

I am not currently subject to disciplinary action.

I am neither engaged in any activities, nor a member of an organisation/club/social networking website, which would constitute a conflict of interest, or create a perception of a conflict of interest, with respect to my duties as a Fair Work Inspector.

I am aware of the need to disclose any potential conflict of interest in relation to a particular case or my role as a Fair Work Inspector to my Manager.

I am not aware of any of my personal activities which, if made public, would bring my good character into question or compromise the activities of the Fair Work Ombudsman.

Signature: ..... Date:  
.....



**Part D: Current Manager’s Declaration**

*This section is to be completed by your Current Manager.*

**If the Nominee has been known for less than 6 months by their Current Manager, the appointment will be subject to the provision of a police check to the Fair Work Ombudsman.**

I have known the Nominee (insert name).....for ..... years and ..... months.

- (i) The Nominee is aware of their powers and responsibilities in exercising the functions of a Fair Work Inspector under the *Fair Work Act 2009*;
- (ii) I certify that the attached photograph of the Nominee and any copies of this photo provided electronically is a true photograph of the Nominee and is less than six months in age;
- (iii) I am not related to the Nominee by birth or marriage; and
- (iv) To the best of my knowledge, the Nominee is of good character because:

Signature: ..... Date:  
.....

**Part E: Fair Work Ombudsman’s Approval**

*This section is to be completed by the Fair Work Ombudsman or authorised delegate*

I am / am not satisfied that the person is of good character as required by s700(2) of the *Fair Work Act 2009*.

I approve / do not approve his or her appointment as a Fair Work Inspector.

Signature: ..... Date:  
.....

Bill Loizides, Group Manager, Field Operations,  
Delegate of the Fair Work Ombudsman.

**Part F: Notes**

A digital or passport photograph of the Nominee (taken no more than 6 months prior to the date of the completion of this form) must be attached to this form. The Nominee’s Current Manager must note on the reverse of the photo supplied that the

photo is a true photograph of the Nominee. This should be done by use of the words: "I certify that this is a true photograph of (nominated officer's name) and less than 6 months in age".

An electronic copy of the photo must also be forwarded (via e-mail) to the officer nominated below.

Once completed, this entire form plus any attachments should be forwarded to:

Ms Wendy Penfold  
GPO Box 9887  
Adelaide SA 5001  
Wendy.Penfold@fwo.gov.au  
Ph 08 8402 9269

In completing this form both the Nominee and his or her current manager should be aware that sections 137.1 and 137.2 of the Criminal Code create offences for providing false or misleading information or documents.