

Senate Standing Committee on Education and Employment

**QUESTIONS ON NOTICE
Supplementary Budget Estimates 2013-2014**

Agency - Fair Work Building and Construction

Department of Employment Question No. EM0017_14

Senator Cameron provided in writing.

Question

FWBC - Responsibility for sham contracting and wage and entitlement investigations in the building and construction industry to FWO

Please advise when FWBC Inspectorate made a decision to transfer responsibility for pursuing sham contracting and other wage and entitlements investigations in the building and construction industry to the Fair Work Ombudsman? Can FWBC provide copies of any and all correspondence between the FWBC and the FWO in relation to the transfer?

Answer

FWBC wrote to the FWO on 30 October 2013.

Arrangements were confirmed by correspondence from the FWO on 18 November 2013 and 3 December 2013.

Correspondence between the agencies is attached.



Australian Government

Fair Work Building
& Construction

30 October 2013

Ms Natalie James
Fair Work Ombudsman
GPO Box 9887
MELBOURNE VIC 3001

Dear Natalie

Arrangements for Investigation of Wages and Entitlements Matters: Fair Work Ombudsman (FWO) and Fair Work Building Industry Inspectorate (FWBII):

I write regarding the arrangements between our agencies for the handling of complaints and investigations relating to wages and entitlements, under the *Fair Work Act 2009* and relevant Commonwealth awards and agreements.

Initially, in 2006, an exchange of letters between the previous heads of our respective agencies established the institutional arrangements to administer these matters. Subsequent administrative arrangements by the agencies diverged from those principles.

Given my understanding of the Government's policy intentions, reinstatement of these previous long-standing arrangements will best align our practices with this intention. That is, FWO will undertake all wages and entitlements matters arising under the *Fair Work Act* and relevant Commonwealth awards and agreements.

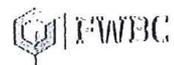
Consistent with this approach I propose that the following framework will relate to wages and entitlements matters which are commenced within the FWBII's jurisdiction and which subsequently need to be referred to FWO:

1. FWO's role will be to investigate those referred matters from FWBII which relate to wages and conditions entitlements under the *Fair Work Act*, other relevant Commonwealth legislation, and industrial instruments;
2. FWO's investigation of such matters will be in accordance with its usual policies and procedures; and
3. The FWO investigation of matters referred by FWBII will be commenced by the relevant FWBII officer contacting the nominated FWO/FWBII liaison officer.

Consistent with this approach, I also propose that FWBII will refer to FWO any current completed investigations for which litigation may be contemplated. I of course recognise that litigation decisions are discretionary matters which would be assessed by your office consistent with relevant FWO litigation guidelines.

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GPO Box 9927
Melbourne VIC 3001

fwbc.gov.au
Hotline 1800 003 338



I anticipate that the detailed administration of matters to be referred will be discussed on a case by case basis between nominated senior officers of our respective agencies. If at any time there is disagreement between our officers about the dealings in a particular case then you and I can discuss and resolve the matter direct.

Finally, I am keen to ensure a comprehensive sector wide approach is taken to the investigation and enforcement of breaches of the *Fair Work Act* and other instruments in our areas of responsibility. Accordingly I remain actively committed to the use of FWBII's examination powers, as appropriate, in any of these matters where:

- that may be of assistance; and
- is within the powers available to me under the Act.

I would be pleased to meet to discuss these proposed arrangements. My office will contact you to arrange a convenient time.

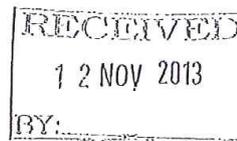
Yours sincerely

Nigel Hadgkiss
Director
Fair Work Building & Construction



Australian Government

Fair Work
OMBUDSMAN



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Nigel Hadgkiss
Director
Fair Work Building & Construction
GPO Box 9927
Melbourne VIC 3001

Dear Mr Hadgkiss

Thank you for your letter dated 30 October 2013 in which you express a preference for changing the existing arrangements between our agencies for dealing with wages and entitlements for employees in the commercial building and construction industry.

Senior staff from our agencies have met to discuss the key issues relating to your proposal, including:

- Ensuring there exists the appropriate legislative mechanism to enable referral under both the *Fair Work (Building Industry) Act 2012* and the *Fair Work Act 2009*.
- Analysis of the legal and practical issues associated with your proposal.
- Understanding the likely impact on FWO resourcing and ability to undertake the agency's core business priorities (including whether additional resources may be required).

The FWO will undertake some further work on understanding these issues and ensuring that our agency is best placed to fulfil our role under the *Fair Work Act 2009*. I will ask my staff to continue to liaise with FWBC as we work through this.

I look forward to the opportunity to meet with you and to build the strong relationship between our agencies.

Yours sincerely

Natalie James
FAIR WORK OMBUDSMAN

8 November 2013



Australian Government

Fair Work OMBUDSMAN

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19/11
Nigel Hadgkiss
Director
Fair Work Building Construction
PO Box 9927
Melbourne VIC 3001

Brian
For implementation please

Dear Nigel

The Government has asked that, to enable the Fair Work Building Industry Inspectorate to align its focus with Government policy, matters involving wages and entitlements of workers in the commercial building industry be dealt with by the Fair Work Ombudsman.

In this context, I am comfortable that the Office of the Fair Work Ombudsman take responsibility for wages and entitlements matters arising under the *Fair Work Act 2009* (the FW Act) involving "building industry participants" as defined by the *Fair Work (Building Industry) Act 2012*.

Following discussions between our offices, I now write to you proposing that we apply the following principles:

1. The FWO will be responsible for inquiring into and, where appropriate, investigating and enforcing matters which allege contraventions of the FW Act relating to wages and entitlements involving a building industry participant.
2. The FWO's treatment of such matters will be in accordance with the Agency's usual policies and procedures.
3. Wages and entitlement matters lodged with the FWBC may be referred to the FWO.
4. FWO will continue to refer other matters arising under the FW Act involving building industry participants which are lodged with the FWO to the FWBC. *how?*
5. FWO and FWBC will keep a record of matters referred in either direction and will provide periodic reports to each other about the workload and any issues which arise. *who?*

I trust that this adequately sets out basis for the mutual exchange of work. Should there need to be any additions or alterations to these principles, please let me know.

Once principles have been agreed upon, the dedicated referral mechanisms and contact officers can be established at both agencies.

I may be contacted on either (03) 9954 2611 or at Natalie.James@fwo.gov.au

Yours sincerely

Natalie James
FAIR WORK OMBUDSMAN
18 November 2013



Australian Government
**Fair Work Building
& Construction**

3 December 2013

Ms Natalie James
Fair Work Ombudsman
GPO Box 9887
Melbourne VIC 3001

Dear Natalie

Thank you for your letter of 18 November 2013 following discussions between our staff.

I am satisfied that the principles reflected in your letter adequately set out the basis for the mutual exchange of work.

I understand that any necessary referral mechanisms and contact staff have already been discussed and I look forward to concluding this matter to fully effect the government's policy intentions.

Yours sincerely ~

Nigel Hadgkiss
Director
Fair Work Building & Construction