



Australian Government

# Fair Work OMBUDSMAN

GPO Box 9887 Melbourne VIC 3001 | 414 La Trobe Street Melbourne VIC 3000

23 November 2018

Mr P A Katsambanis MLA  
Chair  
Community Development and Justice Standing Committee  
Parliament House  
4 Harvest Terrace  
West Perth WA 6005

By email: [lacdjsc@parliament.wa.gov.au](mailto:lacdjsc@parliament.wa.gov.au)

Dear Chair

Thank you for your correspondence to the Fair Work Ombudsman, Ms Sandra Parker PSM, of 18 October 2018, on behalf of the Community Development and Justice Standing Committee of the Western Australian Parliament (**Committee**). Ms Parker has asked me to reply on her behalf.

The Committee has asked the Fair Work Ombudsman (**FWO**) to provide a written response to its request for further comment numbered 29 (**Comment 29**) contained in the report titled *Near enough is not good enough: An initial report on the protection of crowded places in Western Australia* (**Report**).

### ***About the FWO***

The FWO is the national workplace relations regulator, responsible for education about, and the enforcement of, the *Fair Work Act 2009* (Cth) (**FW Act**). The agency undertakes a mix of education and enforcement activities to promote compliance with workplace laws. Both are significant parts of our work and critical to our compliance model.

The FWO also undertakes a range of proactive compliance activities. Where our intelligence suggests a systemic or persistent issue in a geographic area, workforce, supply chain or network, we conduct audits or longer-term inquiries to uncover the root causes and make recommendations for achieving lasting compliance.

### ***The Report***

The Report makes reference to a number of FWO-authored or commissioned materials, including the recent *Inquiry into the procurement of security services by local governments* and the *Phoenix Activity: Sizing the problem and matching solutions*. The Report also notes a number of issues identified by the Committee as potentially contributing to breaches of Australian workplace laws in the security industry. These issues include inferior employment conditions, inappropriate use of subcontracting, procurement considerations and illegal phoenix activity.

As noted in the Report, there is potential for any participant in a procurement relationship to be involved in a breach of the FW Act. This liability arises pursuant to the accessorial liability and/or the franchising and holding company provisions.

### ***Response to Comment 29***

In relation to Comment 29, the FWO notes that all participants in the security industry have a role to play in improving procurement practices, including State governments. It is those parties procuring security services that are best placed to determine what action they should or could take to address any issues that may arise.

The FWO has a number of tools and materials available that may assist security industry participants to improve procurement practices and avoid being involved in a breach of the FW Act, which are briefly outlined below.

### ***Reporting breaches of workplace laws to the FWO***

The FWO invites intelligence about breaches or suspected breaches of the FW Act from a range of sources including employers, employees, industry associations, employee representatives and other industry participants. The FWO can receive this intelligence directly in the form of a request for assistance from an employee or a report by a concerned member of the community via the FWO's registered [My Account function](#). Additionally, the FWO can be contacted by phone on 13 13 94.

Members of the Western Australian Parliament may also wish to inform the FWO of breaches or suspected breaches of the FW Act via the FWO's dedicated inbox:

In addition, in April 2016, the agency launched an online Anonymous Report tool so that any member of the community can alert us to an allegation of non-compliance without disclosing their identity. We have subsequently made our Anonymous Report tool available in 16 languages other than English to make it accessible to the greatest number of people in the community.

### ***Using FWO resources***

The FWO has produced a range of educative resources that allow those involved in procuring labour to ensure they meet their obligations under Australian workplace laws.

The FWO's [Contracting labour & supply chains](#) webpage includes material that assists industry participants to take practical steps to minimise the legal and reputational risks associated with breaches of the FW Act. This includes the downloadable:

- **Guide to labour contracting** - for help on how to select a potential contractor and identify if they are complying with workplace laws;
- **Guide to contracting labour for small business** - checks for small business owners to minimise the risk of hiring a non-compliant contractor;
- **Guide to monitoring your labour contracting** - for help on mapping existing contractors and subcontractors, examining compliance and addressing any problems; and

- **Guide to self-auditing your business** - for information on how to conduct a general self-audit of a business to ensure it is complying with workplace laws.

I trust this information is of assistance.

Yours sincerely

**Anthony Fogarty**  
**Executive Director, Policy, Analysis & Reporting**